

Complaint

IN THE MATTER OF

SOLOMON L. CORUSH D. B. A. AMERICAN COMMERCIAL
TRAVELER

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

Docket 5942. Complaint, Jan. 18, 1952—Decision, June 24, 1952

Where an individual engaged in the publication and interstate distribution of a directory in which were listed advertisements of hotels and motor courts, designated as "American Commercial Traveler"; in soliciting advertisements for paid publication therein, directly and through his sales agents, through oral statements—

- (a) Represented that he could and would assist his advertisers in obtaining listing with the American Automobile Association; when in fact he was not connected in any way with it and exercised no influence upon its selection of approved hotels, motor courts, and other overnight accommodations;
- (b) Falsely represented that he had established a commercial relationship with many businesses as a result of which they directed or requested their salesmen to patronize hotels and motor courts listed in his directory;
- (c) Represented that advertisers would be granted exclusive listings within a prescribed area; the facts being that he granted listings to as many hotels and auto courts as would purchase them;
- (d) Represented that specific numbers of persons would patronize advertisers weekly or monthly by reason of advertisements placed in his directory; when in fact he had no basis for making such representations and many advertisers received no benefit whatsoever from such advertisements;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such representations were true and thereby induce it to purchase listings in his said directory:

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

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. B. L. Williams and *Mr. J. J. McNally* for the Commission.

Hahn, Ross & Saunders, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Solomon L. Corush, an individual, doing business as American Commercial Traveler, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it

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in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Solomon L. Corush, is an individual doing business as American Commercial Traveler, with his office and principal place of business located at 319 South Robertson Boulevard, Beverly Hills, California. The respondent is now, and since April 1950 has been, engaged in the solicitation and sale of advertisements of hotels and motor courts located in various States of the United States and the publication and distribution of a directory of hotels and motor courts, designated as American Commercial Traveler, in which said advertisements are listed.

PAR. 2. In connection with said business, respondent engages in commercial transactions, in commerce, with both customers and prospective customers including the transmission of letters, proofs of advertisements, contracts and checks. Respondent causes his directory to be transported from the place of publication in the State of California to advertisers and to subscribers of said publication located in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said publication in commerce between and among the various States of the United States.

PAR. 3. Respondent and his sales agents in soliciting advertisements for paid publication have made oral representations to the effect: that respondent can and will assist his advertisers in obtaining listings with the American Automobile Association; that respondent has established a commercial relationship with many businesses as a result of which said businesses direct or request their salesmen to patronize hotels and auto courts listed in respondent's directory; that advertisers will be granted exclusive listings within a prescribed area; and that specified numbers of persons will patronize advertisers weekly or monthly by reason of advertisements placed in said directory.

PAR. 4. The aforesaid statements are false, misleading and deceptive. In truth and in fact respondent is not connected in any way with the American Automobile Association, and exercises no influence whatsoever upon the selection of approved hotels, auto courts and other overnight accommodations by said Association. Respondent does not have working agreements with any business firms whereby said firms instruct their salesmen to patronize the advertisers listed in his directory. Respondent does not grant exclusive listings to his advertisers. On the contrary, respondent will grant listings to as many hotels and auto courts as will purchase such listings. Respondent has no basis for representing to advertisers that a specific number of persons will

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patronize said advertisers within any prescribed period of time as a result of a listing in his directory. In fact many advertisers have not received any benefit whatsoever from advertisements inserted in respondent's directory.

PAR. 5. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase listings in respondent's directory.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 24, 1952, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 18, 1952, issued and subsequently served its complaint in this proceeding upon the respondent Solomon L. Corush, an individual doing business as American Commercial Traveler, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. The "Notice" portion of said complaint provided that the failure of said respondent to file his answer within the time therein provided and the failure to appear at the time and place therein fixed for hearing would be deemed to authorize the Commission and the above-named hearing examiner, without further notice, to find the facts to be as alleged in the complaint and to issue an order to cease and desist in the form set forth in said notice. The said respondent failed to file an answer to the complaint herein but, on the contrary, stated in a letter that he did not intend to file an answer, and failed to appear at the time and place fixed for the hearing. At said hearing before the above-named hearing examiner, duly designated by the Commission, the attorney in support of the complaint moved that the respondent

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be found in default, and for the entry of an order to cease and desist in the form set forth in the "Notice" portion of the complaint. Said motion was granted and the hearing was closed. Thereafter, the proceeding regularly came on for final consideration by the said hearing examiner upon the complaint and said motion of the attorney in support of the complaint; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and, pursuant to Rules V and VIII of the Rules of Practice of the Commission, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Solomon L. Corush is an individual doing business as American Commercial Traveler, with his office and principal place of business located at 319 South Robertson Boulevard, Beverly Hills, California. The respondent is now, and since April 1950 has been, engaged in the solicitation and sale of advertisements of hotels and motor courts located in various States of the United States and the publication and distribution of a directory of hotels and motor courts, designated as American Commercial Traveler, in which said advertisements are listed.

PAR. 2. In connection with said business, respondent engages in commercial transactions, in commerce, with both customers and prospective customers including the transmission of letters, proofs of advertisements, contracts and checks. Respondent causes his directory to be transported from the place of publication in the State of California to advertisers and to subscribers of said publication located in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said publication in commerce between and among the various States of the United States.

PAR. 3. Respondent and his sales agents in soliciting advertisements for paid publication have made oral representations to the effect: that respondent can and will assist his advertisers in obtaining listings with the American Automobile Association; that respondent has established a commercial relationship with many businesses as a result of which said businesses direct or request their salesmen to patronize hotels and auto courts listed in respondent's directory; that advertisers will be granted exclusive listings within a prescribed area; and that specified numbers of persons will patronize advertisers weekly or monthly by reason of advertisements placed in said directory.

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PAR. 4. The aforesaid statements are false, misleading and deceptive. In truth and in fact respondent is not connected in any way with the American Automobile Association, and exercises no influence whatsoever upon the selection of approved hotels, auto courts and other overnight accommodations by said Association. Respondent does not have working agreements with any business firms whereby said firms instruct their salesmen to patronize the advertisers listed in his directory. Respondent does not grant exclusive listings to his advertisers. On the contrary, respondent will grant listings to as many hotels and auto courts as will purchase such listings. Respondent has no basis for representing to advertisers that a specific number of persons will patronize said advertisers within any prescribed period of time as a result of a listing in his directory. In fact many advertisers have not received any benefit whatsoever from advertisements inserted in respondent's directory.

PAR. 5. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase listings in respondent's directory.

CONCLUSION

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

ORDER

It is ordered, That the respondent, Solomon L. Corush, an individual, trading as American Commercial Traveler, or trading under any other name or trade designation, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of hotel or auto court directories or other publications, do forthwith cease and desist from representing, directly or by implication, in the solicitation of advertising for such directories or publications:

(1) That the respondent is connected in any manner with the American Automobile Association or is able to obtain the approval of

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or the listing of hotels, auto courts or other accommodations with the American Automobile Association.

(2) That the respondent has a working agreement with any business firm as a result of which such firm instructs its salesmen to patronize the advertisers listed in the respondent's publication.

(3) That advertisers in the respondent's publication are granted exclusive listings within a prescribed area.

(4) That any specific number of persons will patronize the advertisers in the respondent's publication.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of June 24, 1952].

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

HENRY S. BORDEN TRADING AS BORDEN NOVELTY Co. Complaint, July 12, 1950. Order, May 16, 1951.¹ (Docket 5795.)

CHARGE: Advertising falsely or misleadingly and misbranding or mislabeling as to composition and manufacture and preparation of product; in connection with the manufacture and sale of gold covered watch bands or bracelets.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Henry S. Borden, individually and trading as Borden Novelty Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Henry S. Borden, is an individual trading as Borden Novelty Co. with his office and principal place of business located at 128 East 28th Street, New York, N. Y.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the manufacture, sale, and distribution of gold covered watch bands or bracelets.

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

PAR. 3. Respondent is, and was during all times mentioned herein, in substantial competition in commerce with other individuals and with corporations, firms, and partnerships engaged in the sale of gold covered, and other kinds of, watch bands. Among such competitors are many who truthfully mark their products as to gold content and otherwise observe the standards adopted by the industry.

¹ Commission order announcing the fruition of said initial decision, was issued on December 3, 1951.

PAR. 4. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said watch bands in commerce as "commerce" is defined in the Federal Trade Commission Act, the respondent caused certain of the bands sold by him to be stamped with the marking "1/20-12K" and caused said bands to be attached to cards bearing the markings "1/20-12K" GOLD FILLED" and "1/20-12KT. G. F. Top."

PAR. 5. The industry engaged in the manufacture and sale of gold covered articles adopted and put into effect many years ago certain standards and definitions applying to such articles, except watch cases. Such standards provide that a karat is one twenty-fourth part by weight of fine gold in the gold alloy portion of an article and that the weight of the alloyed gold to the weight of the entire metal of the article is expressed by fractions. Said standards also provide that an article having an alloyed gold content of less than one-twentieth shall not be marked "Gold Filled."

PAR. 6. Through the use of the aforesaid printings and markings respondent represented that the gold alloy covering of said bands was one-twentieth of the total weight of the entire metal of said bands, that said bands were gold filled or had gold filled tops, and that the gold alloy covering was of 12 karat fineness.

PAR. 7. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, the gold alloy with which said bands were covered did not constitute one-twentieth of the total weight of the entire metal of the bands and such bands were improperly designated as "Gold Filled" and "Gold Filled Tops." The gold alloy covering of said bracelets was substantially less than of 12 karat fineness.

PAR. 8. The use by the respondent of the aforesaid false, deceptive, and misleading markings has had and now has the tendency and capacity to mislead and deceive a substantial number of wholesalers, retailers, and members of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and caused numbers of the purchasing public to purchase substantial quantities of respondent's products because of such erroneous and mistaken belief. As a result substantial trade has been unfairly diverted to respondent from his competitors and injury has been done by respondent to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on the 16th day of May, 1951, become the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 12, 1950, issued and subsequently served its complaint in this proceeding upon respondent Henry S. Borden, an individual trading as Borden Novelty Co., charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly filed and recorded in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, all intervening procedure before the examiner being waived; and said trial examiner, having duly considered the record herein finds that this proceeding is not in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Henry S. Borden, is an individual trading as Borden Novelty Co. with his office and principal place of business located at 128 East 28th Street, New York, N. Y.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the manufacture, sale and distribution of wrist-watch or bracelet bands, the surface covering of which is composed of gold alloy.

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

PAR. 3. Respondent is, and was during all times mentioned herein, in substantial competition in commerce with other individuals and

with corporations, firms and partnerships engaged in the sale of wristwatch or bracelet bands surfaced with gold alloy.

PAR. 4. Respondent's watch and bracelet bands are all flexible, and a part expandable; the lower or bottom part of the expandable bands is of stainless steel, constructed of separate cross links, each link being in two or more separate parts, tied or pinned together in the center so as to permit expansion. Immediately above the bottom steel part are metallic springs extending the full length of the band which maintain the entire bracelet assembly, when on the arm, in a closed or contracted state. Above the springs and corresponding in shape to the lower links are caps or crowns, made of base metal, surfaced by a thin layer of gold alloy. The non-expandable watch and bracelet bands are composed of separate pieces of base metal linked or tied together to provide flexibility, surfaced on the top by a thin layer of gold alloy.

PAR. 5. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said wristwatch or bracelet bands in commerce as "commerce" is defined in the Federal Trade Commission Act, the respondent caused certain of said bands sold by him to be advertised as, and stamped on the metal ends with the marking "1/20-12K" and caused said bands to be advertised as, and mounted on cards bearing the markings "1/20-12 KT. GOLD FILLED" and "1/20-12 KT. G. F. Top."

PAR. 6. Three of said bands respondents sold in commerce were tested at the Bureau of Standards of the United States Department of Commerce to determine the gold content of their top surface coverings. For the purposes of this test, the surface coverings of end pieces and portions, but not all, of the surface coverings were made, the portions selected being believed to be fairly representative of the entire gold alloy surface coverings. The top surface of the gold alloy on one watch band was found to consist of only approximately one-fortieth of 12 karat gold and thirty-nine fortieths base metal. The tests of the remaining two disclosed that the top surface of one contained one-twentieth of 12 karat gold, and the top surface of the third contained slightly in excess of one-twentieth of 12 karat gold.

PAR. 7. In 1933, at the instance of interested manufacturers, a general conference of representative manufacturers, distributors, and users of gold filled and rolled gold plate articles, other than watch cases, adopted a Commercial Standard for those articles, which was in 1934 promulgated by the Department of Commerce as Commercial Standard CS47-34. Those members of the industry who were willing to conform thereto executed a paper entitled "Acceptance of Commercial Standard CS47-34." Those who participated in the

conference and accepted the standard, with but few exceptions, operated in the New England and Atlantic Coast States extending south to and including New Jersey and in which territory the great bulk, but not all, of the gold filled jewelry was then manufactured. The respondent did not participate in the conference nor execute an acceptance of the standard. There was no statutory authority under which the agreement was entered into or promulgated, of which fact the examiner takes judicial notice. It was purely a voluntary arrangement between the industrial participants in the conference and other members of the industry who voluntarily consented to conform thereto. In 1934 and at the time the commercial standard was promulgated expansion wristwatch bands were not manufactured but were in use for bracelets. The standard thus promulgated provided *inter alia* under the heading "Nomenclature and Definitions," as follows:

"6. A karat is $\frac{1}{24}$ th part by weight of fine gold in the gold alloy portion of the article. For example, '10-Karat Gold Filled' means that the gold alloy used on the surface or surfaces contains 10/24ths by weight of fine gold."

Under the heading "*Quality Marks*";

"10. * * * No article having an alloyed gold content of less than $\frac{1}{20}$ shall be marked 'Gold Filled.' * * *"

PAR. 8. Two manufacturers of metallic wrist bands, who subscribed to the commercial standard referred to in the preceding paragraph, testified that, in their opinion, said standard was generally accepted by the industry; that respondent's markings did not conform to said standard in that the letters "GT" meaning "Gold Top," referred to the entire top crown or shell, whereas the top crown or shell of respondent's wrist bands was composed of base metal surfaced on the top with a thin covering of gold alloy which did not constitute one-twentieth of the total weight of the entire metal in the band as required by the Standard. These two manufacturers conform to the commercial standard and make the entire top piece of wrist bands made and sold by them of gold alloy. They place no markings on the metal bands but print on a card upon which the band is mounted the name of the company, or its trade-mark and "1/20-12K. Gold Filled." To what extent this practice is now or has in recent years been followed in the industry is not disclosed, but the evidence of other witnesses clearly indicates that today many manufacturers of metallic bands in the New York area (condition in other areas not being shown) follow the same form of manufacture and markings used by the respondent, and that the commercial standard, set in 1934, by reason of changed conditions in the industry during the last 17 years is not regarded by many as applicable to or controlling the marking of gold alloyed surfaces of wrist bands.

CONCLUSION

The complaint charges a violation of commercial standard adopted in 1933 by those who voluntarily participated in a conference to standardize gold filled or gold surfaced jewelry, other than watches. Adherence to the standard was purely voluntary. Refusal or failure of the respondent to subscribe or conform to the standard was not a violation of law and formed no basis for the charge that respondent had engaged in unfair methods of competition or unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the complaint be, and the same is hereby, dismissed.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Daniel & Bernard Jacobson, of New York City, for respondent.

JOSEPH GOLDSTONE AND ESTHER GOLDSTONE TRADING AS IMPERIAL PEARL SYNDICATE ET AL. Complaint, June 30, 1945.¹ Order, July 11, 1951. (Docket 5348.)

¹ The Commission on April 28, 1947, issued an order amending complaint, as follows:

This matter comes on to be heard by the Commission upon the request of counsel supporting the complaint, that the complaint herein be amended by including the Imperial Pearl Syndicate, an Illinois corporation with its office and principal place of business at No. 5 North Wabash Avenue, Chicago, Ill., as a party respondent, charging such corporation with the same acts and practices charged against the original respondents herein. It appears that respondents Joseph Goldstone and Ester Goldstone are officers of and do now, and have during the period of time mentioned in the complaint herein, controlled the business policies and practices of said corporation, and that the respondents, Joseph Goldstone and Esther Goldstone and the said Imperial Pearl Syndicate, a corporation, have consented and agreed that the said corporation be made a party respondent in the matter and charged with the same acts and practices charged against the original respondents herein, without the issuance and service of formal amended complaint or notice with respect thereto, and that the answer interposed in behalf of Joseph Goldstone and Esther Goldstone be deemed to be the answer of the said Imperial Pearl Syndicate, a corporation, and have further consented and agreed that the testimony taken in this case shall apply to and have the same force and effect as if the said corporation had been named a party respondent in the first instance and had been duly served with a copy of complaint and given due notice of all hearings and other proceedings in the matter, and the Commission having duly considered the matter and the record herein and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, amended by including the Imperial Pearl Syndicate, an Illinois corporation with its office and principal place of business at No. 5 North Wabash Avenue, Chicago, Ill., as a party respondent in this proceeding, and charging said corporation with all the acts and practices charged against the respondents Joseph Goldstone and Ester Goldstone, copartners trading as Imperial Pearl Syndicate;

It is further ordered, That the answer interposed in behalf of respondents Joseph Goldstone and Esther Goldstone be deemed to be and hereby is accepted as the answer of the added respondent, Imperial Pearl Syndicate, a corporation;

It is further ordered, That all testimony taken in the case shall apply to the said Imperial Pearl Syndicate, a corporation, and have the same force and effect as if it had been named a party respondent in the first instance and had been duly served with a copy of complaint and given due notice of all hearings and other proceedings in the matter.

CHARGE: Neglecting, unfairly or deceptively, to make material disclosure as to product being of Japanese or foreign origin; in connection with the wholesale distribution and sale of imported merchandise, including necklaces and other jewelry products made from cultured pearls.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Joseph Goldstone and Esther Goldstone, copartners trading as Imperial Pearl Syndicate, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Joseph Goldstone and Esther Goldstone are copartners trading as Imperial Pearl Syndicate, with their office and principal place of business located at 5 North Wabash Avenue, Chicago, Ill.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the wholesale distribution and sale of imported merchandise, including necklaces and other jewelry products made from cultured pearls, in commerce among and between the various States of the United States and in the District of Columbia.

The respondents cause and have caused their said merchandise, when sold, to be shipped from their said place of business located in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise among and between the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their said business in connection with the sale and distribution of cultured pearls imported from Japan and other foreign countries, respondents receive said cultured pearls loosely strung, at which time they are graded, matched, restrung and used in pearl necklaces, earrings, brooches and rings, which are thereafter offered for sale and sold as aforesaid. Large quantities of said cultured pearls are imported by said respondents and are offered for sale and sold to members of the purchasing and consuming public in the manner aforesaid.

PAR. 4. At the time of the importation into the United States of the said cultured pearls and at the time the respondents receive said cultured pearls of foreign origin, such products have been and are all labeled or marked with the word "Japan" or the words "Made

in Japan," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondents cause the words or marks indicating their foreign origin to be removed therefrom and thereafter sell and distribute the said products in commerce as above set forth without any words or marks thereon indicating their foreign origin, and cause the said products to be offered for sale and sold to members of the purchasing and consuming public in that condition without informing the purchasers thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be products wholly of domestic manufacture and origin unless the same are labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now, and for several years last past has been, among members of the buying and consuming public, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin or from products made in substantial part of materials or parts of foreign origin. During recent years and especially at the present time, there is a decided and overwhelming preference among American purchasers and consumers for products of American manufacture and origin as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of respondents as aforesaid of offering for sale, selling, and distributing their cultured pearls of Japanese or other foreign origin, made into pearl necklaces, earrings, brooches, and rings, without any labeling or marking to indicate to purchasers the Japanese or other foreign origin of such products, has had, and now has, the capacity and tendency to, and has and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said cultured pearl necklaces, earrings, brooches, and rings and all the parts thereof, are wholly of domestic manufacture

and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of uninformed retailers of respondents' cultured pearl necklaces, earrings, brooches, and rings, a means and instrumentality to mislead or deceive members of the buying and consuming public into the false and erroneous belief that said products and all the parts thereof are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

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

Order dismissing amended complaint without prejudice, follows:

This proceeding regularly came on for final consideration by the Commission upon the amended complaint, respondents' answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, and recommended decision of the trial examiner, no briefs having been filed or oral argument requested.

The complaint herein charges respondents with the use of unfair and deceptive acts and practices in connection with the offering for sale, sale and distribution of cultured pearl necklaces and other articles of jewelry containing cultured pearls in commerce without disclosing the foreign origin of the cultured pearls. Upon consideration of the entire record herein, the Commission is of the opinion, for the reasons set forth in its opinion accompanying the findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc., et al.*,² Docket No. 5358, that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls be labeled or marked so as to disclose the foreign origin of the cultured pearls.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the amended complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of said complaint as may be warranted by the then existing circumstances.

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

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Mr. Jay A. Gilman, of New York City, for respondents.

² 47 F. T. C. 34.

BEN FRIEDLANDER TRADING AS ADELPHI HOSIERY CO. AND LOUIS G. KAUDERER TRADING AS DOUBLE KNIT HOSIERY MILLS. Complaint, August 9, 1946. Order, July 13, 1951. (Docket 5457.)

CHARGE: Misbranding or mislabeling in violation of the Wool Products Labeling Act and the Federal Trade Commission Act; in connection with the offer and sale of men's socks, as set forth in the complaint thereof, as follows:

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Ben Friedlander, an individual trading as Adelphi Hosiery Co., and Louis G. Kauderer, an individual trading as Double Knit Hosiery Mills, hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ben Friedlander is an individual trading and doing business as Adelphi Hosiery Company and has his principal office and place of business at 93 Worth Street, New York 13, N. Y. Said respondent is now and for more than 1 year last past has been engaged in the sale of hosiery.

Respondent Louis G. Kauderer is an individual trading and doing business as Double Knit Hosiery Mills and has his principal office and place of business at Riverside, N. J. Said respondent is now and for more than 1 year last past has been engaged in the manufacture of men's socks, some of which are sold and have been sold to the aforementioned respondent, Ben Friedlander, trading as Adelphi Hosiery Co.

PAR. 2. Respondent Louis G. Kauderer, trading as Double Knit Hosiery Mills, is engaged in the manufacture for introduction in commerce, and both of the respondents are engaged in the introduction into commerce and in the sale, transportation and distribution of wool products as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said Act and in the Federal Trade Commission Act. Many of respondents' said wool products are composed in whole or in part of "wool," "reprocessed wool," or "reused wool," as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondent Louis G. Kauderer, trading as Double Knit Hosiery Mills, has violated the provisions of said act, and said rules and regulations, in the manufacture for intro-

duction into commerce, and both of said respondents have violated the provisions of said act and said rules and regulations in the introduction into commerce and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder.

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

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

ORDER dismissing complaint without prejudice follows:

This matter came on to be heard by the Commission upon the complaint, respondents' answers thereto, testimony and other evidence, including a stipulation between counsel which was read into the record, and initial decision of the trial examiner which the Commission ordered be considered, and which was considered, a recommended decision, to which no exceptions were filed (no briefs having been filed, and oral argument not having been requested).

The complaint charges the respondents with violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products by failing to affix to said wool products a stamp, tag, label, or other means of identification showing the fiber content thereof and other information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

It appears from the record herein that the respondent L. G. Kauderer, an individual trading as Double Knit Hosiery Mills, at the instance of respondent Ben Friedlander, an individual trading as Adelphi Hosiery Co., shipped approximately 480 dozen pairs of men's socks to Black Manufacturing Co., Seattle, Wash., in July 1945. The socks, which were imperfect in construction and manufacture because they failed to conform to specifications of the United States Army and which were known in the trade as "Army rejects," were composed of 63 percent wool and 37 percent cotton. These socks did not bear a stamp, tag, label, or other means of identification showing the name or registered identification number of the manufacturer or of a seller, and at least 60 dozen pairs of these socks did not have printed thereon legible labels or transfers clearly showing the fiber content as required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

It further appears, however, that the aforesaid misbranding, which occurred during the abnormal and unsettled conditions resulting from the war, was inadvertent and partly due to carelessness on the part of an employee of respondent Kauderer; and that, upon having the improper labeling called to their attention, the respondents took immediate steps to fully comply with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

The Commission being of the opinion that under the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding against the respondents or to take such further or other action in the future as may be warranted by the then existing circumstances.

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

Mr. J. W. Brookfield, Jr., and *Mr. George M. Martin* for the Commission.

Mr. Herbert E. Kaufman, of New York City, for Ben Friedlander.

Powell & Parker, of Mount Holly, N. J., for Louis G. Kauderer.

SAMUEL LIPMAN, LOUIS B. LIPMAN, FLOYD LEIBOWITZ AND LOUIS WELSCHER DOING BUSINESS AS PETITE MISS CO. Complaint, June 28, 1945. Order, July 26, 1951. (Docket 5345.)

CHARGE: Misbranding or mislabeling in violation of the Wool Products Labeling Act and the Federal Trade Commission Act and using misleading product name or title as to composition of product in violation of last named act; in connection with the manufacture and sale of women's and children's coats and suits and other articles.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Samuel Lipman, Louis B. Lipman, Floyd Leibowitz and Louis Welscher, individually and as copartners, trading and doing business as Petite Miss Co., hereinafter referred to as respondents, have violated the provisions of said acts, and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Samuel Lipman, Louis B. Lipman, Floyd Leibowitz and Louis Welscher, are copartners, trading and doing business as Petite Miss Co., and have their office and principal place of business at 500 Seventh Avenue, New York, N. Y. Respondents are now and for more than 1 year last past have been engaged in manufacturing and selling women's and children's coats and suits and other articles.

Respondents cause and for more than 1 year last past have caused said products, when sold by them, to be transported from their place of business in the State of New York to various purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of certain of their aforesaid products, the respondents have used and are now using the expression "Ango-Llama" as a trade name for said products which trade name appears on labels attached to the products, and in various other ways.

PAR. 3. Through the use of the aforesaid trade name, in the manner aforesaid, the respondents have represented and are now representing that the said products are made wholly or in part of the hair or wool of the llama.

PAR. 4. The use by the respondents of the trade name, in the manner aforesaid, is false and misleading. In truth and in fact none of the hair or wool of the llama is used in the manufacture of said products or contained therein.

PAR. 5. There is a preference on the part of the substantial portion of the purchasing public for coats and other articles made of llama wool.

PAR. 6. The use by the respondents of the acts and practices hereinabove described has the capacity and tendency to and does mislead and deceive wholesalers and retailers who purchase their said products for resale as to the true fiber content of the products. By said acts and practices respondents also place in the hands of the aforesaid purchasers of their said products for resale a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the true fiber content of the products. As a result of this deception, substantial quantities of said products are purchased in the belief that they are made wholly or in part of the hair or wool of the llama.

PAR. 7. Since July 15, 1941, among the coats, suits, and other articles manufactured, offered for sale, sold and distributed in commerce, and the coats, suits, and other articles manufactured for introduction into commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, are many which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939, in that such coats, suits and other articles are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in said act and said rules and regulations.

Among the said wool products offered for sale, sold and distributed by respondents in commerce, as aforesaid, and among the coats manufactured for introduction into said commerce, were certain articles which bore conflicting labels. Attached to some of said articles, particularly coats, were cardboard tags which bore the following information:

Fabric	Content
100% WOOL Exclusive of Ornamentation	
MFG. 885	
Manufactured for	
Style	Size
PETITE MISS CO.	

A cloth label sewed to the innerlining near the collar of said garments reads as follows:

The
CUDDLE COAT
ANGO-LLAMA
MOHAIR AND WOOL
100%

Lined with Skinner's Quality Rayon.

PAR. 8. The use on the same coat of the cardboard label which states that said coat is composed of "100% wool" and a cloth label which states that said coat is composed of "mohair and wool" is conflicting and has the capacity and tendency to confuse and mislead and does confuse and mislead the purchasing public as to the fiber content of said garments and is a violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 9. In the course and conduct of their business as aforesaid, the respondents have used the statement "Mfg. 885" on the aforesaid cardboard tags.

By the use of said statement, in the manner aforesaid, the respondents represent that there has been assigned to them a manufacturer's number by the agency of the United States Government authorized to assign such numbers to manufacturers of woolen products. In truth and in fact a manufacturer's registered number has never been assigned to respondents by an agency of the United States Government authorized to assign such numbers to manufacturers of woolen products, and the respondents are not entitled to use such representation.

PAR. 10. The aforesaid acts, practices, and methods of respondents, as alleged in paragraph seven and nine herein, constitute misbranding and were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and all the acts, practices and methods of respondents, as alleged therein, are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, the attached initial decision of the trial examiner shall, on July 26, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by James A. Purcell, trial examiner: This proceeding came on to be considered by the above-named trial examiner therefore duly designated by the Commission, upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint, no proposed findings and conclusions having been presented

by counsel and oral argument not having been requested; and further upon consideration of a motion to dismiss the complaint, without prejudice to the right of the Commission to reopen the matter should future conditions warrant, on the several grounds therein set forth, filed herein by memorandum to the Commission on January 20, 1950, by the attorney in support of the complaint, concurred in by the attorney representing the respondents. Said motion was, by order of the Commission dated November 6, 1950, referred to the trial examiner for his consideration.

The undersigned, being now fully advised in the premises, states as follows:

On June 28, 1945, complaint issued against the four-named respondents, former officers of Petite Miss, Inc. (such corporation not here a respondent), said individuals, as copartners having acquired the business and assets of the corporation, Petite Miss, Inc., and continuing said business under the firm name and style of Petite Miss Co. Respondents were charged with violation of the Federal Trade Commission Act through the deceptive use of the term "Ango-Llama" and also with violation of the Wool Products Labeling Act of 1939 and of the rules and regulations promulgated under the last-named act, the alleged violation consisting of the use of conflicting labels and the unauthorized use of a manufacturers' number in connection with the sale of their woolen products.

As to the use by respondents of the term "Ango-Llama" in connection with the sale of their products, a supplemental investigation of respondents' practices in October of 1947, developed that they no longer used the term "Ango-Llama," and in its place and stead had substituted a trade name or designation of its products which has not been challenged.

As to the charge of violation of the Wool Products Labeling Act: The specific violation charged respondents with the unlawful use of a "Manufacturer's Registered Identification Number," (885), which had been assigned for use on July 2, 1941, to the corporation, Petite Miss, Inc. Respondents, as copartners, after acquiring the assets and good will of Petite Miss, Inc., continued for a time the use of said manufacturer's number 885 under the misapprehension they were legally entitled so to do by reason of their successorship to the business of the corporation. In August of 1945, respondents were notified that the designation number theretofore assigned to Petite Miss, Inc., would have to be canceled, but due to the pendency of the complaint against the company such action was not in fact taken until April 14, 1948, whereupon respondents, copartners trading as Petite Miss Co., applied for assignment of a manufacturer's registered identification number as a result whereof the number 6838 was, on July 9,

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1948, duly assigned and such designation is now in force and effect.

An investigation of the methods of respondents in the conduct of their business in relation to the charges of the complaint, pursued at the instance of this Commission on October 3, 1947, failed to disclose that the respondents were, at that time, violating the provisions of the Wool Products Labeling Act of 1939.

By reason of the foregoing it is the opinion of the trial examiner that no substantial public interest presently exists in the issues raised in the present proceeding, wherefore:

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should further facts warrant.

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

Mr. Russell T. Porter for the Commission.

Mr. Louis H. Solomon, of New York City, for respondents.

FOREST CITY PRODUCTS, INC., AND H. SCHINDLER & Co., INC. Complaint, August 11, 1945. Order, August 3, 1951. (Docket 5366.)

CHARGE: Misbranding or mislabeling as to composition of product; in connection with the sale of waxed thread designed for use in cleaning human teeth.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Forest City Products, Inc., a corporation, and H. Schindler & Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Forest City Products, Inc., is a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business at 205 St. Clair Avenue NW., in the city of Cleveland, Ohio.

Said respondent is now, and has been for several years last past, engaged in the sale and distribution of waxed thread designed for use in cleaning human teeth, which said respondent designates and identifies generally by the trade name or brand "Sentinel," to dealers, purchasers, and users thereof located in the various States of the United States and in the District of Columbia.

Said respondent causes and has caused said waxed thread, when sold, to be transported from its principal place of business in Cleveland, Ohio, to the purchasers thereof located in the various States of the United States other than the State of Ohio, and in the District

of Columbia. Said respondent maintains, and at all times, mentioned herein has maintained, a course of trade and commerce in said waxed thread between and among the States of the United States.

PAR. 2. Respondent H. Schindler & Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its office and principal place of business in the city of Canton, Mass.

PAR. 3. Respondent Forest City Products, Inc., has caused, and now causes, the containers and packages containing said waxed thread and the cards and other advertising material accompanying same, to be inscribed with the words "Dental Floss" and frequently with the additional words "Purified Wax Silk."

Through the use of the inscription "Dental Floss" and the inscription "Purified Wax Silk," respondent Forest City Products, Inc., represents and implies to purchasers and users of said product that it is made from silk fiber, the product of the cocoon of the silkworm. In truth and in fact, the waxed thread offered for sale and sold by said respondent marked, branded, and represented as aforesaid, was not and is not composed of silk fibers, the product of the cocoon of the silkworm, but was and is composed of a thread or fiber known as rayon, produced through a synthetic product, which was substituted for the silk fiber usually used in the manufacture of such thread.

PAR. 4. For many years waxed thread designed for use in cleaning human teeth has been composed of silk fibers, the product of the cocoon of the silkworm, and such thread has been designated, described and referred to in the trade and by the public as "Dental Floss." The term "Dental Floss" has so long been associated by the public with thread for the cleaning of teeth composed of silk fibers, the product of the cocoon of the silkworm, that when this term is used to designate, describe, or refer to thread used for cleaning teeth, such thread is accepted by the public as being composed of silk fibers.

The use of the term "Dental Floss" to designate, describe, or refer to waxed thread designed for use in cleaning human teeth which is composed in whole or in part of fibers other than silk, the product of the cocoon of the silkworm, without disclosing in immediate connection and conjunction therewith, in words of equal conspicuousness, the true name of the fibers contained in such thread, is misleading and deceptive to members of the public in that such thread is accepted as and for thread composed of silk.

PAR. 5. Respondent H. Schindler & Co., Inc., is now and has been for several years last past, engaged in the manufacture and packaging of waxed thread used for the cleaning of human teeth for the respondent Forest City Products, Inc., and respondent H. Schindler & Co., Inc., has placed, and now places, said waxed thread composed of rayon

in said containers or packages bearing the inscription "Dental Floss" and, in some instances, said additional inscription "Purified Wax Silk" thereby assisting and enabling respondent Forest City Products, Inc., to sell and dispose of said waxed thread composed of rayon as and for thread composed of silk, the product of the cocoon of the silkworm.

PAR. 6. The acts and practices of respondents, as herein described, have had and have the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers of said waxed thread by creating the erroneous and mistaken belief that said waxed thread is made from silk fiber, the product of the cocoon of the silkworm, and to cause a substantial number of such purchasers and the general public, acting on such erroneous and mistaken belief, to buy said waxed thread composed of rayon from respondent Forest City Products, Inc.

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

COMPLAINT DISMISSED without prejudice by the following order:

This matter came on to be heard by the Commission upon the complaint of the Commission and the respondents' answers thereto admitting all of the material allegations of the complaint and further stating additional facts in explanation of their acts and practices alleged in the said complaint to be in violation of the Federal Trade Commission Act.

The allegations of the complaint, all of which are admitted by respondents, state, among other things: (1) That respondent H. Schindler & Co., Inc., manufactured for respondent Forest City Products, Inc., waxed thread used for the cleaning of human teeth which, upon directions from respondent Forest City Products, Inc., it placed in containers which in all cases were labeled "Dental Floss" and in certain cases had the additional inscription "Purified Wax Silk," (2) that the wax thread in the containers so marked was composed of rayon, (3) that through the use of the inscription "Dental Floss" and the inscription "Purified Wax Silk" respondents have represented that the waxed thread in the containers so marked was composed of silk.

In addition to their admission of these allegations of the complaint, respondents state in their answers: (1) That their rayon product was packaged in containers inscribed "Purified Wax Silk" for a very limited period of time in 1941 while respondent H. Schindler & Co., Inc., used up containers so marked which it had on hand to complete an order for respondent Forest City Products, Inc., when the Office of Production Management unexpectedly froze its stock of raw silk

causing it to shift to rayon as the raw material used in completing the said order, and (2) that the term "Dental Floss" does not identify a product so marked as being made of silk. Also respondents' answers indicate that their acts and practices have greatly changed from their earlier practices as described in the complaint herein. For example, respondent Forest City Products, Inc., states that nylon has replaced rayon in their product and their containers now are labeled to show that their product is manufactured from nylon. Respondent Rain-Beau Products Co., the successor to H. Schindler & Co., Inc., states that it has long discontinued the practice of packaging wax thread for cleaning teeth and now supplies such material to others for packaging as they desire.

Therefore, the Commission being of the opinion that the record is not sufficient to support the allegations of the complaint relating to the unfair and deceptive nature of respondents' use of the term "Dental Floss" in referring to thread made of rayon, and that respondents' use of the term "Purified Wax Silk" in connection with rayon thread was abandoned many years ago and there is no reason to believe that the practice will be resumed; and the Commission being further of the opinion that in the circumstances the public interest would not be served by further proceedings in this matter at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of this complaint as may be warranted by the then existing circumstances.

Mr. John L. York for the Commission.

Barlow & Barlow, of Providence, R. I., for respondents.

EDWARD F. QUIRKE AND SARA QUIRKE, TRADING AS ELMIRA STEEL Co. Complaint, October 5, 1945. Order, August 16, 1951. (Docket 5387.)

CHARGE: Advertising falsely or misleadingly and misrepresenting directly or orally by self or representatives as to comparative merits of product, guarantee, patented product, tests, indorsements or approval and qualities, properties or results of product; claiming indorsements and testimonials falsely or misleadingly as to or from Department of Commerce; and offering unfair, improper, or deceptive inducements to purchase as to guarantee; in connection with the manufacture and sale of a powdered solvent preparation designed to improve or condition fuel oil and designated as Elmirite.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Edward

F. Quirke and Sara Quirke, individually and trading as Elmira Steel Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Edward F. Quirke and Sara Quirke are individuals trading under the name of Elmira Steel Co., with their principal place of business at 185 Montague Street, Brooklyn, N. Y.

PAR. 2. Respondents are now, and have been for more than 2 years last past, engaged in the manufacture and sale of a powdered solvent preparation designed to improve or condition fuel oil, and designated as Elmirite. Respondents cause and have caused said product, when sold by them, to be transported from their place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, in connection with the offering for sale, sale and distribution of their product in said commerce, respondents have made numerous false, deceptive, and misleading statements and representations to purchasers and prospective purchasers of their said product by means of circulars, letters, and pictures, all of general circulation, and also by means of sales manuals and oral representations employed by respondents' sales agents, all descriptive of their said powdered preparation. Among and typical of such representations so made, but not all-inclusive, are the following:

(Pictures of boilers, tanks and buildings wrecked by explosions.)

* * *

We have refrained from offering a "liquid solvent" for eliminating sludge from fuel oil storage tanks, sediment from the lines and carbon from pre-heaters. We can do it—but the customer would buy several hazards. * * * They are inflammable and explosive.

Only a powder such as Elmirite gives a guaranteed prescribed service to heating plants.

Elmirite is — — — patented * * * tested and approved by Department of Commerce as per claims stated herein.

* * * * *

* * * will eliminate sludge and water from fuel oil tanks.

* * * * *

Reduces oil viscosity.

* * * * *

Changing to heavier from light oil * * * does not necessitate adjusting burners or changing equipment.

* * * * *

Savings up to 6% in oil consumption.

* * * * *

Furnaces will come up to heat in shorter time.

* * * * *

An absence of smoke.

* * * * *

Oil will be cleaner and fire hotter.

* * * * *

There will be no scale formation on alloy steels and particularly little or no scale on straight carbon steels.

* * * * *

Elmirite will remove carbon from burners * * * and will prevent carbon from forming on burners.

PAR. 4. Through the use of the foregoing statements and representations, and others similar thereto but not herein set out, all of which purport to be descriptive of the effectiveness of respondents' powdered preparation in use, respondents represent, directly and by implication, that Elmirite is not as hazardous as liquid solvents; that only a powdered solvent such as Elmirite is guaranteed to furnish prescribed service to heating plants; that Elmirite is patented; that Elmirite has been tested and approved by the Department of Commerce of the United States; that its use will eliminate sludge and water from fuel oil tanks; that Elmirite reduces oil viscosity; that in changing from light to heavier oils, there is no necessity for adjusting burners when Elmirite is used; that savings up to 6 percent in oil consumption result from the use of Elmirite; that furnaces will come up to a heating temperature in a shorter time when Elmirite is used; that Elmirite eliminates smoke and causes the fuel oil to be cleaner, causes the fire to be hotter, and leaves no scale on alloy steel and very little, if any, scale on carbon steel; that Elmirite will remove carbon from burners and will prevent carbon formation on burners.

PAR. 5. The foregoing statements and representations made by respondents are false, deceptive, and misleading in the following among other particulars:

In truth and in fact Elmirite is as hazardous as liquid solvents. Powdered solvents are not guaranteed to furnish prescribed services to heating plants. Elmirite is not a patented product. It has neither been tested nor approved by the Department of Commerce of the United States. Its use will not eliminate sludge and water from fuel oil tanks, nor reduce oil viscosity. Elmirite has no effect upon the adjusting of burners in changing from light to heavy oils. No saving in oil consumption results from the use of Elmirite in fuel. Furnaces will not come to a heating temperature any quicker when Elmirite is used. Elmirite does not eliminate smoke, and it does not cause fuel oil to be cleaner. Fires are no hotter when Elmirite

is added to the fuel oil. Elmirite has no effect on scale. Its use will not remove carbon from burners and will not prevent carbon from forming on burners.

PAR. 6. The use by respondents of the said false and misleading statement and representations in connection with the sale of their aforesaid product has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondents' said product into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said product. By these means respondents have further placed in the hands of their dealers, agents, and distributors an instrument by means of which the latter mislead and deceive and have misled and deceived members of the consuming public.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's rules of practice, the attached initial decision of the trial examiner shall, on August 16, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by JOHN W. ADDISON, Trial Examiner: This proceeding came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondents' testimony, and other evidence introduced in support of and in opposition to the allegations of the complaint and motion to dismiss the complaint without prejudice by counsel supporting the complaint as to which opposing counsel waived answer and agreed that the case be considered without intervening procedure which motion was tentatively denied by order of April 25, 1951 (proposed findings not having been presented and oral arguments not having been requested).

The complaint, issued in October 1945, charged a partnership in Brooklyn, N. Y., with the use of unfair and deceptive acts and practices, in violation of the Federal Trade Commission Act, to promote the sale in commerce of a powdered solvent preparation known as Elmirite designed to improve or condition fuel oil, by misrepresenting its effectiveness in the claims set forth in paragraph 3 of the complaint. When the complaint issued Edward F. Quirke, John S. Quirke, Sara

B. Quirke, Edith Quirke, and Virginia Quirke were partners trading as Elmira Steel Co. John S. and Sara B. died in September 1949 and Virginia retired and the partnership was dissolved, whereupon said Edward K. Quirke and Edith Quirke, trading as Elmira Steel Co., formed a new partnership that succeeded to the business of the dissolved Elmira Steel Co.

The use of many of the challenged claims had been abandoned before the complaint issued and the use of others was later given up. None of them has been used by the successor partnership except those shown in Commission Exhibit 12, which is not circulated among the general public. The only use of it for advertising purposes is in very rare instances where a customer or prospective customer asks for a copy. It has to do not with a stock product but with a coil-cleaning compound made up on order to meet requirements prescribed for troubles described by the customer concerned and is for use by engineers on ships and in plants daily consuming 30,000 to 80,000 gallons of Nos. 2-6 oils.

Respondent Edward F. Quirke says that the new partnership has no intention of resuming the use of any of the other advertisements in evidence.

The trial examiner concludes that the public interest does not require further corrective action by the Commission and that the motion to dismiss without prejudice should be granted. Accordingly,

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

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

Mr. R. A. McOuat and *Mr. Jesse D. Kash* for the Commission.

Perkins, Daniels & Perkins, of New York City, for respondents.

H. WARSHOW & SONS, INC., JOSEPH WARSHOW, JACK J. FELDMAN AND LOUIS J. LAYTON. Complaint, November 2, 1950. Order, September 21, 1951. (Docket 5824.)

CHARGE: Advertising falsely or misleadingly, misbranding or mislabeling, misrepresenting directly or orally by self or representatives and using misleading product name or title as to manufacture or preparation, nature, qualities, properties, or results and quality of product; in connection with the manufacture and sale of elastic fabrics.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that H. Warshow & Sons, Inc., a corporation and Joseph Warshow, Jack J. Feldman, and Louis J. Layton, as individuals and as officers of said corporation, hereinafter referred to as respondents, have violated the

provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, H. Warshow & Sons, Inc., is a corporation organized and existing under the laws of the State of New York. Respondent Joseph Warshow is president and treasurer, Jack J. Feldman is vice president, and Louis J. Layton is secretary of corporate respondent. As such officers these individual respondents formulate, direct, and control the acts and practices of said corporation, including its advertising representations. The principal place of business of said respondents and their post-office address is 15 West Thirty-seventh Street, New York 18, N. Y.

PAR. 2. Respondents are now and for several years last past have been engaged in the manufacture, sale, and distribution, among other things, of elastic fabrics.

In the course and conduct of their said business, respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said products, in commerce, among and between the various States of the United States.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the sale of their products in commerce, respondents have made statements and representations of general circulation classifying and describing their said elastic fabrics by means of advertisements in newspapers and trade journals, letters, oral statements, labels and invoices. Among and typical of the statements and representations made in the manner aforesaid are the following:

On printed labels attached to their elastic fabrics:

H. Warshow & Sons * * * Style 1140, price \$8.00, Width 60'', Color Nude, Nylon Power Net;

POWER NET Woven with Du Pont Nylon;

In newspapers and trade journals:

Fabrics by Warshow. For flexible figure control. "npr" NYLON POWER NET;

In letters to customers:

We beg to advise you that our Quality 8318 is Nylon Power Net;

In statements by respondent Warshow to customers:

I told him it was power net and I approved his use of the power net label;
Feature it as Power Net.

PAR. 4. Through the use of the statements and representations above set forth and others similar thereto not specifically set out herein, respondents represent and have represented their elastic fabric to be a "power net" product, that is, having the quality, characteristics and method of construction of the genuine "power net" as that term is understood and used in the corset, girdle, foundation, and brassiere trade and industry, and as known to the purchasing public.

PAR. 5. In the year 1809 a machine was invented in Nottingham County, England, which was designed to make a simple hexagonal mesh or net having twisted threads that would not ravel. This machine was known as the "bobbinet" loom and it is manufactured at that one place and nowhere else, namely, Nottingham, England. From this machine comes the word "net" as comprised and used in the term "power net." The word "power" in combination with the word "net" was first used in the year 1931, in originating the term "power net." The process of the helical winding of two fibers upon a rubber thread to give an opposed double stretch was patented and the trademark "Lastex" was obtained for this elastic yarn. The idea of using this "Lastex" yarn on the "bobbinet" loom was conceived and tried out in 1932. The result of this experiment was a product with hexagonal mesh, or net design, with opposed diagonal threads which produced the "two-way stretch," a network which had a snap or powerful kick-back. It was strong enough to be used in making corsets, permitting the elimination of the use of whalebone, rattan, horn, turkey quill, laces, rustless steel, and celluloid strips in corset construction. It became a deluxe fabric for making expensive foundation garments. Because the fabric was "net" and made on the "bobbinet" loom, and because it was strong enough to become the "stretch" material of corsets and foundations, it was named in the industry as "power net." It became very popular and the demand exceeded the supply because only a few manufacturers had "bobbinet" machines, which were scarce because of the slow production of them in Nottingham County, England. The term "power net" is and has been extensively used not only by corset and girdle manufacturers in advertisements describing the "two-way stretch" fabric employed by them in making fine foundation garments, but it has also been widely publicized by department stores, and specialty shops selling "power net" articles of wear. "Power net" came to be known to the manufacturers, department stores, specialty shops and to members of the public as a high grade type of fabric made on the "bobbinet" loom with Lastex yarn. This meaning continued unchallenged from the year 1933 to 1948. Many members of the trade and of the purchasing public prefer corsets, girdles, and foundation garments made of the "power net" fabric produced on the bobbinet loom.

PAR. 6. During the year 1948 respondents began using Lastex yarn on knitting machines known as Kayloom, Kidde, Raschel, and Reiner to make elastic fabric, and to advertise and represent such elastic fabric as "power net" as alleged in paragraph 3 of this complaint. The said elastic fabric, advertised and sold by respondents, as aforesaid, is of entirely different construction from power net, being knitted with loops and not woven of intersecting yarns. Respondents' said fabric is an imitation of bobbinet power net. It is not a "net" product, and it does not have the hexagonal mesh of the genuine "power net" product made on the bobbinet machine. It does not have the "double stretch" or "two-way" stretch of power net but stretches more one way than another, and does not have the same appearance on both sides as is true of the power net product. Respondents' product is a knitted fabric which is merely looped while the bobbinet machine produces a product which is genuinely net with an even, powerful two-way stretch.

PAR. 7. The representations of respondents as hereinbefore set forth in describing, designating and advertising its product as "power net" are false and misleading and have the capacity and tendency to deceive manufacturers, department stores, specialty shops, and members of the public alike into the erroneous and mistaken belief that such representations are true, and as a result of such belief, so induced, cause and have caused a substantial portion of the purchasing public to purchase substantial quantities of respondents' said product.

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

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, the attached initial decision of the trial examiner shall, on September 21, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT

Initial decision by Clyde M. Hadley, trial examiner: This proceeding is before the trial examiner for final consideration upon the complaint of the Commission, the answer of respondents, testimony and other evidence introduced in support of and in opposition to the complaint, proposed findings and conclusions submitted by counsel, and oral argument of counsel.

Respondents H. Warshow & Sons, Inc., a New York corporation, and its officers, Joseph Warshow, Jack J. Feldman, and Louis J. Layton, all located at 15 West Thirty-seventh Street, New York 18, N. Y.,

are engaged in the manufacture, sale, and distribution of elastic fabrics, in which they maintain a course of trade in commerce among various States of the United States. The complaint herein charges respondents with unfair and deceptive acts and practices in commerce by falsely and misleadingly representing in their advertising that their elastic fabric is a power net product, with the characteristics of genuine "power net" as understood in the corset, girdle, foundation, and brassiere trade and industry, and known to the purchasing public.

There is only one issue herein: Whether the term "power net" as applied to two-way stretch meshed fabrics has acquired a secondary meaning, with the trade and consuming public, that any such fabric is made only on a bobbinet machine; or whether such term "power net" is and always has been known in the trade and to purchasers generally as descriptive of a fabric having certain characteristics, rather than as indicative of the type of machine upon which it was made.

As shown by the record, the great majority of fabrics advertised today as "power net" are made on machines other than bobbinet, by a knitting process, whereas the bobbinet fabric is woven on a loom. The characteristics distinguishing "power net," as generally understood by the trade and the public, are a hexagonal mesh, and a two-way stretch imparted to the fabric by means of a component of elastic yarn.

While some testimony appears in the record that a product made on respondents' knitting machines might ravel or slip, whereas the bobbinet weave, due to its knotted construction, would not, this feature was not mentioned in advertising, nor stressed by witnesses sufficiently to indicate substantial public concern or even knowledge thereof, in connection with power net; thus it would not be a determining factor in specifying "power net."

Since the record shows that all elastic fabrics designated "power net" possess, and have possessed, the two essential characteristics—hexagonal mesh, with two-way stretch achieved by the constituent of elastic yarn—and evidence is lacking that either the trade or the public is concerned as to whether such power net be knitted or woven, the question resolves itself into whether, in the public interest, the Federal Trade Commission should restrict use of the term "power net" to woven fabrics made only on bobbinet machines, on the ground that said term has acquired a secondary meaning to this effect among the trade and the purchasing public.

The term "secondary meaning" has been judicially defined as a word or phrase which might "have been used so long and so extensively by one producer with reference to his article that, in that trade and to that branch of the purchasing public, the word or phrase had come to mean that the article was his product; in other words, had

come to be, to them, his trademark." In arriving at this definition, the courts have considered how the particular term or name may or might have become established in the mind of the public, including the length of time the term was used, the advertising involved, and public acceptance of the meaning of the term. No time-limit has been set for the emergence of a secondary meaning; this varies with the circumstances of the case. The identity of the manufacturer does not appear essential so long as the term connotes to the trade and the public only one machine or process as the source of the designated article.

According to the evidence, the fact that when power net was first made, the bobbinet machine was the only machine extant capable of making net, appears never to have been a factor in determining the recognized meaning of "power net." "Net" is included therein in its pristine significance as a generic term denoting a meshed fabric. The word "power" as used therein was intended and promoted by the United States Rubber Co., the originator in 1935 of Lastex "power yarn," to describe all fabrics "both knitted and woven" containing that yarn, without giving any fabricator exclusive right to such use of the word "power." In fact, free use of the word "power" in connection with any fabric so constructed, as in "power satin," "power leno," etc., was encouraged and fostered.

The fortuitous circumstance that for a time "power net" was made only on bobbinet machines—because they were then the only ones available—was nullified and became of no consequence immediately upon the advent of other machines suitable for this purpose. The term "power net" has never been applied to a fabric not possessing the component of power yarn, nor has it ever been linked in any manner with any particular machine. This fact has been tacitly recognized by the first manufacturer to produce power net on a bobbinet machine, who initially designated its product "Elastonet," later "power net," and finally adopted therefor, in 1951, the legend "Power Nets Made on Bobbinet Machines," to indicate the mechanical source of its particular product.

Other advertisers used designations such as "Power Net Elastic" (1935), "Power Net Lastex" (1939), and "Power Net Fabric . . . Knit or Woven of 'Lastex' Yarn" (1939). Eventually one manufacturer, in 1950, adopted the term "power bobbinet net." In all the "power net" advertising contained in the record (covering the span from 1935 to date) the word "bobbinet" does not once appear until 1950. Hence, it becomes apparent that no association of the term "power net" with the bobbinet machine ever existed in the mind of the purchasing public to develop a secondary meaning.

In the light of such judicial understanding of "secondary meaning," and as shown by the record herein, the term "power net," as com-

monly used by the trade and the general public, refers, not to a fabric made on a certain machine or by a certain manufacturer, but to a fabric possessing certain characteristics: specifically, hexagonal mesh and two-way stretch imparted thereto by a component of elastic yarn. These characteristics are possessed in common by the meshed fabric with two-way stretch, known to the trade as "power net," produced on both bobbinet machines and machines other than bobbinet. It follows, therefore, that no secondary meaning connoting bobbinet fabrication inheres in the term "power net."

Inasmuch as the greater weight of reliable, probative, and substantial evidence establishes the truth of respondents' representations, it is found that the charge of unfair and deceptive acts and practices in commerce is unproven; therefore

It is ordered, That the complaint be, and it hereby is, dismissed.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. R. L. Banks, *Mr. Morton Nesmith*, and *Mr. J. M. Doukas* for the Commission.

Mr. Herman Mendes, of New York City, for respondents.

GARY JUNIOR CO., INC., OSCAR ZINN AND IRVING WILENSKY.
Complaint, March 26, 1951. Order, October 23, 1951. (Docket 5863.)

CHARGE: Misbranding or mislabeling and neglecting, unfairly, or deceptively, to make material disclosure as to composition of product, in violation of the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act; in connection with the introduction and manufacture for introduction and sale of wool products which include ladies' dresses and other articles of ladies' apparel which were made by respondents from a fabric designated as "Parker-Wilder Range 1121."

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Gary Junior Co., Inc., a corporation, Oscar Zinn and Irving Wilensky, individually, and as officers of said corporation have violated the provisions of said acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Gary Junior Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 237 West Thirty-fifth Street, New York, N. Y.

Respondents Oscar Zinn and Irving Wilensky are president and secretary-treasurer, respectively, of corporate respondent, and in such capacity they formulate and execute its policies and practices. Their business address is the same as that of corporate respondent.

PAR. 2. Subsequent to January 1, 1950, respondents have introduced into commerce, manufactured for introduction into commerce, and offered for sale, sold, and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein. The said wool products include ladies' dresses and other articles of ladies' apparel which were made by respondents from a fabric designated as "Parker-Wilder Range 1121," purchased from Strand Woolen Co., Inc.

PAR. 3. Upon the labels affixed by respondents to the said articles appeared the following:

55% wool
45% rayon

PAR. 4. The said products were misbranded within the intent and meaning of the said act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and the amount of their constituent fibers. In truth and in fact, the said products were not 55 percent wool, as "wool" is defined in the said act; the aggregate of the woolen fibers therein constituted less than 55 percent of the said products and they contained more than 45 percent of rayon. The said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5 per centum of the total fiber weight.

PAR. 5. The person by whom the piece goods, from which said products were made by respondents, were manufactured for introduction into commerce affixed thereto labels and tags as required by said act containing information with respect to its fiber content as follows:

20% wool
30% reprocessed wool
50% rayon

Respondents have further violated the provisions of the Wool Products Labeling Act of 1939 by substituting for said tags and affixing to the said products tags and labels containing information set forth in paragraph three herein with respect to the content thereof which was not identical with the information with respect to such content upon the tags and labels as affixed to the wool product from which said products were made by the person by whom it was manufactured for introduction into commerce.

PAR. 6. The aforesaid acts and practices of respondents as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and consti-

tuted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner shall, on October 23, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT

Initial Decision by Frank Hier, trial examiner.

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on March 26, 1951, issued and subsequently served its complaint in this proceeding upon the respondents Gary Junior Co., Inc., a corporation, and Oscar Zinn and Irving Wilensky, individually, and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the issuance and service of said complaint and the filing of respondents' joint answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. The taking of testimony was closed after all counsel rested, and thereafter counsel on both sides submitted proposed findings and conclusion for the consideration of the trial examiner. Thereafter counsel in support of the allegations of the complaint moved to set aside the closing order and to reopen the proceeding in order to offer additional evidence, which motion was denied by the trial examiner. Thereafter the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony, and other evidence, proposed findings as to the facts and conclusions presented by counsel, and said trial examiner, having duly considered the record herein, finds that this proceeding was brought in the interest of the public, and that there is insufficient reliable, definite, and substantial evidence to sustain the allegations and charges of the complaint.

The complaint charges misbranding as to the fiber content of respondents' dresses. The correct fiber content of a fabric known as Parker-Wilder Range 1121 Gordon Mills was proved as 20 percent wool, 30 percent reprocessed wool and 50 percent rayon, and it was

further established that respondents purchased some 8,700 yards thereof correctly labeled as to content, from which they manufactured some 4,000 dresses, all of which were sold, a substantial portion at least being sold in interstate commerce. A dress manufactured by respondents, and purportedly sold by them to Jay's of Washington, D. C., was introduced in evidence. There was no definite evidence, however, that this dress was made from the fabric in question. The Federal Trade Commission investigator testified it looked like one (Tr. 56, 58), the respondents were uncertain at first but later identified it from the style number as being made from another fabric containing 55 percent wool, 45 percent rayon (Tr. 85). Since the tag, which was purportedly on the dress at the time of purchase, although never proved to be affixed thereto, bore this content as a legend, the connection between tag and dress became immaterial. The dress was never exhibited to the fabric seller for identification and connection with the fabric sold.

There was also testimony by an investigator that he had found 300 dresses hanging on racks in respondents' warehouse, of the same style, of which 150 were tagged as containing 20 percent wool, 30 percent reprocessed wool and 50 percent rayon, the remaining 150 being tagged as containing 55 percent wool, 45 percent rayon. Since he believed all the dresses to be made from the same fabric, Parker-Wilder Range 1121, he called respondents' attention to this and they, accepting without further examination his statement, changed the tags on the last batch to read 20 percent wool, 30 percent reprocessed wool and 50 percent rayon. None of these dresses had been sold at the time.

This proof, resting only, as it does, on the investigator's belief based on his prior examination of the fabric (Tr. 57-59), that these 150 dresses were made from Parker-Wilder Range 1121, the fiber content of which was known, coupled with respondent Wilensky's statement in one place in the transcript that he did not know he had Range 1121 (Tr. 33), and in another that the 150 dresses could have been made from that fabric but he did not know, and the further fact that all of respondent Wilensky's knowledge came from the investigator, which he accepted without inquiry or examination (Tr. 7, 26, 27, 32; Cx. 3, 48, 54, 55, 61), is too unsubstantial and indefinite on which to make a positive finding. The trial examiner is of the opinion, on the whole record, that the evidence of misbranding fails on vital points from haziness, uncertainty and contradiction.

It is accordingly ordered that the complaint herein be, and the same hereby is, dismissed as to all respondents.

Before *Mr. Frank Hier*, trial examiner.

Mr. Jesse D. Kash and *Mr. C. J. Aimone* for the Commission.

Curran & Stim, of New York City, for respondents.

AMERICAN PHARMACEUTICAL CO. Complaint, April 18, 1950. Order, October 30, 1951. (Docket 5765.)

CHARGE: Advertising falsely or misleadingly as to history, qualities, properties or results and safety of product and furnishing means and instrumentalities of misrepresentation and deception through supplying false and misleading advertising mats and display cards; in connection with the manufacture and sale of a preparation containing drugs and designated "C. S. A. Tablets."

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that American Pharmaceutical Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Pharmaceutical Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 525 West Forty-third Street, New York, N. Y.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the business of manufacturing, offering for sale, selling and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for its said preparation and the formula and directions for use are as follows:

Designation: C. S. A. Tablets

Formula: Each tablet contains:

Calcium Succinate 2.8 grs.

Aspirin 3.7 grs. plus excipients

Directions for use:

The directions for use appearing on the label are as follows:

When indicated, start treatment with a dose of 3 tablets 4 times daily taken preferably at meal times and before retiring. After relief from acute pain has been achieved, reduce dose to 2 tablets 4 times daily and continue for 4 to 6 weeks. Then 1 tablet 4 times daily should be taken for a period of several months to prevent recurrence of pain.

If fever or other untoward symptoms occur, the physician should be consulted.

Children under 14 years of age should receive treatment only upon medical advice.

Tablets should be swallowed whole with a generous amount of water.

PAR. 3. Respondent causes said preparation, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various States of the United States, other than the State of New York, and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said preparation in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of its said business respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning said preparation by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to booklets entitled "C. S. A. Therapy," "A. P. C. Products Catalog," and advertising mats and display cards furnished to dealers; and respondent has disseminated and has caused the dissemination of advertisements concerning said preparation, including but not limited to the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of the said advertisements respondent has made, directly and by implication, the representations shown in the following subparagraphs, identified as (a) to (f) inclusive. The said advertisements, by reason of the said representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act by reason of the true facts which are set forth in subparagraphs (1) to (7) inclusive.

(a) That C. S. A. Tablets, taken as directed, are adequate, effective and reliable treatment for all kinds of arthritis and rheumatism.

(1) C. S. A. Tablets, however taken, are not an adequate, effective and reliable treatment for any kind of arthritis or rheumatism.

(b) That C. S. A. Tablets, taken as directed, will arrest the progress of, will correct the underlying causes of, and will cure arthritis and rheumatism and prevent their recurrence.

(2) C. S. A. Tablets, however taken, will not arrest the progress of, will not correct the underlying causes of and will not cure arthritis or rheumatism, nor prevent their recurrence.

(c) That C. S. A. Tablets, taken as directed, are an adequate, effective and reliable treatment for the symptoms of arthritis and rheumatism and will afford complete and immediate relief from the aches, pains and discomforts thereof.

(3) C. S. A. Tablets are not an adequate, effective or reliable treatment for the symptoms of arthritis or rheumatism; the aches, pains and discomforts incident to those ailments may be of such nature that they will be in no way alleviated by the use of C. S. A. Tablets, however taken, and in other cases the relief afforded will be limited to such degree of temporary and partial analgesic and antipyretic effects as their aspirin content may afford in the individual case.

(4) The effect of C. S. A. Tablets when used in arthritis and rheumatism is limited to temporary and partial relief of minor aches and pains and fever.

(d) That C. S. A. Tablets can be used over a prolonged period of time without harmful effects on the body.

(5) The prolonged administration of C. S. A. Tablets may produce harmful effects on the body.

(e) That C. S. A. Tablets will not cause gastric distress.

(6) C. S. A. Tablets may cause gastric distress.

(f) That C. S. A. Tablets are a new discovery of medical science for relief of arthritis and rheumatism.

(7) C. S. A. Tablets are not a new discovery of medical science for relief of arthritis and rheumatism.

PAR. 6. Respondent's practice of placing, in the hands of its dealers, advertising mats and display cards containing some or all of the representations charged herein as being false and misleading, furnishes such dealers a means and instrumentality designed to enable and capable of enabling said dealers to mislead and deceive the purchasing public as to the therapeutic value of respondent's product.

PAR. 7. The aforesaid acts and practices of respondent have had the capacity and tendency to mislead and deceive, and have misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and statements contained therein were true and into the purchase of substantial quantities of C. S. A. Tablets by reason of said erroneous and mistaken belief.

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

DECISION OF THE COMMISSION

Service of the initial decision of the trial examiner in this proceeding having been completed on the 30th day of January 1951, and no notice of intention to appeal having been filed; and

The Commission having, on the 28th day of February 1951, extended until further order of the Commission the date on which said initial decision of the trial examiner would otherwise become the decision of the Commission; and

The Commission having duly considered said initial decision of the trial examiner and the record herein, and it appearing that the respondent tendered a stipulation and agreement which the trial examiner accepted, subject, however, to the Commission's approval and acceptance thereof, and that the trial examiner, in accordance with the provisions of said stipulation and agreement, ordered that

DISMISSALS—AMERICAN PHARMACEUTICAL CO.—ORDER 1535

this proceeding be closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure should the facts warrant such action; and

The Commission being of the opinion that said stipulation and agreement constitutes an adequate disposition of this proceeding and that the public interest does not require further corrective action at this time:

It is ordered, That said stipulation and agreement be, and the same hereby is, approved and accepted.

It is further ordered, That the attached initial decision of the trial examiner shall, on the 30th day of October 1951, become the decision of the Commission.

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

Commissioner Ayres dissenting.

ORDER CLOSING CASE WITHOUT PREJUDICE

Initial Decision by Frank Hier, trial examiner.

Counsel supporting the allegations of the complaint, joined by counsel for respondent, moves to close this proceeding without prejudice to reopening the same, should the facts warrant. This motion is based on an affidavit of respondent's president stating that upon issuance of the complaint, respondent immediately stopped the advertising and representations complained of, and upon an agreement executed by the president of respondent, but as yet unaccepted and unexecuted by the Commission, that respondent will not in the future resume the representations attacked in the complaint. Counsel in support of the complaint accepts the facts in the affidavit as true and the agreement not to resume as made in good faith, and urges that the public interest will be best served by granting the motion. Nothing to the contrary appearing, the trial examiner accepts the stipulation for and on behalf of the Commission, subject however to the Commission's subsequent approval and acceptance thereof in the public interest, and therefore grants the motion. Accordingly,

It is ordered, That this proceeding be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure should the facts in its judgment warrant such action.

Before *Mr. Abner E. Lipscomb*, trial examiner.

Mr. Edward F. Downs for the Commission.

Mr. Albert T. Scharps, of New York City, for respondent.

J. KAY DAVIDSON, JR., NORTON A. DAVIDSON, ETC., TRADING AS STONE MOUNTAIN GRIT Co. Complaint, March 1, 1949. Order, November 26, 1951. (Docket 5642.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the sale of a poultry grit designated Stonemo Granite Grit.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that J. Kay Davidson, Jr., Norton A. Davidson, Charles L. Davidson, Elizabeth L. Davidson, Florre Jo E. Davidson, and Mamie St. J. Davidson, individually and as copartners, trading and doing business as Stone Mountain Grit Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents J. Kay Davidson, Jr., Norton A. Davidson, Charles L. Davidson, Elizabeth L. Davidson, Florre Jo E. Davidson, and Mamie St. J. Davidson are individuals and copartners trading under the name Stone Mountain Grit Company with their principal office and place of business located in Lithonia, Georgia.

PAR. 2. These respondents are now and have been for more than one year last past engaged in offering for sale, selling and distributing a poultry grit designated Stonemo Granite Grit.

In the course and conduct of their said business, the respondents cause and have caused said poultry grit, when sold, to be transported from their aforesaid place of business in the State of Georgia to the purchasers thereof located in the various States of the United States other than the State of Georgia and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said poultry grit in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said poultry grit in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents have made certain statements and representations concerning their said poultry grit, said statements and representations appearing in newspapers, trade journals, folders, circular letters and other advertising media. Among and typical of such statements and representations, but not all inclusive, are the following:

* * * it keeps * * * birds in better health, free from crop bound and digestive troubles and effects a definite saving in feed consumed—up to 20%.
* * * STONEMO * * * keeps digestive systems healthy!

It assures better use of available feed and improved flock health.

* * * for each 1¢ spent for STONEMO a saving of 5¢ in feed costs is very certain to occur. More important than the saving in feed costs is the benefits your birds secure through the improved digestion. They grow and thrive better—are naturally healthier—produce better and live longer. We know that the foregoing is absolutely true * * *

A hen will eat only 3 to 5¢ worth of STONEMO Granite Grit in one year but—Oh, Brother! What that low cost means to the poultryman in better health for his hens, lower mortality, better use of feed and a definite feed saving!

* * * —helps to build big lusty pullets that are disease resistant * * *

* * * STONEMO * * * It makes feed go 20% further.

* * * You can feed the fifth hen free.

20% better digestibility means 20% saving in feed costs.

STONEMO saves up to 20% on feed.

There is a definite saving in feed costs when you feed STONEMO Granite Grit.

PAR. 4. By and through the use of the statements and representations set out in Paragraph Three above, and others of similar import, but not specifically set out herein, the respondents represent and have represented directly and by implication that their poultry grit, Stonemo Granite Grit, when used with poultry ration will keep poultry free of digestive or crop-bound troubles; will keep digestive systems healthy; will improve flock health; will increase egg production; will reduce mortality; will assure disease-resistant and long-lived birds; will make feed go substantially further thereby effecting a substantial saving in feed consumed.

PAR. 5. The foregoing statements and representations are false, deceptive and misleading. In truth and in fact, respondents' said poultry grit will not, when used with poultry ration, keep poultry free of digestive or crop-bound troubles; nor will it keep digestive systems healthy. It will not under all conditions improve flock-health or increase egg production. It will not generally reduce mortality, nor will it assure disease-resistant or long-lived birds. It will not effect any substantial saving in feed consumed.

PAR. 6. The use of respondents of the false, deceptive and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of respondents' said product as a result of said erroneous and mistaken belief.

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

Complaint dismissed without prejudice by the following order:

This matter came on to be heard by the Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence taken before a trial examiner of the Commission

theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel.

The complaint alleges that the respondents, copartners trading as the Stone Mountain Grit Company, falsely represented that their poultry grit when used with poultry ration:

1. Will effect a substantial saving in feed consumed, and will increase egg production; and
2. Will keep poultry free from digestive or crop-bound troubles, keep digestive systems healthy, improve flock health, reduce mortality and assure disease-resistant and long-lived birds.

The record shows that respondents discontinued the complained of representations approximately one year prior to the issuance of the complaint herein.

Respondents' grit consists of small, uniformly graded pieces of crushed granite rock. This grit when consumed by poultry lodges in the gizzard. The gizzard is a muscular organ which uses such grit to crush and grind food eaten by the poultry and thus performs an important function in aid of the digestive process. Without any hard objects in the gizzard, poultry are unable to adequately digest a diet consisting of anything of a fibrous nature or anything coarser than finely ground grain mash.

Some raisers confine their poultry to restricted areas and feed them finely ground grain mashes only. Others confine their poultry but feed them a diet of mashes and whole or coarsely ground grain. Still others do not confine their flocks, which, therefore, in addition to being supplied with a diet consisting of mashes and whole or coarsely ground grain in varying degrees, are free to pick up grass, seeds and various other coarse and fibrous foods. The record shows that if grit is furnished to confined poultry fed a diet containing no coarse or fibrous material requiring grinding, no appreciable saving in feed results. However, furnishing a grit to confined poultry fed a coarser diet results in a better utilization of such diet and therefore a substantial saving in feed. Where poultry are not confined but are permitted to range, they require some kind of grit to properly utilize the coarse and fibrous food thus made available to them. The amount of savings in feed which results from supplying such flocks with commercial grit depends upon the amount of suitable sized gravel present in the area to which the poultry have access. There are certain large areas of the country in which there is not a sufficient amount of gravel naturally available in the pastures to supply the needs of poultry. In such areas the supplying of grit results in great savings in feed. The greater weight of the evidence shows that even in those areas where there is available an ample supply of suitable gravel, furnishing a commercial grit may result in a substantial saving in feed costs.

Where poultry are restricted to a diet not requiring any grinding in the digestive process, no saving in feed will result from supplying them with a grit. But the Commission is of the opinion the knowledge that the principal purpose of grit in a poultry diet is as a grinding agent is so common to poultry raisers that respondents' representations do not have the tendency or capacity to mislead poultry raisers into believing that they would effect a substantial saving in feed by adding respondents' grit to a poultry diet which contains nothing requiring grinding. The Commission is therefore of the further opinion that the greater weight of the evidence of record does not support the allegations of the complaint relating to respondents' representations that the use of their product will effect a substantial saving in feed consumed.

The Commission has not considered herein the question of whether or not respondents' representations that the use of their grit will result in a 20 percent saving in feed are unfair and deceptive in that 20 percent is greater than the actual saving. The complaint does not raise this question, being limited on this point to the allegation that respondents falsely represented that the use of their grit will effect a substantial saving in feed consumed.

The record further shows that better utilization by poultry of their feed results in better egg production. Therefore, for the same reasons as stated above in connection with respondents' representations relating to savings in feed consumed, the Commission is of the opinion that the greater weight of the evidence of record does not support the allegations of the complaint relating to respondents' representations that the use of their grit will increase egg production.

The record also shows that the presence of grit in their diet is a factor tending to improve the health of poultry. Its grinding action tends to assure proper utilization of their feed, thus adding to their general health. Its grinding action also prevents impaction in the digestive tract of grass and other feeds containing a large amount of fiber. Also, the presence of grit toughens the lining of the gizzard, preventing erosion which frequently occurs in poultry having no grit or gravel available. However, the use of respondents' grit does not cause poultry to be immune to disease or to all digestive trouble and will not always improve flock health, reduce mortality or assure disease-resistant and long-lived birds. However, as above set out, the use of their grit will in many cases and to some extent accomplish the results which respondents' complained of representations claimed would be accomplished in all cases and to an absolute extent. Also, the record shows that respondents discontinued all of these unfair and deceptive representations approximately one year before the issuance of the complaint herein. They have employed a new agency to handle

their future advertising, and they assure the Commission that these representations will not be repeated.

The Commission having no reason to believe that respondents will resume these discontinued representations, and upon all of the above circumstances being of the opinion that the public interest does not require further corrective action in this proceeding at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of this complaint as may be warranted by the then existing circumstances.

Before *Mr. Henry P. Alden*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Robert P. McLarty, of Atlanta, Ga., for respondents.

NATIONAL RETAIL FURNITURE ASSOCIATION, ET. AL. Complaint, September 11, 1946.¹ Order, December 7, 1951. (Docket 5324.)

CHARGE: Combining or conspiring to restrain and monopolize trade through so-called "uniform standards of fair commercial practices", involving the controlling of distributive channels through boycotts, blacklists, and the cutting off of supplies of others; and the putting into effect of a "Trade Relations Movement", concerned with prohibiting direct employer-employee selling in large organizations; in connection with the offer and sale of furniture and associated products or articles.

AMENDED COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named specifically and by reference in the caption hereof have violated the provisions of section 5 of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Retail Furniture Association, sometimes hereinafter referred to as respondent National Association, is a nonprofit membership corporation organized and existing under the laws of the State of Illinois, with its principal office at 666 Lake Shore Drive, Chicago, Ill., composed of various trade associations, such as are referred to in the above caption, whose members are, in part at least, engaged in the manufacture of, or dealing in, furniture and associated products or articles, and of corporations, partnerships and individuals so engaged.

The following named individuals are or have been during the time

¹ Amended.

hereinafter mentioned officers of said respondent National Association, and as such, and individually, are designated as respondents herein:

Lorenzo Richards, President.

Jurgen Petersen, Treasurer.

W. J. Cheyney, Vice president.

Roscoe R. Rau, Executive vice president and secretary.

The following named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent National Association, and as such, and individually, are named as respondents herein:

J. H. Huffard

Edward Adaskin

C. Ludwig Baumann

Louis Cohen,

Julius Goodman

Clarence Haverty

Howard B. Josselyn

Kalter Kleeman

Homer Ladd

Leo Lehman

R. H. Levenson

Richard Link

H. A. Moran

W. W. Morrison

Neil Petree

Maxwell S. Porter

Harold M. Ruben

Frank L. Sedgwick

R. F. Shawan

William L. Shearer, III

E. N. Short

E. B. Spangenthal

Harry Stern

Loren Troost

John Van Den Berg.

and the above-named officers.

The membership of respondent National Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and directors hereinabove named as respondents, as such officers and board members, are also made respondents as representatives of all the members of said association, including those members not herein specifically named.

PAR. 2. Respondents American Retail Federation, sometimes hereinafter referred to as respondent American Federation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 1627 K Street NW., Washington, D. C., composed of trade associations, corporations, partnerships, and individuals.

The following named individuals are or have been during the time hereinafter mentioned officers of said American Federation, and as

such, and individually, are named as respondents herein:
Delos Walker, Chairman of the board.

Bruce MacLeish	}	Vice Chairmen
B. Earl Puckett		
Clarence Haverty		
Walter Morrow, President.		
William Schear, Treasurer.		
W. F. Wade, Jr., Secretary.		

The following named individuals are or have been during the time hereinafter mentioned members of the executive committee and trustees of said American Federation, and as such, and individually, are named as respondents herein:

Edward N. Allen	Clarence Haverty
Ralph F. Burkard	A. W. Hughes
T. V. Houser	Harold M. Lane
Nathan S. Sachs	Bruce MacLeish
Thomas S. Smith	E. C. Mauchly
R. Don Herod	Morton J. May
Fred Lazarus	B. Earl Puckett, and
Malcolm McNaughten	Delos Walker
Barent S. Vrooman	

The membership of respondent American Federation changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers, members of the executive committee, and trustees hereinabove named as respondents, as such officers, members of the executive committee, and trustees, are also made respondents as being representatives of all the members of said respondent American Federation, including those members not herein specifically named.

PAR. 3. Respondent Illinois Federation of Retail Associations, sometimes hereinafter referred to as respondent Illinois Federation, is a nonprofit corporation organized and existing under the laws of the State of Illinois, with its principal office at 140 South Dearborn Street (suite 737), city of Chicago, State of Illinois.

The following named individuals are or have been during the time hereinafter mentioned officers of said Illinois Federation, and as such, and individually, are named as respondents herein:

Joseph C. Spiess, President.
M. C. Penticoff, Vice president.

Earl Kribben, Treasurer.

Joseph T. Meek, Executive secretary.

The following named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of said respondent Illinois Federation, and as such, and individually, are named as respondents herein:

Al Baskin	Elmer F. Wieboldt
R. M. Black	George Madigan
C. M. Broughton	Leon Mandell
Guy Deetz	J. C. Amis
Herbert Giessing	C. G. Gilbert
Robert Halbach	D. F. Kiesau
Harold Lund	J. D. McCarthy
Charles Osheroff	A. S. Bauer
O. L. Parr	J. C. Brennan
J. A. Long	D. D. Richards, and
Earl Swingle	A. L. Starshak
S. P. Carson	

and the above-named officers.

The membership of respondent Illinois Federation changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and directors hereinabove named as respondents, as such officers and board members, are also made respondents as being representatives of all the members of respondent Illinois Federation, including those members not herein specifically named.

PAR. 4. Respondent Cleveland Retail Furniture Association sometimes hereinafter referred to as respondent Cleveland Association is a voluntary nonprofit association, with its principal office at 5432 Broadway, Cleveland, Ohio.

The following named individuals are or have been during the time hereinafter mentioned officers of said Cleveland Association, and as such, and individually, are named as respondents herein:

R. W. Young, President.
 B. W. Amster, Vice president.
 A. L. Federman, Treasurer.

The following named individuals are or have been during the time hereinafter mentioned members of the executive committee of re-

spondent Cleveland Association, and as such, and individually, are named as respondents herein:

B. W. Amster	H. E. Marder
E. W. Brown, Jr.	B. W. Marks
F. L. Grdina	L. C. Reidy, and
A. L. Kaufmann	R. W. Young
W. H. Leopold	

and the above-named officers of respondent Association.

The following are members of the respondent Association:

(1) Respondent Fish Furniture Shop, Inc., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at 1829-31 Euclid Avenue, Cleveland, Ohio.

(2) Respondent A. Grdina and Sons, a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at 6019 St. Clair Street, Cleveland, Ohio.

(3) Respondent Altman Furniture Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal place of business at 15012 St. Clair Street, Cleveland, Ohio.

(4) Respondent Colonial Furniture Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at 739 Prospect Avenue, Cleveland, Ohio.

(5) Respondent Mayer-Marks Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its office and principal place of business at 414 Prospect Avenue, Cleveland, Ohio.

(6) Respondent S. Kohn and Sons Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at St. Clair Avenue and East 105th Street, Cleveland, Ohio.

(7) Respondent King Furniture Co., a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business at 908-10 East 105th Street, Cleveland, Ohio.

(8) Respondent Stern Furniture Co., a corporation, organized and doing business under the laws of the State of Ohio, with its principal office and place of business at 7734-42 Broadway Avenue, Cleveland, Ohio.

(9) Respondent Ohio Furniture and Music Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at 6321-23 St. Clair Street, Cleveland, Ohio.

The membership of respondent Cleveland Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and executive committee hereinabove named as respondents, as such officers and members of the executive committee, and the above named corporate respondent members are also made respondents as being representatives of all the members of said respondent Cleveland Association, including those members not herein specifically named.

PAR. 5. Respondent Trade Relations Council of Western Pennsylvania sometimes hereinafter referred to as respondent Western Pennsylvania Council is a nonprofit corporation, organized and existing under the laws of the State of Pennsylvania, with its office at 425 Park Building, Pittsburgh, Pa. The following named individuals are or have been during the time hereinafter mentioned officers of respondent Western Pennsylvania Council, and as such, and individually, are designated as respondents herein:

W. H. Burchfield, president.
 Frank A. Hegner, 1st vice president.
 Wilmer M. Jacoby, 2d vice president.
 Joseph Gilbert, secretary-treasurer.
 L. J. McAllister, managing director.

The following named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent Western Pennsylvania Council, and as such, and individually, are named as respondents herein:

W. H. Burchfield	Otto A. Kossler
H. M. Epstine	Martin Kramer
C. A. Faller	Joseph Mandel
Joseph Gilbert	William E. Morgan
Frank A. Hegner	S. F. Pollock
W. M. Jacoby	J. D. Poske, and
Lynford A. Keating	Irwin D. Wolf
L. S. Kelso	

The membership of the respondent Western Pennsylvania Council changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents.

ents herein; therefore the members of the Board of Directors of respondent Western Pennsylvania Council hereinabove named as respondents, as such members of the Board of Directors, are also made respondents as being representatives of all members of respondent Western Pennsylvania Council including those members not herein specifically named.

PAR. 6. Respondent Retail Furniture Association of Baltimore, Inc., sometimes hereinafter referred to as respondent Baltimore Association, is a corporation organized and existing under the laws of the State of Maryland, with its principal office at 12 West Madison Street, Baltimore, Md.

The following named individuals are or have been during the time hereinafter mentioned officers of said respondent Baltimore Association, and as such, and individually, are designated as respondents herein:

Raymond Schapiro, President.
Isaac Potts, Vice president.
Charles Feldman, Vice president.
Millard Littlepage, Vice president.
R. E. Hegel, Secretary.
Norman Labovitz, Treasurer.

The following-named individuals are or have been during the time hereafter mentioned members of the Board or Directors of respondent Baltimore Association, and as such, and individually, are named as respondents herein:

Charles Besche	Milford Nathan
Herman Fish	Solomon Shaivitz
Harry Goldberg	Theodore Siehler
Samuel Bugatch	Oliver B. J. Krastell
Morris Fradkin	David B. Sonneborn
Stewart Hecht	R. H. Levenson, and Jesse
Theodore Elfont	Benesch
Gerard Gassinger	

The membership of respondent, Baltimore Association, changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and directors hereinabove named as respondents, as such officers and board members, and also made respondents as being representatives of all members of said respondent Baltimore Association, including those not herein specifically named.

PAR. 7. Respondent, the Retail Trade Board of the Boston Chamber of Commerce, sometimes hereinafter referred to as respondent Boston Board, is an unincorporated association with its office at 80 Federal Street, Boston, Mass.

The following named individuals are or have been during the time hereinafter mentioned officers of respondent Boston Board, and as such, and individually, are designated as respondents herein:

Edward L. Hubbard, President.	
H. D. Hodgkinson	} Vice presidents.
Edward H. Presbrey	
E. D. Warner	
Robert A. Johnston, Secretary.	
Miller Laufman, Treasurer.	
Daniel Bloomfield, Manager.	

The following named individuals are or have been during the time hereinafter mentioned members of the "Governing Council" of respondent Boston Board, and as such, and individually, are named as respondents herein:

Abraham Asher	J. Henry Smith
Ralph U. Brett	Leon Strauss
H. J. Clapp	F. Frank Vorenberg
Richard F. Fuller	A. M. Horne
George Hansen	Edward L. Hubbard
Hazen Jones	L. B. Hunter
Edwin M. Kingsley	A. J. Jardine
H. D. Hodgkinson	David E. Moeser
R. W. Maynard	P. A. O'Connell
J. G. McNeil	Edward H. Presbrey
E. R. Mitton	Walworth Pierce
Paul Schaye	E. D. Warner, and
Frank Schmandt	Joseph Wiggin
A. P. Schier	

The following are, or have been during the time hereinafter mentioned, members of said respondent Boston Board.

(1) Respondent Jordan Marsh Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 450 Washington Street, Boston, Mass.

(2) Respondent Wm. Filene's Sons Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 426 Washington Street, Boston, Mass.

(3) Respondent R. H. White Corp., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 518 Washington Street, Boston, Mass.

(4) Respondent C. F. Hovey Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 33 Summer Street, Boston, Mass.

(5) Respondent Leopold Morse Company, a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 135 Washington Street, Boston, Mass.

(6) Respondent T. D. Whitney Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 39 Temple Place, Boston, Mass.

(7) Respondent R. H. Stearns Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 140 Tremont Street, Boston, Mass.

The membership of respondent Boston Board changes from time to time by the addition and withdrawal of members, so that all the members of respondent Boston Board at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and members of the "Governing Council" hereinabove named respondents as such officers, and members, are also made respondents as being representatives of all the members of said respondent Boston Board including its members not herein specifically named.

PAR. 8. Respondent New York Council on Retail Trade Diversion, Inc., sometimes hereinafter referred to as respondent New York Council, is a corporation organized and existing under the laws of the State of New York, with its principal office located at 60 East 42d Street (Room 4402), New York, N. Y.

The following named individuals are or have been during the time hereinafter mentioned officers of said respondent New York Council, and as such, and individually, are designated as respondents herein:

Arthur L. Garniss, Executive vice president.

Nathan Sachs, Vice president.

David Freudental, Treasurer.

The following-named individuals are or have been during the time hereinafter mentioned members of the Executive Committee of re-

spondent New York Council, and as such, and individually, are named as respondents herein :

Louis Broido	Delos Walker
J. E. Davidson	John Wood
Sidney Solomon	

The membership of respondent New York Council changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and members of the Executive Committee hereinabove named respondents, as such officers and members of the Executive Committee, are also made respondents as being representatives of all the members of said respondent New York Council, including its members not herein specifically named.

PAR. 9. Respondent Associated Furniture Dealers of New York, Inc., sometimes hereinafter referred to as respondent New York Association, a corporation organized and existing under the laws of the State of New York, with its principal office at 45 East 17th Street, New York, N. Y.

The following-named individuals are or have been during the time hereinafter mentioned officers of said respondent, and as such, and individually, are designated as respondents herein :

Harry Michaels, President.
 Nathan S. Sachs, Vice president.
 I. Finkenberg, Chairman of the board.
 James N. Spear, Treasurer.
 Eugene H. Sickel, Secretary.
 James B. McMahon, Jr., Executive vice president.

The following-named individuals are or have been during the time hereinafter mentioned members of the Board of Governors of the said respondent New York Association and as such, and individually, are named as respondents herein :

Milton S. Ballenberg	George Hammel
C. Ludwig Baumann	John A. Schwarz
S. L. Froelich	J. Selig

and the above-named officers, with the exception of respondent James B. McMahon, Jr.

The membership of respondent New York Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named

as respondents herein without inconvenience and delay, and also said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and members of the Board of Governors hereinabove named respondents, as such officers and members of the Board of Governors, are also made respondents as being representatives of all the members of respondent New York Association, including its members not herein specifically named.

PAR. 10. Respondent Philadelphia Trade Relations Council sometimes hereinafter referred to as respondent Philadelphia Council, is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office at 12 South 12th Street (room 1532), Philadelphia, Pa.

The following-named individuals are or have been during the time hereinafter mentioned officers of said respondent Philadelphia Council and as such, and individually, are designated as respondents herein:

Arthur Bloch, Vice president.

Thomas Quigley, Secretary-treasurer.

The following named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent Philadelphia Council and as such, and individually, are named as respondents herein:

Fred Bandler

Myer B. Barr

B. Leo Doyle

Carl Fissell

Walter T. Grosscup

Arthur C. Kaufmann

Philip Kind

Walter Murta

Raymond Rosen

J. Richard Shryock

Myer Simon

Donald M. Smith

Maurice Spector

Harry I. Stern

Herbert J. Tily

George E. Whitwell

Alexander Wilf, and

Julius N. Zeckhauser

and the above named officers.

The membership of respondent Philadelphia Council changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and directors hereinabove named as respondents, as such officers and board members, are also made respondents, as being representatives of all the members of said respondent Philadelphia Council, including its members not herein specifically named.

PAR. 11. Respondent Retail Merchants Association of Pittsburgh

sometimes hereinafter referred to as respondent Pittsburgh Association is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office at 1916 Oliver Building, Pittsburgh, Pa.

The following named individuals are or have been during the time hereinafter mentioned officers of said respondent Pittsburgh Association and as such, and individually, are named as respondents herein:

Edgar J. Kaufmann, President.
Karl J. Kaufmann, Vice president.
William H. Burchfield, Treasurer.
Edward B. Livingston, Acting secretary.

The following named corporations compose the membership of respondent, Pittsburgh Association, and as such, and individually, are named as respondents herein:

(1) Kaufmann's Department Stores, Inc., organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 5th Avenue and Smithfield St., Pittsburgh 19, Pa.

(2) Joseph Horne Co., organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business at Penn Avenue and Stanwix Street, Pittsburgh 22, Pa.

(3) Gimbel Bros., organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business at 339 Sixth Avenue, Pittsburgh 22, Pa.

(4) The Rosenbaum Co., of Pittsburgh, organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business at Sixth Street and Liberty Avenue, Pittsburgh 22, Pa.

(5) Frank and Seder of Pittsburgh, Inc., organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business at Fifth Avenue and Smithfield Street, Pittsburgh 22, Pa.

The membership of said respondent Pittsburgh Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and Board of Directors, hereinabove, named as respondents as such officers and members of the Board of Directors, and the above-named corporate respondent members, are

also made respondents, as being representatives of all the members of said respondent Pittsburgh Association, including those members not herein specifically named.

PAR. 12. Respondent, Retail Merchants Association of Detroit, is an unincorporated association, with its principal office at 320 West Lafayette Avenue, Detroit, Mich.

The following-named individuals are or have been during the time hereinafter mentioned officers of said respondent Detroit Association, and as such, and individually, are named as respondents herein :

Ralph E. Murphy, President.
Steven J. Jay, First vice president.
Maurice A. Enggass, Second vice president.
I. Himelhoch, Treasurer.
Charles E. Boyd, Secretary.

The following-named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent Detroit Association, and as such, and individually, are named as respondents herein.

L. C. BeGole	J. F. Moore
Harry Breitmeyer	James H. Neubauer
Dudley Campbell	Stuart J. Rackham
William Demery	W. W. Rogers
S. F. Dole	Jay D. Runkle
Adolph M. Goetz	Nate S. Shapero
Joseph L. Hickey	Leo Siegel
R. Hunsinger	Victor W. Sincere
Charles Kern	Harry Suffrin
Ernest C. Kern	Ray J. Sullivan
Ralph B. King	Oscar Webber
A. E. Loyal	Eugene C. White
E. R. McDuff	Frank P. Williams
John Miller	Edward F. Wright

and the above-named officers.

The following corporations are, or have been during the time hereinafter mentioned members of said respondent Detroit Association and as such are named respondents herein :

- (1) Demery and Co., organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 6433 Woodward Avenue, Detroit, Mich.
- (2) Saks Fifth Avenue, organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 100 New Center Building, Detroit, Mich.
- (3) Ernest Kern Co., organized, existing and doing business under

the laws of the State of Michigan, with its principal office and place of business at 1030 Woodward Avenue, Detroit, Mich.

(4) Peoples Outfitting Co., organized, existing, and doing business under the laws of the State of Michigan, with its principal office and place of business at 150 Michigan Avenue, Detroit, Mich.

(5) Himelhock Brothers & Co., organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 1545 Woodward Avenue, Detroit, Mich.

(6) Frank & Seder of Detroit, Inc., organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 1437 Woodward Avenue, Detroit, Mich.

(7) The J. L. Hudson Co., organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 1206 Woodward Avenue, Detroit, Mich.

(8) Montgomery Ward & Co., Incorporated, organized, existing and doing business under the laws of the State of Illinois, with its principal office and place of business at 619 W. Chicago Avenue, Chicago, Ill.

(9) Sears, Roebuck & Co., organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 925 S. Homan Avenue, Chicago, Ill.

The membership of said respondent Detroit Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and Board of Directors, hereinabove named as respondents as such officers and members of the Board of Directors, and the above-named corporate respondent members, are also made respondents, as being representatives of all the members of said respondent Detroit Association, including those members not herein specifically named.

PAR. 13. Respondent Retail Trade Board of Providence Chamber of Commerce is an unincorporated trade association, with its principal office at Westminster St., Providence, R. I., sometimes hereinafter referred to as respondent Providence Trade Board.

The following-named individuals are or have been during the time hereinafter mentioned officers of said respondent, and as such, and individually, are named as respondents herein:

Charles A. Blake, Chairman.

Frank A. W. Pelley, Vice chairman.

Frank J. Ryan, Treasurer.

Paul R. Ladd, Manager.

The following-named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent Providence Trade Board, and as such, and individually, are named as respondents herein:

Frederick W. Aldred	H. Albert Walker
Frank E. Ballou	A. P. Avery
Woodworth Bradley	A. Wilson Barstow
William S. Cherry, Jr.	Mortimer L. Burbank
George L. Crooker	Bernard L. Cleary
Irving Goldberg	Kenneth E. Griffin
Jesse L. Johnson	Robert M. Parker
Stanley B. Mason	Ernest T. Scattergood
Harry Pinkerson	Max Siegal
Robert F. Shepard	Frederick B. Thurber and
A. Howard Swanson	Albert H. Daly

and the above-named officers.

The following corporations are or have been during the time hereinafter mentioned members of said respondent Providence Trade Board and as such are named respondents herein:

(1) The Outlet Co., organized, existing, and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 176 Weybosset St., Providence, R. I.

(2) A. T. Scattergood Co., organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 210 Weybosset St., Providence, R. I.

(3) Rhode Island Supply Company, Incorporated, organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 877 Westminster St., Providence, R. I.

(4) Crooker Company, organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 100 Empire St., Providence, R. I.

(5) Gladding's Inc., organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 291 Westminster St., Providence, R. I.

(6) Callender, McAuslan & Troup Co., organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 239 Westminster St., Providence, R. I.

(7) The Shepard Co., organized and existing, and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 259 Westminster St., Providence, R. I.

The membership of respondent Providence Trade Board changes from time to time by addition and withdrawal of members, so that

all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers hereinabove named as respondents as such officers, directors and the above-named respondent members are also made respondents as being representatives of all the members of said respondent Providence Trade Board including those members not herein specifically named.

PAR. 14. The membership of said respondent, National Retail Furniture Association and the American Retail Federation is composed of trade associations in various States of the United States, whose respective members, are engaged in business in the various States of the United States, as well as corporate, partnership and individual members of the industry, representing approximately 80 percent of the total output of the furniture industry and associated products or articles, of the United States, the same being organized for the purpose of promoting the interests of and to secure friendly relations and cooperation between the various retail furniture dealers and dealers in associated products or articles in their respective areas and in the United States and with the other members of the furniture industry. Many of them, in the regular course and conduct of their business, purchase furniture and said kindred articles from concerns located in States other than the States in which they are, respectively located, and many of them, in the regular course and conduct of their business, sell and deliver such articles to purchasers in States other than the States in which they, respectively, are located, and in the District of Columbia, and are variously engaged in interstate commerce.

PAR. 15. Since the organization of respondent National Retail Furniture Association and during the past 10 years, the respondents hereinabove named and described or referred to and each of them, have under varying circumstances and degrees of cooperation, and for varying differing periods of time entered into, acquiesced in, maintained, carried out or observed and have joined in or participated in various planned or agreed common courses of action and agreements, understandings, combinations and conspiracies to hinder and suppress competition and to restrain such trade and to promote a monopoly therein among themselves, in the interstate sale and distribution of the merchandise hereinabove referred to, in the United States and in the District of Columbia. Pursuant to and in order to effectuate and carry out said purposes, common courses of action, agreements, understandings, combinations and conspiracies, respondents have imposed or attempted to impose upon all members of said industry, including one another and including independent manufacturers,

jobbers and wholesalers, selling agents and others, certain practices, rules, regulations, and requirements more particularly described as follows:

Respondent National Retail Furniture Association, and the other respondents, have adopted, promoted, effected and enforced, for approximately eleven years last past, said uniform standards of so-called fair commercial practices to be observed by the members of the industry, including manufacturers, wholesalers, jobbers and other vendors, among which practices are the following:

1. No sales will be made directly to ultimate consumers with the exception of sales to city, county, State, and Federal governments or other public bodies, and authorities connected therewith, railroads and other common carriers; provided, however, that sales to any such consumers as are above expected shall be for their own use and not for any other consumer. This applies regardless of whether such ultimate consumer is a friend of any member of the firm, or a friend or relative of an employee of the firm or of any other concern.

2. No person will be admitted to showrooms or quoted prices except an authorized dealer or his regularly employed agent.

3. No person or firm will be recognized as an authorized dealer unless such person or firm, actually carries a stock of new furniture and is listed as a recognized retailer of furniture. Such stock of new furniture must be representative of a full line and in sufficient quantity to clearly establish that it is used for retail selling purposes and not as a subterfuge to gain recognition as an authorized dealer.

4. Use of effective methods and means to enforce said practices, rules, regulations and requests above set forth in this paragraph 15, including use of boycotts and blacklists against members and others who fail or refuse to abide by and carry into effect said practices, rules, regulations and requests.

PAR. 16. Respondents have also collectively and cooperatively formulated, adopted and put into operation a "Trade Relations Movement," one of the purposes and objectives of which was to deprive employees of large industrial and commercial organizations of the opportunity of buying furniture and associated products and articles from their respective employers. The said Trade Relations Movement was formulated, adopted and put into operation beginning in 1938, but the respondent American Retail Federation did not become affiliated with it until 1940. Respondents' purposes and objectives have been accomplished through respondents' collective persuasion directed at said large industrial and commercial organizations, some of which were thereby led into acceptance and agreement with respondents' purposes and objectives, resulting in a substantial number of the said employees and other buyers of furniture and associated

products or articles being deprived of opportunities of buying through the facilities of said large industrial and commercial organizations, and, correlatively, the vendors of said products or articles being deprived of that outlet and method of selling and marketing their said products or articles. Various other means were also collectively and cooperatively used by respondents in said movement to stop consumer trade from being diverted from respondent retail furniture merchants.

PAR. 17. Said planned and agreed courses of action, understandings, agreements, combinations and conspiracies and the things done thereunder, and pursuant thereto, as hereinabove alleged, have had, and have the direct or indirect effect of unduly and unlawfully restricting and restraining trade in commerce in said products between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the consuming public and otherwise depriving the public of the benefits that would flow from normal competition among and between said respondents, except respondent National Retail Furniture Association, the American Retail Federation and the other trade association respondents, and with others not respondents herein; of tending to eliminate and eliminating, competition, and of tending to create a monopoly in the sale of said products in commerce.

PAR. 18. The acts, practices and methods of the respondents, as herein alleged, are all to the prejudice of the public; having a dangerous tendency to, and have actually hindered competition between and among respondents in the sale of said products in commerce within the intent and meaning of the Federal Trade Commission Act; have tended to create in respondents a monopoly in the sale of said products in interstate commerce; have unreasonably restrained interstate commerce in said products; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER GRANTING RESPONDENT'S APPEAL FROM RULING OF HEARING EXAMINER AND DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter coming on to be heard by the Commission upon the respondents' appeal from a ruling of the hearing examiner denying the respondents' motion for dismissal of the amended complaint herein, and the answer to such appeal filed by counsel in support of the complaint; and

It appearing to the Commission that the specific acts and practices described in the amended complaint and alleged to have been engaged in pursuant to the planned common courses of action, agreements,

understandings, combinations and conspiracies therein referred to occurred more than 10 years ago under economic conditions which differed materially from those now prevailing; and

It further appearing that the record does not show that the rules, regulations and requirements designated in the amended complaint as "uniform standards of so-called fair commercial practices" and alleged to have been imposed or enforced upon all members of the furniture industry were distributed by any of the respondents after March 18, 1936, and does not clearly establish the extent to which said "standards" have been imposed or enforced upon the members of the industry since said date, or the extent to which the respondents' activities since 1936 have restricted or restrained interstate trade in furniture products or affected competition between and among the respondents or tended to create in the respondents a monopoly in the sale of furniture products; and

It further appearing that counsel in support of the complaint have in effect conceded that the allegations of the amended complaint with respect to the respondents' formulation, adoption and putting into operation of a so-called "Trade Relations Movement," one of the alleged purposes of which was to deprive employees of large industrial and commercial organizations of the opportunity of buying furniture and associated products from or through the facilities of their respective employees, have not been sustained by the greater weight of the evidence thereon; and

The Commission being of the opinion that in the circumstances the public interest will be better served by a dismissal of the amended complaint than by a continuation of the proceeding, it being understood, however, that this action does not constitute an adjudication of any of the issues involved or prejudice the right of the Commission to conduct a further investigation into the respondents' business practices and to take such further action as the Commission may consider warranted as the result of such investigation, or otherwise:

Accordingly, it is ordered, That the respondents' appeal from the ruling of the hearing examiner be, and it hereby is, granted.

It is further ordered, That the amended complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

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

Mr. George W. Williams and *Mr. Rufus E. Wilson* for the Commission.

Davies, Richberg, Beebe, Landa & Richardson, of Washington, D. C., for National Retail Furniture Association, its officers and members of the Board of Directors.

Mr. Leo J. Heer, of Chicago, Ill., also represented National Retail Furniture Association.

Covington, Burling, Rublee, O'Brian & Shorb, of Washington, D. C., for The American Retail Federation, its officers and members of the Executive Committee and trustees.

Mr. Deneen A. Watson, of Chicago, Ill., for Illinois Federation of Retail Associations, its officers and members of the Board of Directors.

Miller, Daus & Schwenger, of Cleveland, Ohio, for Cleveland Retail Furniture Association, its officers, various members of the Executive Committee and members.

Halle, Haber, Berick & McNulty, of Cleveland, Ohio, also represented B. W. Marks and Mayer Marks Co.

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for Trade Relations Council of Western Pennsylvania and Retail Merchants Association of Pittsburgh, its officers, various members of the Board of Directors and members.

Mr. Herbert C. Moore and *Mr. William C. Rogers*, of Baltimore, Md., for Retail Furniture Association of Baltimore, Inc., its officers and members of the Board of Directors.

Willard, Allen & Mulkern and *Russell, Plumer & Rutherford*, of Boston, Mass., for The Retail Trade Board of the Boston Chamber of Commerce, its officers, members of the "Governing Council", and members.

Hutchins & Wheeler, of Boston, Mass., also represented George Hansen and Chandler & Co., Inc.

Hemenway & Barnes, of Boston, Mass., also represented Jordon Marsh Co. and C. F. Hovey Co.

Choate, Hall & Stewart, of Boston, Mass., also represented R. H. White Corp.

Weil, Gotschal & Manges, of New York City, for New York Council on Retail Trade Diversion, Inc., various officers and members of the Executive Committee.

Gould & Wilkie, of New York City, for J. E. Davidson.

Marlow & Lincoln, of New York City, for John Wood.

Zelby & Burstein, of New York City, for Associated Furniture Dealers of New York, Inc., its officers and members of the Board of Governors.

Mr. Edwin S. Malmel, of Philadelphia, Pa., for Philadelphia Trade Relations Council, its officers and members of the Board of Directors.

Beaumont, Smith & Harris, of Detroit, Mich., for Retail Merchants Association of Detroit, its officers, members of the Board of Directors and members.

Mr. L. E. Oliphant, Jr., and *Mr. J. A. Lind*, of Chicago, Ill., also represented R. Hunsinger and Montgomery Ward & Co.

Goulston & Storrs, of Boston, Mass., also represented Sears, Roe-

buck & Co., Scott Furriers, Inc., Jays, Inc., Kay Jewelry Co., Lehrburger & Asher, Inc., Liquor Mart, Inc. and Raymond's, Inc.

Morrissey & Conley, of Providence, R. I., for Retail Trade Board of Providence Chamber of Commerce, its officers, members of the Board of Directors and members.

Swan, Keeney & Smith, of Providence, R. I., for Jesse L. Johnson.

MIL-KAY ORANGE CORP. OF AMERICA. Complaint, June 26, 1950. Order, December 10, 1951. (Docket 5788.)

CHARGE: Advertising falsely or misleadingly and assuming or using misleading trade or corporate name as to composition of product and furnishing means and instrumentalities of misrepresentation or deception through supplying false and misleading display cards; in connection with the sale of a beverage concentrate, an acid solution and a special color designated respectively as "Mil-K Fruit Base", "Citric Acid Solution" and "Special Mil-K Botl Color", which it sells and distributes to bottling plants for use in the preparation of a carbonated beverage designated as "Mil-Kay".

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Mil-Kay Orange Corp. of America, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Mil-Kay Orange Corp. of America is a corporation organized and existing under and by virtue of the laws of the State of Missouri with its principal place of business located at 3012 Locust Street, St. Louis, Mo.

PAR. 2. Respondent is now and for more than one year last past has been engaged in the sale and distribution of a beverage concentrate, an acid solution and a special color designated respectively as "Mil-K Fruit Base," "Citric Acid Solution" and "Special Mil-K Botl Color," which it sells and distributes to bottling plants located in various States of the United States for use in connection with the preparation of a carbonated beverage designated as "Mil-Kay."

Respondent causes its said products when sold to be transported from its place of business in Missouri to purchasers thereof in various other States. When the beverage drink "Mil-Kay" has been prepared by the use of respondent's said products, it is frequently shipped by bottlers to retailers located in States other than the State in which such shipments originated.

Respondent maintains and has maintained a course of trade in its

products between and among the various States of the United States and its volume of business has been substantial.

PAR. 3. In the course and conduct of its business respondent has disseminated and has caused the dissemination of various advertisements concerning the beverage "Mil-Kay" made by the use of its products by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and caused the dissemination of advertisements concerning said beverage "Mil-Kay" by various means for the purpose of inducing and which would likely induce, directly or indirectly, the purchase of said beverage "Mil-Kay" in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the advertisements disseminated and caused to be disseminated as hereinabove set forth are the following counter display cards used by bottlers and retailers in advertising and promoting the sale of "Mil-Kay" as follows:

Drink MIL-KAY
It is Good For You

These words are printed upon a picturization of a whole orange.

A picture of a bottle of "Mil-Kay" bearing the following lettering:

MIL K BOTL
CONTAINS VITAMIN B,
REFRESHING
JUST SAY
MIL-KAY
THE VITAMIN B,
DRINK
INVIGORATING
MIL-KAY
SOLD IN BOTTLES ONLY

The picture of the bottle with its inscriptions is printed upon a picturization of an exploding orange.

PAR. 4. By means of the display cards bearing the picturizations thereon set out in Paragraph Three herein, respondent represented and placed in the hands of bottlers and retailers means and instrumentalities by and through which they may and have represented that the principal and characteristic ingredient of the beverage "Mil-Kay" is orange juice.

PAR. 5. The aforesaid statements and picturizations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Mil-Kay," while simulating the odor, appearance, and taste of a product composed principally of orange juice, derives its odor, appearance, and taste chiefly from imitation ingredients and is in fact an imitation orange product.

PAR. 6. The use by the respondent of the aforesaid false advertisements had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the picturizations contained therein are true and caused a portion of the purchasing public to purchase substantial quantities of the product "Mil-Kay" because of such erroneous and mistaken belief.

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

ORDER closing case without prejudice follows:

The respondent in this proceeding having executed and tendered to the Commission a proposed stipulation of facts and agreement to cease and desist from the acts and practices alleged in the complaint to have been in violation of the Federal Trade Commission Act; and

The hearing examiner having recommended that said stipulation and agreement to cease and desist be accepted and that the case be closed without prejudice to the right of the Commission to reopen the same and resume trial thereof if the respondent again engages in said acts or practices; and

It appearing to the Commission that the complaint charges the respondent with having falsely represented, through the use of certain advertising display cards, that a beverage designated as "Mil-Kay, the Vitamin B₁ Drink," prepared from ingredients sold by the respondent, is composed principally of orange juice; and

It further appearing that prior to the issuance of the complaint the respondent abandoned the use of said advertising display cards, and that it has now deleted from its corporate name the word "Orange," thus negating any implication that may have been inherent in the use of said corporate name that the beverage "Mil-Kay, the Vitamin B₁ Drink," is composed principally of orange juice; and

The Commission being of the opinion that in the circumstances the public interest does not require a continuation of this proceeding at this time:

It is ordered, That the proposed stipulation and agreement to cease and desist executed by the respondent on September 29, 1950, be, and it hereby is, accepted.

It is further ordered, That the case growing out of the complaint herein be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

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

Mr. John L. York and *Mr. Jesse D. Kash* for the Commission.

Freedman & Levy, of Washington, D. C., for respondent.

BOND STORES, INC. Complaint, September 2, 1949. Order, January 10, 1952. (Docket 5697.)

CHARGE: Advertising falsely or misleadingly as to composition, manufacture or preparation, prices, source or origin and value of products, using misleading product name or title as to composition and source or origin of product and misrepresenting prices; in connection with the sale of men's, women's and children's clothing.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bond Stores, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bond Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business at 380 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent is now and for several years last past has been engaged in the retail sale of men's, women's and children's clothing, some of which clothing is and has been manufactured by respondent in factories owned and operated by it in New Brunswick, N. J., Rochester, N. Y., Buffalo, N. Y., Glen Falls, N. Y., and Meridian, Miss. Other clothing sold by respondent at retail is purchased by it from other manufacturers.

Respondent ships and has shipped the clothing manufactured by it and purchased by it from other manufacturers from its factories and from factories of other manufacturers from which respondent buys and has bought clothing to 68 retail stores owned and operated by it, which retail stores are located throughout the various States of the United States and in the District of Columbia. In many instances the retail stores to which such clothing is shipped by respondent are located in States other than the State in which such shipments have or had their origin.

Respondent's retail stores are engaged in the sale of clothing as above described and the shipment of certain thereof in commerce, as "commerce" is defined by the Federal Trade Commission Act, to purchasers located in States other than that in which such shipments have or had their origin, and to customers residing within the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said clothing in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its said clothing in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondent made certain statements and representations in newspapers and circulars concerning, among other things, the quality and value of its clothing, the prices at which such clothing is offered for sale and the savings resulting from its purchase at such prices. Among and typical, but not all inclusive, of the statements and representations so made are the following:

(a) "Shetland and Genuine Kerrys made of imported wool . . ." "Cameron Worsteds" "Sizzling Bond Special men's suits \$50. quality pure wool Cameron Coverts \$37.75."

(b) "\$25.—Verified \$34.50 value" "Set your alarm! Get here early! Bond repeats a SELL-OUT MORE Rochester-Tailored top coats worth every cent of \$50.—\$37.75."

(c) "SPECIAL PURCHASE Usual price would be \$19.95—\$14.95"

(d) "Regularly \$10.50 triple decker bold look easy price \$8.95 Bootmaker hand finished . . ." "Today at Bond's $\frac{1}{3}$ off—leather-lined luxury zip coats! You save \$24.—\$45.95. Regularly \$69.95." "Today $\frac{1}{4}$ off. Bond slices \$20. from gabardine \$79.95 zip coats "59.95." "SALE! \$10.50 men's shoes \$8.95 Recognized \$10.50 quality."

(e) "Super-Quality broadcloth pajamas Bond-Priced below manufacturer's usual wholesale price! \$2.98."

PAR. 4. Respondent, through the use of the aforesaid statements appearing in the advertisements set out and quoted under the numbered subparagraphs above, represented:

(a) That the articles of clothing designated "Shetland," "Kerrys" and "Cameron" were made from fabrics imported from the Shetland Islands, Ireland, and Scotland, respectively.

(b) That the clothing offered for \$25 was of the value of \$34.50 and that the clothing being offered at \$37.75 was actually worth and was of the value of \$50.

(c) That the usual and regular price for the clothing offered at \$14.95 was \$19.95 and the difference between such prices represented a saving to the purchaser from the regular price.

(d) That the regular price for the shoes offered at \$8.95 was \$10.50 and that the difference between such prices represented a saving to the purchaser from the regular price; that said shoes were hand finished. That the regular price of the coats offered for \$45.95 and \$59.95 was \$69.95 and \$79.95, respectively, and that the differences represented savings to the purchaser of \$24 and \$20, respectively, from the regular prices.

(e) That the price of \$2.98 asked for pajamas was below the manufacturer's usual wholesale price.

PAR. 5. The statements in said advertisements are false, misleading and deceptive in the following respects:

(a) The articles of clothing designated "Shetland", "Kerrys" and "Cameron" were not made from fabrics imported from the Shetland Islands, Ireland, and Scotland, respectively.

(b) The clothing offered for \$25 was not of the value of \$34.50 and the clothing offered at \$37.75 was not actually worth and was not of the value of \$50, based upon the price of comparable merchandise sold by other retailers in the same trade territory.

(c) The usual and regular price for the clothing offered at \$14.95 was not \$19.95. In truth and in fact, respondent's regular selling price for such clothing did not exceed \$14.95 and a purchase at that figure did not result in a saving from respondent's regular price.

(d) The regular price for the shoes offered at \$8.95 was not \$10.50. In truth and in fact, respondent's regular selling price for said shoes did not exceed \$8.95 and a purchase at that figure did not result in a saving from respondent's regular price, and said shoes were not "hand finished." The regular prices of the coats offered for \$45.95 and \$59.95 were not \$69.95 and \$79.95, respectively. In truth and in fact, respondent's regular selling prices for said coats did not exceed \$45.95 and \$59.95, respectively, and a purchase of said coats at such prices did not result in savings in any amount from the regular prices.

(e) The price of \$2.98 asked for pajamas was not below the manufacturer's usual wholesale price.

PAR. 6. The use by respondent of the foregoing false, misleading and deceptive statements and representations, and others similar thereto, had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase the clothing sold by respondent through its retail stores.

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

COMPLAINT DISMISSED without prejudice by the following order:

It appearing to the Commission that counsel in support of the complaint and counsel for the respondent, Bond Stores, Inc., have reached an agreement on a proposed informal stipulation; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, without admitting having violated the Federal Trade Commission Act, not to use certain of the acts and practices complained of, as therein more particularly set forth; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way

prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement, and that settlement by stipulation of the matters here involved would not violate the Commission's stated policy of encouraging law observance through cooperation in certain types of cases where there has been no intent to defraud or mislead:

It is ordered, That the proposed stipulation and agreement executed by the respondent on November 20, 1951, be, and it hereby is, approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. Edward F. Downs for the Commission.

Goldberg & Grossman, of New York City, for respondent.

RICHMOND-CHASE CO., EDMUND N. RICHMOND, CHARLES M. O'BRIEN, BURNELL E. RICHMOND AND GEORGE A. RICHMOND. Complaint, August 6, 1948. Order, January 11, 1952. (Docket 5578.)

CHARGE: Discriminating in price through the paying or granting of commissions, brokerage, or other compensation, or allowances and discounts in lieu thereof, on sales of respondents' food products to direct buyers, in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COMPLAINT: The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Richmond-Chase Co. is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. The respondent corporation is engaged in the business of selling canned fruits and vegetables, processed dried fruits and frozen foods (all of which are hereinafter designated as "food products"), which it packs, processes, and cans at five canning plants which it operates in the State of California, one at

San Jose, the second at Stockton, a third at Mountain View, a fourth at Edenvale, and a fifth at San Leandro. The respondent corporation is a substantial factor in the distribution and sale of food products, selling approximately \$25-million worth of such commodities each year. Such sales are made to buyers located in various sections of the United States, Alaska, the Territory of Hawaii, the Island of Puerto Rico, and many foreign countries.

PAR. 2. Respondent Edmund N. Richmond is an individual with his principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. He is now president of Richmond-Chase Co. and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as president, respondent Edmund N. Richmond has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 3. Respondent Charles M. O'Brien is an individual with his principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. He is now first vice president of Richmond-Chase Co. and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as first vice president, respondent Charles M. O'Brien has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 4. Respondent Burnell E. Richmond is an individual with his principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. He is now second vice president of Richmond-Chase Company and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer and at the present time, and for some time past as second vice president, respondent Burnell E. Richmond has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 5. Respondent George A. Richmond is an individual with his principal office and place of business located at 817 West Santa Clara Street, San Jose, Calif. He is now secretary-treasurer of Richmond-Chase Co. and has been a substantial stockholder and an officer of said corporation since some time after June 19, 1936. After becoming an officer and at the present time, and for some time past as secretary-treasurer, respondent George A. Richmond has exercised, and still

exercises, a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 6. Respondent corporation, as aforesaid, is now and has been since June 19, 1936, engaged in the business of packing, processing, selling, and distributing food products. Each of said individual respondents through said corporate respondent has likewise been engaged in said business. Said respondents and each of them in the course and conduct of their business as aforesaid have sold and distributed, and now sell and distribute their food products to buyers located in the several States of the United States and the Territories and insular possessions thereof and other places under the jurisdiction of the United States, including sales to buyers in the State of California. Said respondents cause such food products, when sold, to be transported from their places of business in California to the buyers thereof in the State of California and also to the customers of such buyers located in the several States of the United States, the Territories, insular possessions thereof, and other places under the jurisdiction of the United States. There has been since June 19, 1936, a constant current of trade and commerce conducted by each of said respondents in such food products between and among the various States of the United States, the Territories and insular possessions thereof and other places under the jurisdiction of the United States.

PAR. 7. Respondents, and each of them, through said respondent corporation, now sell and distribute, and since June 19, 1936, have sold and distributed, their food products in commerce through two separate and distinct methods: (1) By selling some such food products to buyers through brokers or agents; and (2) by selling some such food products directly to other buyers without the intervention of a broker or agent, and paying such buyers a commission or brokerage fee on such purchases.

First: The first method is by selling food products to buyers through brokers. A broker of food products, as considered herein, may be defined as a sales agent who negotiates the sale of food products for and on account of the seller as principal and whose compensation is a commission or brokerage fee paid by the seller. Such brokers act as respondents' sales agents, soliciting and obtaining orders for the respondents' food products at respondents' prices and on respondents' terms. Such brokers generally transmit such purchase orders to the respondents who thereafter invoice and ship the food products to respondents' customers. The respondents pay such brokers for their service in negotiating and making such sales for the respondents' account commissions or brokerage fees which are customarily based on a percentage of the invoice sales price of the food products sold.

Such brokers are not traders for profit and do not take title to nor have any financial interest in the products sold and neither make a profit nor suffer a loss on the transaction. This phase of respondents' business is not challenged herein.

Second: A second method, which is challenged by this complaint, is respondents' sale in the course of the aforesaid commerce of food products direct to buyers who are paid directly or indirectly commissions or brokerage fees on purchases made for their own account. All such buyers referred to herein are "direct buyers." In transactions between respondents and such buyers, the respondents do not use brokers. Some of such direct buyers purchase respondents' food products in the course of the aforesaid commerce for resale to their customers located in the several States of the United States. Other of respondents' direct buyers who are classified as "export brokers" purchase some of respondents' food products in the course of the aforesaid commerce for resale to their customers located in the several States of the United States and in Territories, insular possessions, or other places under the jurisdiction of the United States.

Such direct buyers generally transmit their own purchase orders for food products directly to the respondents. The respondents thereafter invoice and ship such food products directly to such buyers or to the customers of such buyers. Respondents collect the purchase price of the food products from the buyers and not from the buyers' customers. The respondents, among their several methods of sales, pay such buyers commissions or brokerage fees on such purchases, usually by deducting or allowing from the invoice price of the food products purchased an amount which is equal or approximately equal to the commissions or brokerage fees paid by the respondents to their brokers, as illustrated in the first method. On sales made by the respondents to buyers whom the respondents classify or who classify themselves as "export brokers," such commissions or brokerage fees are generally designated by respondents as "export discounts."

Contrary to the manner in which brokers operate (as described in the first method above), such buyers are traders for profit, purchasing and reselling such food products in their own names and for their own accounts, taking title to the food products and assuming all risk incident to ownership. Such resales are not made at the prices and on the terms dictated by respondents but at the prices and on the terms determined by the respective buyer who makes a profit or suffers a loss thereon, as the case may be. This phase of respondents' business is challenged by this complaint.

PAR. 8. The respondents, and each of them, since June 19, 1936, in connection with the sale of their food products in commerce, as illustrated in the second method set out in paragraph 7 herein, have been

and are now paying or granting and have paid and granted, directly and indirectly, commissions, brokerage or other compensation or allowances and discounts in lieu thereof to buyers on purchases of respondents' food products made for their own account for resale.

PAR. 9. The acts and practices of the respondents, and each of them, in promoting the interstate sale of their food products, since June 19, 1936, by paying or granting to buyers, directly or indirectly, commissions, brokerage or other compensation or allowances or discounts in lieu thereof by the second method set forth in paragraph 7 herein, are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

COMPLAINT DISMISSED without prejudice by the following order:

This matter came on to be heard by the Commission upon the complaint; respondents' answer thereto; a stipulation as to the facts entered into by and between counsel in support of the complaint and counsel for the respondents which provides, among other things, that the stipulation as to the facts may be considered in this proceeding in lieu of evidence in support of and in opposition to the charges in the complaint; recommended decision of the hearing examiner and respondents' exceptions thereto; and briefs and oral argument of counsel.

The complaint herein charges the respondents with violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, through the paying or granting of commissions, brokerage, or other compensation, or allowances and discounts in lieu thereof, on sales of respondents' food products to direct buyers.

It appears that the respondents discontinued 1 of the 2 types of transactions challenged in the complaint about 2 years prior to the issuance of the complaint and there is no indication that they will again engage in such transactions. The Commission is of the opinion that further corrective action with respect to such transactions is not required at this time. The Commission is of the further opinion that the allegations in the complaint with respect to the other type of transactions are not sustained.

The Commission having duly considered the matter, and being now fully advised in the premises:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should the facts warrant such action.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Edward S. Ragsdale and *Mr. C. G. Miles* for the Commission.

Bell & Ehrlich, of Washington, D. C., for respondents.

H. G. HORNIBROOK AND APEX OIL PRODUCTS Co. Complaint, October 13, 1939.¹ Order, February 8, 1952. (Docket 3888.)

CHARGE: Misrepresenting qualities and comparative merits in connection with the sale and distribution of lubricating oil for motors designated "Film-X Motor Oil."

AMENDED AND SUPPLEMENTAL COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that H. G. Hornibrook, an individual, and Apex Oil Products Co., a corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent H. G. Hornibrook is an individual formerly trading as Apex Oil Products Co., and having his office and principal place of business at 100-200 17th Avenue, North, in the city of Minneapolis, State of Minnesota. Respondent Hornibrook in his individual capacity was for more than 1 year prior to May 1, 1939, engaged in the sale and distribution of a lubricating oil designated Film-X Motor Oil.

Respondent Apex Oil Products Co. is a corporation organized and existing under the laws of the State of Minnesota and having its office and principal place of business at 100-200 17th Avenue, North, Minneapolis, Minn. Said corporate respondent is now, and has been since the date of its incorporation on or about May 1, 1939, engaged in the sale and distribution of the lubricating oil designated Film-X Motor Oil. Said respondent corporation succeeded to the business of respondent H. G. Hornibrook and the said H. G. Hornibrook is president and general manager of said respondent corporation. Respondents have sold and distributed said product to wholesalers, retailers and other purchasers thereof.

In the course and conduct of their business as aforesaid, the respondents caused said product, when sold, to be transported from their aforesaid place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Minnesota, and in the District of Columbia. Respondents maintained, at all times mentioned herein, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent H. G. Hornibrook, trading as Apex Oil Products Co., was engaged in

¹ Amended and supplemental.

the practice of falsely representing the qualities and properties of his said lubricating oil by means of false and misleading statements and representations on labels on the containers in which said product was sold and by various other means, all of which statements and representations were distributed to members of the purchasing public situated in various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated as aforesaid are the following:

FILM-X Motor Oil is guaranteed to remove carbon from the motor.

FILM-X has several times the film strength of any other natural oil. Actual tests have demonstrated that motors using FILM-X show less than one-tenth the wear of motors using ordinary oil.

Through the use of the aforesaid statements and representations, together with other statements of similar import and meaning not herein set out, respondent H. G. Hornibrook represented to prospective purchasers situated in various States of the United States and in the District of Columbia that the use of his lubricating oil in motors removes carbon therefrom; that his lubricating oil has several times the film strength of any other natural oil and is therefore superior to all other natural oils; and that motors using said respondent's oil wear less than one-tenth as much as motors using other oil.

PAR. 3. In the course and conduct of its business the corporate respondent Apex Oil Products Co. has been, and is now, engaged in the practice of falsely representing the qualities and properties of its said lubricating oil by means of false and misleading statements and representations on labels on the containers in which said product is sold and by other various means, all of which statements and representations are distributed to members of the purchasing public situated in various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated as aforesaid is the following:

FILM-X Motor Oil is guaranteed to remove carbon from the motor.

Through the use of the aforesaid statement and representation, together with other statements of similar import and meaning not herein set out, the corporate respondent Apex Oil Products Co. represents to prospective purchasers situated in various States of the United States and in the District of Columbia that the use of its lubricating oil in motors will remove carbon therefrom.

PAR. 4. The aforesaid statements and representations by the respondents are grossly exaggerated, false and misleading.

In truth and in fact respondents' oil will not remove carbon from motors. The aforesaid advertisements containing statements that

respondents' oil has several times the film strength of any other natural oil unduly exaggerate the importance of the film strength of oils and serve as a representation that other oils of less film strength are inferior to respondents' oil. The film strength of lubricating oil is not a true criterion of quality or superiority. Motors which are lubricated with respondents' oil do not wear less than one-tenth as much as motors lubricated with other oil. Any decrease in the wear of a motor effected through the use of respondents' lubricating oil is not substantially greater than the decrease in the wear produced through the use of any high-quality lubricating oil. There is no substantial difference in the wear of a motor in which respondents' lubricating oil is used and the wear of a motor in which any high-quality lubricating oil is used.

PAR. 5. The use by the respondents of the aforesaid false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations are true, and into the purchase of respondents' products because of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

AMENDED COMPLAINT DISMISSED without prejudice by the following order:

This matter has come before the Commission upon the motion of counsel supporting the complaint to close this case without prejudice. No answer to this motion has been filed by respondents, each of whom has been duly served with a copy of said motion.

It appearing from the record herein that all of the alleged false and misleading representations complained of in the amended complaint were discontinued many years ago; and

It further appearing that in 1950 persons other than the individual respondent herein assumed ownership and control of the corporate respondent; and the Commission having no reason to believe that the alleged false and misleading representations which have been discontinued by respondents will be resumed, and it being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the amended complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any

time in the future with respect to the subject matter of said amended complaint as may be warranted by the then existing circumstances.

Before *Mr. Miles J. Furnas*, *Mr. Lewis C. Russell* and *Mr. Edward E. Reardon*, hearing examiners.

Mr. Joseph Callaway for the Commission.

Mr. George Nordlin, of Minneapolis, Minn., for respondents.

HIRAM E. BARBER TRADING AS MOTOR EQUIPMENT SPECIALTY CO.
Complaint, March 23, 1942. Order, February 13, 1952. (Docket 4737.)

CHARGE: Advertising falsely and misleadingly that goods would be shipped promptly upon receipt of order accompanied either by payment in full or by one-third of the purchase price, that shipment would be made the day of receipt of remittance by telegraph shipment, and that goods so sent would be new and in usable condition; in connection with the advertising for prospective agents and salesmen to engage in the sale and distribution of his three devices known as "Mesco Fender Roller," "Universal Wheel Check," and "Tire Remover."

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Hiram E. Barber, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hiram E. Barber, is an individual, trading and doing business under the name Motor Equipment Specialty Co., and having an office and principal place of business in Beaver City, Nebraska.

PAR. 2. Respondent is now, and has been for more than three years last past, engaged in the business of manufacturing, selling, and distributing three devices known as "Mesco Fender Roller," "Universal Wheel Check," and "Tire Remover." The roller is designed and intended to be used for the removal of dents from automobile fenders, bodies, and tops, the wheel check to determine the alinement of automobile wheels, and the tire remover to remove automobile tires from the rims or wheels. In the course and conduct of his business, respondent causes said devices, when sold, to be transported from his aforesaid place of business in the State of Nebraska to purchasers located in the various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the purchase of said devices by salesmen purchasing for resale, and others, respondent has advertised for salesmen to engage in the distribution of his devices in newspapers and magazines and other periodicals of general circulation, particularly among prospective agents and salesmen for devices of this general nature who sell direct to the ultimate consumer, and has caused letters and circulars to be sent to prospective agents and salesmen in various parts of the United States through the United States mails. Among and typical of the claims and representations made in said advertisements, letters, and circulars are the following:

Get your samples and get going.

If you are in a real hurry, then wire the money, Western Union, to Beaver City, Nebraska, via McCook, Nebraska.

Or if you are in a real rush, then wire the money, Western Union, to Beaver City, Nebraska, via McCook, Nebraska, and we will ship the same day.

Send this slip with money order or draft for \$12.50 and I will send you the fender rollers and include the wheel check immediately. Or \$14.00 gets the tire remover also.

Cash with order is cheapest, but we will ship C. O. D. if one third accompanies order.

Through the use of the aforesaid statements, and others similar thereto not set out herein, respondent has represented that he will ship the goods ordered by prospective salesmen or agents, promptly upon receipt of the order, accompanied either by payment in full or by one-third of the purchase price, that when remittance is by telegraph shipment will be made the day of its receipt, and that the goods so sent will be new and in usable condition.

PAR. 4. The aforesaid representations so made and disseminated by respondent in the course of his aforesaid business were misleading and untrue. In truth and in fact, respondent, although well aware that salesmen and agents could not sell said devices without proper samples thereof, and that delay in the shipment thereof would be highly detrimental to such persons, did not ship samples to persons sending orders by telegraph, accompanied by the amount of money required by the respondent, the same day that the remittance was received, nor did he ship samples to those ordering by mail with reasonable promptitude after receipt of such orders. In many instances he sent samples of said devices which were defective or second hand.

PAR. 5. In many instances, after the receipt of the goods ordered by prospective salesmen and agents had been unreasonably delayed by respondent's failure to ship them seasonably, such salesmen and agents notified respondent of the cancellation of their orders, instructed him to make no shipment, and demanded the return of the money paid to respondent. It was the practice of respondent under such circum-

stances to disregard such instructions, to ship the goods, and to refuse the demand for refund.

PAR. 6. In many instances respondent has delivered to persons who purchased his said devices through his salesmen or agents, goods which were defective or second hand.

PAR. 7. Among and typical of claims and representations made by respondent with respect to the fender roller, in the manner set forth in paragraph 3 hereof, are the following:

. . . they are neat, handy, easily operated

. . . equipment that will slip these dents out quickly and easily.

This outfit really lifts the dent out of the fender. It does the job quickly, easily. . . .

Works so easily that it is just a swing of the wrist. . .

Through the use of the aforesaid statements, and others similar thereto not set out herein, respondent has represented that the technique of the operation of his said fender roller is easily acquired.

PAR. 8. The aforesaid representations so made and disseminated by respondent in the course of his aforesaid business were misleading and untrue. In truth and in fact, it is not possible to operate the fender roller satisfactorily without a considerable amount of practice, the proper technique is not readily acquired even by persons having some mechanical aptitude and skill, and large numbers of those who purchased said device for resale were wholly unable to use it successfully. A satisfactory demonstration is in almost every instance necessary to effect sales. Respondent's representations were made to prospective salesmen or agents, and no disclosure that a study of the operation of the device, and a considerable amount of practice therewith, was necessary as a preliminary to attempting to sell it, until after the prospective salesman or agent had paid for his sample.

PAR. 9. Among and typical of other claims and representations made by respondent with respect to his fender roller in the manner set forth in Paragraph Three hereof, are the following:

These products are what 95% of the garage and fleet owners must have They are indispensable.

Modern tools for modern cars.

That is why these tools sell so well.

. . . something that practically every shop needs and very few have.

. . . the finishing tools have been doubling in sales each week for the past few weeks. That means just one thing. They are what practically every garage ought to have and they are finding it out.

So you see why these tools are so popular.

Body and fender men who have spent years in learning to do perfect work with old fashioned equipment find that Mesco rollers do the work better, easier, and many times quicker.

That is just what these new tools are. They are finely engineered tools, made and developed through years of experience, and work on the most modern cars.

Through the use of the aforesaid statements, and others similar thereto not set out herein, respondent has represented that there was a great and growing need for and demand for the said rollers, that they were readily salable, that they were adopted for use on current and recent automobile models, that they were extremely efficient, and were finely engineered to accomplish and would accomplish the purpose for which they were intended, and were highly meritorious.

PAR. 10. The aforesaid representations so made and disseminated by respondent in the course of his aforesaid business were misleading and untrue. In truth and in fact, there are many other methods of and tools for removing dents from fenders, the demand for respondent's device was almost negligible, was not increasing, and it was not readily salable. The tool is not well adapted to the large, high-crown fenders of automobiles of recent years, and the device is for practical use, almost entirely without merit.

PAR. 11. Among and typical of other claims and representations made by respondent with respect to all his devices, in the manner set forth in paragraph 3 hereof, is the following:

We have never done much advertising because we didn't need to. These tools sell readily . . . and we had all the salesmen we could use. However, we have enlarged our output. . . .

Through the use of the aforesaid statement and others similar thereto not set out herein, respondent has represented that he had done little advertising for salesmen, because he had enough to sell his former output, but that his production had recently been enlarged.

PAR. 12. The aforesaid representations so made and disseminated by the respondent in the course of his aforesaid business were misleading and untrue. The respondent's advertising for salesmen had been extensive and continuous. The tools did not sell readily, the respondent never had enough salesmen to dispose of his output, and his facilities for production were never increased.

PAR. 13. Respondent has also engaged in the practice of representing to prospective salesmen that certain territory was open, when in fact exclusive rights to sell in such territory, in whole or in part, had been granted by respondent to others.

PAR. 14. Among and typical of other claims and representations made by respondent with respect to the opportunities for the sale of his devices, in the manner set forth in paragraph 3 hereof, is the following:

Every mechanic a prospect, 95% virgin.

Through the use of the aforesaid statement, and others similar thereto not set out herein, respondent has represented that little effort has been made to sell the said devices, and that they have never been offered to the vast majority of prospective purchasers.

PAR. 15. The aforesaid representations so made and disseminated by respondent in the course of his aforesaid business were misleading and untrue. In truth and in fact, efforts to sell said devices have been made by a large number of people over a large part of the United States, and they have been offered to great numbers of prospective purchasers.

PAR. 16. Respondent has also engaged in the practice of inserting in the advertising matter referred to in paragraph 3 hereof, what purport to be copies of favorable testimonials from users of his devices.

In truth and in fact such testimonials, were never given by the persons by whom they were represented to have been given.

PAR. 17. Respondent has also engaged in the practice of representing, by means of letters sent through the United States mails, to prospective salesmen and others in various States of the United States, that his devices, and his representations with respect thereto, have been submitted to and approved by the Federal Trade Commission and the United States Post Office Department and that the devices have been approved by and are in use by departments and agencies of the United States Government. Such representations were made by statements such as:

We have already shown the Postal Inspectors and the Federal Trade Commission that they do everything we say . . .

The Federal Trade Commission and Postal authorities . . . both have been here and looked over our merchandise, investigated its operation and construction, and our claims in our literature. The most they have done is to suggest some changes in the wording of some of our statements. . . . We consider this our best recommendation.

. . . these tools are in the use of the United States Government.

PAR. 18. The aforesaid representations so made and disseminated by respondent in the course of his aforesaid business are misleading and untrue. In truth and in fact neither the postal authorities of the United States nor the Federal Trade Commission has passed upon the merits of respondent's devices or approved them or the claims made by respondent for them. None of the tools are used by any department or agency of the United States Government.

PAR. 19. Among and typical of claims and representations made by respondent with respect to his wheel check in the manner set forth in paragraph three hereof, are the following:

The Universal has been tested beside machines costing \$375.00 and it is every bit as accurate. In fact it is more accurate than any machine we have had the privilege of testing it with.

There is nothing to break or get out of order. Put the heaviest truck on it and it won't be injured in the least.

Through the use of the aforesaid statements, and others similar thereto not herein set out, respondent has represented that the device

will disclose faulty alignment of automobile wheels with a greater accuracy than other devices intended for the same purpose, that the construction is such that the device will not break or get out of order, and that it may be used to test the heaviest vehicles without injury.

PAR. 20. The aforesaid representations so made and disseminated by respondent in the course of his aforesaid business are misleading and untrue. In truth and in fact the said wheel check is not accurate, and is inferior in accuracy to other devices used for the same purpose. It frequently gets out of order, and is damaged when used under heavy vehicles. It is poorly constructed and is of little practical merit.

PAR. 21. The use by respondent of the statements and representations, as set forth herein, in connection with the offering for sale and sale of his said devices, has had the tendency and capacity to mislead and deceive purchasers and prospective purchasers thereof into the false and erroneous belief that such claims and representations were true, and to induce them to purchase such devices on account thereof.

PAR. 22. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter has come before the Commission upon the motion of counsel supporting the complaint to dismiss the complaint without prejudice. No answer to said motion has been filed by respondent, upon whom a copy of said motion has been duly served.

It appearing from said motion that respondent has not been engaged in the business to which the complaint in this matter relates for many years, and the Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of said complaint as may be warranted by the then existing circumstances.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Randolph W. Branch for the Commission.

AMERICAN COUNCIL ON PUBLIC AFFAIRS ET AL. Complaint, August 24, 1949. Order, February 15, 1952. (Docket 5695.)

CHARGE: Representing falsely and misleadingly, through use of substitute titles, that books and pamphlets are new works, in connection with the publication, sale, and distribution of new issues of

works previously published by others, mainly United States Government agencies.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that American Council on Public Affairs, a corporation, and Morris B. Schnapper, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. American Council on Public Affairs is a corporation existing and doing business under and by virtue of the laws of the District of Columbia with its office and principal place of business located at 2153 Florida Avenue, Washington, D. C. Said corporation also does business under the trade name of Public Affairs Press. Respondent Morris B. Schnapper is the executive secretary of said corporate respondent with his office and principal place of business located at 2153 Florida Avenue, Washington, D. C., and controls and directs the acts, policies and business affairs of said corporation, particularly in respect to the acts and practices alleged herein. The respondents are now, and have been for more than 1 year last past, engaged in the publication, sale and distribution of books in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents cause and have caused said books when sold to be shipped from their said place of business located in the District of Columbia to purchasers thereof located in the various States of the United States and in the District of Columbia.

Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said books in commerce among and between the various States of the United States and in the District of Columbia. Their volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the sale of their books, respondents have engaged, subsequent to March 21, 1938, in the practice of advertising, selling and distributing books and pamphlets, previously published by others, under names or titles different from the names or titles under which said books or pamphlets were previously published.

The books and pamphlets so advertised, sold and distributed by respondents include, but are not limited to:

"American Names" previously published by the United States Department of the Interior under the title: "The Origin of Certain Place Names in the United States."

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"Fishery Resources of the United States" previously published as Senate Document No. 51, 79th Congress, and printed and sold by U. S. Government Printing Office under the title: "Fishery Resources of the United States: Letter of the Secretary of the Interior transmitting pursuant to law, a report on a survey of the fishery resources of the United States and its provinces."

"Guide to American Business Directories," previously published by the United States Department of Commerce, are printed and sold by U. S. Government Printing Office under the title: "American Business Directories."

"Endless Horizons" previously published by the United States Government Printing Office under the title: "Science, the Endless Frontier."

"Dictionary of Guided Missile Terms" previously published by the National Military Establishment Research and Development Board under the title: "Glossary of Guided Missile Terms."

"Mineral Resources of the United States" previously published by the United States Government Printing Office under the title: "Mineral Position of the United States" as an appendix to "Hearings before a Subcommittee of the Committee on Public Lands, United States Senate, Eightieth Congress."

PAR. 4. Through the use of the titles aforesaid, and other substitute titles not specifically set out herein, respondents have represented, directly and by implication, that the books and pamphlets so titled by them are new works.

The said representation is false and misleading. In truth and in fact, the said books and pamphlets are not new works but are new issues of works previously published by others.

PAR. 5. Through the use of the words "American Council on Public Affairs" in the name of the corporate respondent, respondents have represented, directly and by implication, that the said respondent is in some fashion connected with the United States Government, that it is a body elected or otherwise constituted as an advisory body on public affairs, is an assembly for consultation and advice on public affairs or has some status other than that of a book publisher and seller and functions as an educational or public service organization.

The said representations are false and misleading. In truth and in fact, respondent American Council on Public Affairs has no connection whatever with the Government of the United States, is not a body elected or otherwise constituted as an advisory body on public affairs, is not an assembly for consultation and advice on public affairs. It is engaged in the business of selling and distributing books and is not an educational or public service organization.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER granting respondents' appeal from initial decision of hearing examiner, and decision of the Commission dismissing complaint without prejudice, follows:

This matter came before the Commission upon respondents' appeal

from the hearing examiner's initial decision, respondent Morris B. Schnapper's statement and supplemental statement in support of the appeal, and the brief filed in opposition to the appeal by counsel supporting the complaint.

The principal ground relied on by respondents in support of their appeal is that the hearing examiner's findings as to the unfair and deceptive nature of the titles of their publications are not supported by the record. No appeal has been taken from the hearing examiner's ruling dismissing the allegations of the complaint relating to the use of the corporate respondent's name.

The hearing examiner found that respondents have published and sold books and pamphlets under names different from those under which they had previously been published by the Government; that by the use of such substitute titles respondents have represented that these books were new works; that their use of such substitute titles has the tendency and capacity to, and does, mislead prospective purchasers into believing the publications are new works; that persons are thereby induced to purchase respondents' books; and that such acts and practices of the respondents constitute unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act.

The complaint alleges respondents' use of substitute names on publications containing previously published material is an unfair practice only to the extent that the substitute names have the tendency and capacity to cause the purchase of the new publications by persons who would not have purchased them had they realized the new publications consisted of the same material as that contained in the original publications. The Commission is of the opinion that these allegations are not supported by the evidence of record. The evidence relating to those publications which were specifically found by the hearing examiner to have such misleading titles is as follows:

1. "Fishery Resources of the United States, edited by Lionel A. Walford." The contents of respondents' book so entitled were originally published as a Senate document with the title "Fishery Resources of the United States." This material was later republished by the Government with the heading "Fishery Resources of the United States of America, by Fish and Wildlife Service, edited by Lionel A. Walford." The latest Government edition of this material is advertised by the Government Printing Office as "Fishery Resources of the United States." Respondents' publication gives credit to the Fish and Wildlife Service. There is no appreciable difference between any of these titles and there exists no reasonable basis for anyone familiar with the Government publication being misled by respondents' title.

2. "Endless Horizons, by Vannevar Bush." The contents of re-

spondents' volume so entitled have not previously been published in this form. As it clearly reveals in its acknowledgments, this publication contains materials chiefly drawn from the author's previous writings and speeches. The Government publication "Science the Endless Frontier, Report to the President on a Program for Postwar Scientific Research," found by the hearing examiner to be identical to respondents' publication, in fact contains material which comprises only approximately one-fourth of the material contained in respondents' publication. As it is a new publication, this volume was properly given a new title.

3. "American Names, by Henry Gannett." Respondents' volume so named on the cover contains a title sheet reading "A Guide to the Origin of Place Names in the United States—American Names—By Henry Gannett." The contents of this volume are essentially the same as those contained in a bulletin compiled by the United States Geological Survey entitled "The Origin of Certain Place Names in the United States, by Henry Gannett." This bulletin was first published in 1904 and has been out of print since 1905. Any possibility of a purchaser being misled to his injury by the difference in these names is reduced to insignificance by the fact that the earlier publication has been out of print for almost 50 years.

For similar reasons, the Commission is of the opinion that the evidence of record does not sustain the allegations of the complaint relating to the titles of other publications of the respondents and is of the further opinion that in the circumstances the public interest does not require any further action in this matter at this time.

It is ordered, Therefore, that respondents' appeal from the hearing examiner's initial decision be, and it hereby is, granted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of said complaint as may be warranted by the then existing circumstances.

Before *Mr. Clyde M. Hadley*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

AMERICAN TELEVISION LABORATORIES, INC., ET AL. Complaint, May 20, 1944. Complaint, August 18, 1944.¹ Order, March 20, 1952. (Docket 5161.)

CHARGE: Falsely advertising as to free services, educational qualities, job and employment opportunities, terms and conditions, etc., in connection with the sale and distribution of correspondence courses in the field of television, radio and communications.

¹ Amended.

AMENDED COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that American Television Laboratories, Inc., a corporation, and Ulises A. Sanabria, Samuel R. Rabinoff, Elmer D. Carter, Lee de Forest, A. J. Cole, and J. M. Shaddrick, individually and as officers and directors of American Television Laboratories, Inc., hereinafter referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Television Laboratories, Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 433 East Erie Street, Chicago, Ill. Said corporate respondent also has an office and place of business at 5612 Sunset Boulevard, Los Angeles, Calif.

Respondents Ulises A. Sanabria, Elmer D. Carter, A. J. Cole, and J. M. Shaddrick, individuals, have their office and principal place of business at 433 East Erie Street, Chicago, Ill. Respondents Samuel R. Rabinoff and Lee de Forest have their office and principal place of business at 5612 Sunset Boulevard, Los Angeles, Calif. Respondents Ulises A. Sanabria, Elmer D. Carter and Samuel R. Rabinoff are the stockholders and directors of said corporate respondent. Respondents Ulises A. Sanabria, Lee de Forest, A. J. Cole, J. M. Shaddrick, and Samuel R. Rabinoff are officers of said corporate respondent. Said individual respondents, as directors and officers of said corporate respondent, are in active control of its management, and formulate, control and direct its policies and practices.

PAR. 2. For more than 2 years last past, respondents have been engaged, and are now engaged, in the sale and distribution of courses of instruction in the field of television, radio, and communications, to members of the public. In the conduct and course of said business, respondents have caused, and now cause said courses of instruction, together with materials and equipment furnished therewith, when sold, to be transported from their place of business in the State of Illinois, to numerous purchasers thereof located in various States of the United States and in the District of Columbia. Purchasers pursue said courses by correspondence through the medium of the United States mail, and, as a part thereof or in addition thereto, some take laboratory training at said place of business of respondents. Respondents, heretofore, and at all times mentioned herein, have maintained, and now maintain, a course of trade in said courses of instruction, materials and equipment among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct and course of said business and for the purpose of inducing the purchase by members of the public of said courses of instruction, together with said materials and equipment furnished therewith, respondents, by means of advertisements in magazines, periodicals, and newspapers and by means of letters and circulars, and also by means of personal solicitations of salesmen under the direction of said respondents, have made and make various representations with respect to said corporate respondent, its courses of instruction, the materials and equipment furnished therewith, its personnel, the television industry, the opportunities for employment therein, and other matters in connection with said courses of instruction. Among and typical of the representations thus made are the following:

(1) That corporate respondent offers a free training course in television and radio and will accept suitable young men for such course, to provide the television industry with trained television engineers, and that it maintains a training division for such purpose, by reason of (a) its being an industrial laboratory and manufacturer interested in the expansion of the television industry; (b) its having taken on the task for the television industry of providing said industry with trained engineers and technicians as needed upon such expansion; (c) its head engineers having assured the Government and the television industry that it would make available large numbers of well trained men for key positions in the television industry; (d) the Government having approved commercial television only after receiving such assurances; and (e) for various other reasons calculated to interest young men in employment in the television industry, without, however, disclosing that its business is that of operating a correspondence school and a laboratory training school, and that such free course is offered only for the purpose of obtaining students who will pay it for its regular tuition course.

(2) That corporate respondent's training courses are given to train men who will accept employment in the television industry and for no other purpose.

(3) That the men who enter corporate respondent's training agreements become its "associates" and such agreements constitute "working" agreements or arrangements.

(4) That positions as television engineers and technicians (at certain salaries) are available and will be available in the television industry to all men who are accepted by corporate respondent to take, and who will devote themselves to, its television courses.

(5) That the television industry is rapidly expanding and will expand rapidly, and that trained television engineers are needed in such industry and will soon be needed in large numbers.

(6) That corporate respondent's free training course in television is

a complete engineering course which will qualify the man who devotes himself to it for a position as a trained television engineer in the television industry.

(7) That corporate respondent's course, herein referred to as its "tuition course," is a complete engineering course which will qualify the man who devotes himself to it for a position as a trained television engineer in the television industry, calling such course when referring to it as its "engineering course," its "Television Engineering Training" and its "Engineering Course in Television," and at such times for comparison, calling its free training course in television its "technicians course," its "Technicians Training," its "technical training" and as its "Radio Communications Training."

(8) That students taking such correspondence courses and laboratory training are instructed and trained personally by its engineers Lee de Forest and Ulises A. Sanabria.

(9) That the student who is enrolled in corporate respondent's free training course, upon enrolling in its course, herein referred to as the "tuition course," will continue to receive instruction free and all that the student has to do is to pay for the equipment furnished by it with the latter course; also representing to other prospective students for such tuition course who have not first enrolled in said free course, that the student in such tuition course pays only for the equipment furnished with such course and that the corporate respondent gives the instruction therein free.

(10) That corporate respondent is engaged in giving, and gives free courses of instruction and training in television, radio, communications, and other subjects, without at the same time making it equally clear that it is engaged in the business of operating a school on a tuition basis, of the type commonly called a "correspondence school," and not in pursuance of, nor in aid of, any manufacturing, research, or government activities, and that it is engaged in giving, and gives such free courses only for the purpose of obtaining students who will enroll in, and pay for the correspondence courses which it gives on a tuition basis, commonly called "correspondence school courses" and for no other purpose, and particularly not for the purpose of providing industry or the government with trained television, radio, communications, or other engineers and technicians.

(11) That corporate respondent will determine, or has determined, or its engineering staff or department will determine, or has determined, from an examination of data submitted by the student on work done by him on such free course and from other data furnished by him whether he is qualified to undertake designated work in engineering.

(12) That in connection with its regular tuition course corporate

respondent will deliver to the student certain equipment which will become his property.

(13) That the manufacturers' net "group" price of the equipment furnished by corporate respondent with its tuition course is equal to a certain amount (comparing such price with the amount of its tuition).

(14) That in connection with said free course and said regular tuition course corporate respondent will furnish certain residence laboratory training.

(15) That in connection with its regular tuition course, the student will be given and furnished by corporate respondent, certain instructions, training, and equipment.

(16) That anyone with "reasonable" qualifications can become a trained television, radio and communications engineer and technician by taking such free course.

(17) That a student who has been "accepted" by corporate respondent to take its regular tuition course of instruction and training is a person whom it has determined has the qualifications to take such course and become a trained television, radio and communications engineer and technician.

(18) That corporate respondent's regular tuition correspondence course is different from its free course.

PAR. 4. The representations set out in subparagraphs 1 to 5 inclusive, of paragraph 3, aforesaid, and others of similar import and meaning heretofore made by respondents, give the false and erroneous impression, and have the capacity of causing, and have caused many persons, many of whom have entered into tuition and other contracts with the corporate respondent, to have the false belief, that corporate respondent is engaged in giving training courses to provide the television industry with trained television engineers and technicians; whereas, as a matter of truth, its purpose in obtaining and accepting students for its courses, together with everything that it does in that connection, as aforesaid, is to enable it to operate its school at a profit, and for no other purpose, regardless of any incidental benefit to some student, industry, or the government.

By the use of the terms "associates" and "working agreements" and similar terms, as referred to in subparagraph 3 of paragraph 3 aforesaid, and by the use of the representations hereinabove set out and others of similar import and meaning heretofore made by respondents, respondents have given, and give prospective students for corporate respondent's tuition courses, the false and erroneous impression that the men who take such courses are not students of, or in a school, but are men who are working for, and under an arrangement with, a television laboratory and manufacturing establishment whereby acceptable

men are trained to fill positions, as television engineers and technicians, in the television industry, and particularly, positions, as trained television engineers and technicians, in connection with the design, construction, installation and operation of television equipment and facilities designed and manufactured by corporate respondent.

The representations set out in subparagraphs 4 and 5 of paragraph 3, aforesaid, and others of similar import and meaning made by respondents, are false and deceptive and have the capacity to cause, and have caused many persons, many of whom have entered into tuition and other contracts with the corporate respondent, to believe that such representations are true. In truth, there were and are no reliable facts upon which to base a representation, or to assume that television engineers or technicians of the kind that the corporate respondent proposes to train by its courses are now needed or will be needed in sufficient numbers, or at any ascertainable salaries, to warrant the representations made by respondents as to the present and future needs of the television industry and its possibilities for employment.

The representations set out in subparagraphs 6 and 7 of paragraph 3 aforesaid, and others of similar import and meaning made by respondents, are false and deceptive in that the corporate respondent's courses of instruction and training described aforesaid, and represented by respondents to be engineering courses, are in no sense complete or true engineering courses, as the term "engineering course" is used generally and understood by engineers, and by students and teachers of engineering, and cannot be relied upon by a student who devotes himself to such courses in the manner directed by the corporate respondent, and according to its method and plan of instruction, to qualify him for a position as a trained engineer or technician in the television industry, because of the lowness of its entrance requirements for the students which such respondent accepts and offers to accept for such courses, and because of the inadequacy of its plan and method of instruction and training and of its system of grading.

Respondents' representations that the corporate respondent's correspondence courses, as well as its laboratory training work, are given under the personal direction of its engineers de Forest and Sanabria, referred to in subparagraph 8 of paragraph 3 aforesaid, and others of similar import and meaning heretofore made by respondents, are gross exaggerations and deceptive. Personal instruction, either by correspondence or in the laboratory, by either de Forest or Sanabria is too limited to warrant such representations. In fact, the corporate respondent's correspondence courses are little more than a series of printed booklets and the lessons therein are graded in a more or less mechanical manner. To a large number of the students, whom the corporate respondent offers to accept and does accept in such course,

such lessons beyond the initial ones, could not possibly be, and are nothing more than fruitless, although perhaps, interesting reading, and certainly could not be, and are not, of any benefit to them as a course in engineering, for the reason that they are wholly unprepared educationally to undertake studies in engineering, and could not, and do not understand, or solve the engineering problems contained in the corporate respondent's lesson-booklets. The fact is that said respondent, after getting students interested in its free course as a course in engineering, itself later represents to such students that such course is only a "technician's" course and not an "engineering" course, in order to induce such students to take its tuition course which it then states is its engineering course.

The representations set out in subparagraph 9 of paragraph 3 aforesaid, and others of similar import and meaning heretofore made by respondents, are false and deceptive in that corporate respondent's instruction in any course in which it receives any money from a student is not "free," regardless of the value or price of any equipment which it may agree to furnish such student in connection with such course. The fact is that the corporate respondent depends on money thus received from students on contracts entered into with students covering such instruction, herein called "tuitions," for the operation of its school, and for the profits, if any, derived from such operation. The further fact is that, in many instances, such equipment is never delivered to the student, although a large portion, or even all of the tuition is paid. The fact is that the corporate respondent has taken from many students tuition contracts, and installment payment thereon, and insisted on receiving such payments at times when it could not deliver the equipment agreed by it to be delivered to such students, and when it was in possession of no facts upon which it could reasonably or validly base an assumption that it would be able to deliver such equipment as called for by such contracts or at any other time.

In truth and in fact, it is deceptive and grossly misleading for respondents to represent that any course that the corporate respondent gives is "free," because under its plan and method of obtaining students for its "tuition courses," its purpose is not to give a student a "free" course, but to get him to start its tuition course on a free basis, and then, by its well-laid plan, to induce him to permit it to convert the course thus ostensibly started as a "free course" into a "tuition course," and to sign a contract for its "tuition course," without, in many instances, changing in any substantial way the course started, and without becoming obligated itself to furnish any additional material or equipment, unless, and until, the student has taken a large number of lessons. The fact is that the latter contingency may never be reached, in view of the fact, that such student, like many

students, may never reach such point in the course, although, like all students who are thus induced to sign contracts for such "tuition courses," he thereupon agrees under the terms of such contract to pay for the course in full. The use of the word "free" under such circumstances is a trick and an unfair scheme on the part of the corporate respondent to deceive prospective students for its "tuition courses," and such use has the tendency to deceive and does deceive a large number of students who are induced thereby to enroll in said respondent's so called "free course."

While the corporate respondent, in instances where a student "subscribes" to said "free course," but does not thereafter enroll in said "tuition course," may furnish the remaining lessons of such "free course" without charge; yet the fact is that respondents' representations with reference to the corporate respondent's giving such free course were and are all used by them as a means of selling and distributing, and in connection with the sale and distribution by the corporate respondent in commerce of its tuition courses, and as thus used were and are false and deceptive. Likewise, respondents have used, and use false and deceptive representations concerning the quality of the corporate respondent's free course, falsely representing it as an engineering course, together with false and deceptive representations regarding the corporate respondent, the nature and extent of its free course, and its reasons for offering such free course, its engineers, and its activities, its business, and its interests and obligations, in order to obtain favorable notice by prospective students for its tuition course and finally to obtain from them their contracts for such tuition course. For the same reason, respondents have deceived and deceive such prospective students for the corporate respondent's tuition course by failing to inform them that the corporate respondent is a correspondence school, that it operates such school as a business, and that its courses are given as a part of and in pursuance of its correspondence school business, and also by failing to inform them regarding many other pertinent matters, known to respondents, necessary for a clear and complete understanding of the contracts covering said tuition courses which the corporate respondent has induced and does induce said students to sign. The corporate respondent's use of representations that it is a laboratory and a manufacturer, and interested in the expansion of television, and like representations, has the tendency to create, and does create the erroneous impression in the minds of its prospective students for its tuition course that it gives its courses as a part of a laboratory and manufacturing business, and because, being in such business, it is interested in the expansion of the television industry.

The representations set out in subparagraphs 10 to 18, inclusive, of paragraph 3, aforesaid, and others of similar import and meaning here-

tofore made by respondents, are false and deceptive, and have the capacity to deceive, and do deceive many persons, many of whom have entered into tuition and other contracts with the corporate respondent, by reason of the failure of respondents to disclose at the time of the making of such representations facts necessary to a clear and complete understanding of the representations thus made by them, and, for the reasons indicated above, and others known to respondents, were likely to induce and did induce courses of action desired by the corporate respondent on the part of its prospective and enrolled students, including the signing by such students of contracts for "tuition courses" which would not have been obtained, if such facts had been disclosed by respondents.

The aforesaid representations and implications made and published by respondents as aforesaid were and are grossly exaggerated, false, misleading and deceptive.

PAR. 5. The foregoing acts and practices used by respondents in connection with the offering for sale, and the sale and distribution, in commerce, of the corporate respondent's courses of instruction, have misled and deceived, and have the capacity and tendency to, and do, mislead and deceive, purchasers of said courses into the erroneous and mistaken belief that the representations and implications alleged aforesaid are true, when, in fact, they are not true, and to induce them to purchase and pursue said courses on account thereof.

PAR. 6. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

COMPLAINT DISMISSED by the following order:

Respondents American Television Laboratories, Inc., Ulises A. Sanabria, Samuel R. Rabinoff, and Elmer D. Carter by their attorneys, on August 28, 1950, filed with the Commission a motion that this proceeding be dismissed without prejudice to the Commission's right to reinstate the same if the public interest should so require at some future time, upon the ground that the proceeding is not in the public interest.

The Commission having duly considered the matter and being now fully advised in the premises and being of the opinion that there is no present public interest sufficient to warrant carrying this proceeding further:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute such other and further proceedings as future facts warrant.

Before *Mr. George Biddle* and *Mr. Clyde M. Hadley*, hearing examiners.

Mr. D. E. Hoopingarner and *Mr. J. R. Phillips, Jr.*, for the Commission.

Willard & Bloche, of Oak Park, Ill., and *Mr. I. Harvey Levinson*, of Chicago, Ill., for respondents.

JACK KLEINMAN ET AL. DOING BUSINESS AS BON DANA SPORTSWEAR Co. Complaint, March 26, 1951. Order, May 22, 1952. (Docket 5864.)

CHARGE: Misbranding in violation of the Wool Products Labeling Act through substituting for manufacturers' tags others carrying deceptive information as to fiber content.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Jack Kleinman, Louis Ezratty, and Irving Zaneoff, individually, and as co-partners, trading under the name Bon Dana Sportswear Co., hereinafter referred to as respondents, have violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Jack Kleinman, Louis Ezratty, and Irving Zaneoff, are copartners doing business under the name Bon Dana Sportswear Co. and have their office and principal place of business located at 1359 Broadway, New York, N. Y.

PAR. 2. Subsequent to June 21, 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce, and sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121," purchased from Strand Woolen Co. on or about June 21, 1950.

PAR. 3. Upon the labels affixed to the said skirts appeared the following:

Bon Dana Sportswear
5082
50% Wool
50% Rayon

PAR. 4. The said skirts were misbranded within the intent and meaning of the said act, and the rules and regulations promulgated thereunder in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. In

truth and in fact, the said skirts were not 50 percent wool, as "wool" is defined in said act, but contained substantial amounts of "reused wool" and "reprocessed wool" as those terms are defined in said act; the aggregate of the woolen fibers therein constituted less than 50 percent of the said skirts and they contained more than 50 percent of rayon. The said articles were further misbranded in that the labels affixed thereto did not show the percentage of the total fiber weight thereof, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of: "reused wool" and "reprocessed wool," as those terms are defined in said act and the aggregate of all other fibers, each of which constituted less than 5 percent of such total fiber weight.

PAR. 5. The person by whom the piece goods, from which said skirts were made by respondents, were manufactured for introduction into commerce affixed thereto labels and tags as required by said act containing information with respect to its fiber content as follows:

20% Wool
30% Reprocessed Wool
50% Rayon

Respondents have further violated the provisions of the Wool Products Labeling Act of 1939 by substituting for said tags and affixing to the said skirts tags and labels containing information set forth in paragraph 3 herein with respect to the content thereof which was not identical with the information with respect to such content upon the tags and labels as affixed to the wool product from which said skirts were made by the person by whom it was manufactured for introduction into commerce.

PAR. 6. The aforesaid acts and practices of respondents as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER denying appeal from initial decision of hearing examiner and decision of the Commission dismissing complaint without prejudice follows:

This matter came on to be heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision dismissing the complaint herein without prejudice.

The complaint in this matter alleges that respondents sold in commerce wool products, including certain ladies' skirts, which were made by respondents from a fabric designated as "Parker-Wilder 1121" purchased from the Strand Woolen Co. on or about June 29, 1950, which fabric was composed of 50-percent rayon, 20-percent wool and

30-percent reprocessed wool. Said complaint further alleges that said skirts were misbranded in that they were labeled 50-percent wool and 50-percent rayon. The hearing examiner in his initial decision held that there is no evidence that any skirt made by respondents from the "Parker-Wilder 1121" fabric was ever sold or offered for sale labeled as 50-percent wool and 50-percent rayon. He further held that respondents had through inadvertence misbranded a few dozen sample skirts made from an unknown fabric. These skirts were of a total value of approximately \$480 as compared with respondents' annual sales of \$3,500,000. Upon this record the hearing examiner in his initial decision held that the allegations of the complaint had not been sustained and ordered that the complaint be dismissed without prejudice.

From this initial decision counsel supporting the complaint brings this appeal upon the ground that the record proves that the misbranded skirts were made from the "Parker-Wilder 1121" fabric. In support of this position counsel supporting the complaint urges that this fact is shown by respondents' cutting records and by a visual comparison of the "Parker-Wilder 1121" fabric and the misbranded skirts. In fact, respondents' cutting records only show that the "Parker-Wilder 1121" fabric was made into style 8037 skirts. The misbranded skirts are labeled style 5082. It is true that styles 8037 and 5082 are the same except that 8037 is used for garments containing wool and 5082 is used for garments which are nonwool and that as the misbranded skirts are part wool the number 5082 is clearly erroneous. Therefore, upon these records it is possible that the misbranded skirts could be style 8037 garments made from the "Parker-Wilder 1121" fabric which had been erroneously marked not only as to style number but also as to wool content. However, such a conclusion is pure conjecture and has not been proved. The contention of counsel supporting the complaint that the Commission could determine if the fabrics are identical by a visual comparison is of no merit. Proof of identity of such fabrics by visual comparison requires a degree of expertness in this particular field not possessed by the Commission.

As contrasted with the evidence showing a possibility that the misbranded skirts were made of the "Parker-Wilder 1121" fabric is the sworn testimony of respondent Kleinman that all of the garments made of the "Parker-Wilder 1121" fabric were correctly labeled as 50-percent rayon, 20-percent wool and 30-percent reprocessed wool. Respondents explain the misbranded skirts as being a small sample run which was erroneously marked through inadvertence. This contention is supported by the fact that even the style number on these skirts was clearly erroneous.

Respondents manufactured a large number of garments from the "Parker-Wilder 1121" fabric. If this record had connected the mis-

branded skirts to this fabric it would have indicated a deliberate and serious violation of the Wood Products Labeling Act. On the absence of such proof the record only shows that respondents in one isolated case sold a small number of garments which were accidentally misbranded.

Upon this record the Commission is of the opinion that the appeal of counsel supporting the complaint is of no merit and that the hearing examiner's initial decision is appropriate in all respects to dispose of this proceeding.

It is ordered, therefore, That the appeal of counsel supporting the complaint from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall on the 22d day of May 1952, become the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on March 26, 1951, issued and subsequently served its complaint in this proceeding upon the respondents Jack Kleinman, Louis Ezratty, and Irving Zaneoff, individually, and as copartners doing business as Bon Dana Sportswear Co., charging them and each of them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the issuance of said complaint and the filing of an answer thereto in which all respondents joined, hearings were held at which testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly filed in the office of the Commission. Upon the submission of all evidence, counsel for respondents moved to dismiss the complaint upon the following grounds: (1) failure of proof to sustain the charges therein contained, and (2) lack of public interest, which motion was taken under advisement by the examiner to be disposed of in his initial decision. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the joint answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions submitted by respective counsel, oral argument not having been requested; and said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Jack Kleinman, Louis Ezratty, and Irving Zaneoff are copartners doing business under the name Bon Dana Sportswear Co. and have their office and principal place of business located at 1359 Broadway, and maintain a factory at 253 West 26th Street, New York, N. Y.

PAR. 2. Subsequent to June 21, 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce, and sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121," purchased from Strand Woolen Co. on or about June 21, 1950.

PAR. 3. The fabric designated as "Parker-Wilder 1121" purchased from the Strand Woolen Co. when received by respondents had labels affixed thereto showing the fiber content as "20% wool, 30% re-processed wool, 50% rayon."

The specific and only charge in the complaint is that respondents misrepresented the wool content of skirts made out of said fabric by substituting labels, which were attached to the skirts when sold, containing the following representation:

Bona Dana Sportswear
5082
50% Wool
50% Rayon

There is no evidence that any skirt made by respondents from the fabric purchased from the Strand Woolen Co. and designated "Parker-Wilder 1121" was ever sold or offered for sale by respondents with a tag attached thereto containing the words and figures "5082, 50% wool, 50% rayon" and the charge is not sustained.

PAR. 4. Respondents made various styles of women's dresses, each style being designated by a number. Different fabrics were made into skirts of the same style, all being given the same style number. The books and records of the respondents made and kept in the regular course of business in conformity with the Wool Products Labeling Act of 1939 and the invoices conclusively show the following:

The fabric purchased from the Strand Woolen Co. and designated "Parker-Wilder 1121" was, by respondents, cut into 56 two-piece garments consisting of a skirt and jacket, the cut number being 6499 and the style number, 901. The garments were sold and shipped on September 14, 1950, or within 24 hours thereafter.

On October 26 or 27, 1950, more than a month after the skirts made from the fabric purchased from the Strand Woolen Co. and designated

as "Parker-Wilder 1121" had been made into garments and sold and delivered to the purchasers, an investigator for the Commission called at respondents' factory, examined their books and records and the labels on finished garments then in the factory. The books disclosed that the fabric designated as "Parker-Wilder 1121" had been cut into garments of the style No. 901. In the showroom he found several racks of garments labeled style 901, "55% wool, 45% rayon." He made no inquiry to ascertain the fabric from which the garments were made or from whom purchased, but concluded that as they bore the style number 901 they were made from the fabric purchased from the Strand Woolen Co. and designated "Parker-Wilder 1121" and were mislabeled. The evidence conclusively shows he was mistaken. There is no evidence that these garments were mislabeled.

PAR. 5. Respondents have been manufacturing women's wearing apparel since 1943, their annual business aggregating \$3,500,000 per annum. From the inception of this proceeding respondents have frankly admitted that during the year 1950 some 6 dozen (the exact number not being known) sample skirts of the approximate value of \$480 and containing wool were made in their factory and without their knowledge and solely through inadvertence on the part of employees were misbranded. Respondents' books and records do not disclose from what source the material, out of which the sample skirts were made, was purchased. There is, however, no evidence that connects these sample skirts, or two skirts made and sold by respondents and offered in evidence, with the fabric purchased from the Strand Woolen Co. and designated "Parker-Wilder 1121."

CONCLUSION

The violation of the Wool Products Labeling Act of 1939 with which the respondents are charged in the complaint and which forms the basis for the charge of violation of the Federal Trade Commission Act is not sustained.

ORDER

It is ordered, That the complaint in this proceeding be, and the same is, dismissed without prejudice to the right of the Commission to institute further proceedings should other and future facts warrant.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

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

MOSES WEISS ET AL. TRADING AS MOGLEN MANUFACTURING CO. Complaint, December 20, 1945. Order, June 2, 1952. (Docket 5409.)

CHARGE: Advertising falsely as to make through use of a picture previously connected with competitor's product; using the word

"manufacturing" in trade name improperly; and failing to disclose rayon content; in connection with the sale and distribution of scarfs embroidered with the seal or insignia of a branch of the United States Armed Forces.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Moses Weiss, Irving Weiss, Fay Weiss, and Ann Weiss, individuals trading as Moglen Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof should be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Moses Weiss, Irving Weiss, Fay Weiss, and Ann Weiss, are individuals trading and doing business as Moglen Manufacturing Co., with their principal office and place of business at 1170 Broadway, New York, N. Y. Respondents are now and for more than 1 year last past have been engaged in the offering for sale, sale and distribution of scarfs which have embroidered thereon the seal or insignia of one of the various branches of the United States Armed Forces.

Respondents have caused and are now causing said scarfs when sold by them to be transported from their place of business in the State of New York to purchasers thereof at their various points of location in the various States of the United States other than New York, and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said scarfs in commerce among and between various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid, respondents have been and are in competition with other corporations and individuals and with firms and partnerships selling and distributing scarfs in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors is the firm of Beau Brummel Ties, Inc., of Cincinnati, Ohio.

PAR. 3. Beau Brummel Ties, Inc., of Cincinnati, Ohio, some time during 1942, created a scarf identified with the armed forces of the United States by means of an emblem or insignia. Said concern sold and now sells its scarfs and other products almost exclusively to retail accounts, such as post exchanges and ships services, where said products were and are purchased by substantial numbers of the military forces. The packaging, advertising and counter displays which accompanied said products not only identified them by the name of "Victory Insignia Scarfs," a product of Beau Brummel Ties, Inc.,

but also through the use on circular matter of the featured picturization of a girl over whose head and shoulders were distinctly draped a scarf bearing an emblem or insignia including a spread eagle and the word "Army."

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their scarfs, the respondents began to disseminate advertising or printed matter among military establishments in various States of the United States in or about August 1943, and which advertising or printed matter bore the trade name "Moglen Manufacturing Company." It also featured the pictorial representation of a girl having a scarf arranged over her head and shoulders and the picturization was an exact likeness of that used by Beau Brummell Ties, Inc., referred to in paragraph 3 hereof.

PAR. 5. The use by the respondents of the aforesaid misleading and deceptive picturization on their advertising or printed matter simulating that which, through prior use, has become associated in the minds of purchasers as identifying scarfs of the aforesaid Beau Brummell Ties, Inc., has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers as to the source and origin of said scarfs and causes a substantial portion of said purchasing public because of such erroneous and mistaken belief to believe that such scarfs are manufactured by Beau Brummell Ties, Inc., and because of such belief to purchase a substantial quantity of said scarfs.

PAR. 6. In the course and conduct of their business as aforesaid, respondents, by the use of the word "manufacturing" as part of their trade name which appears on their letter order blanks, have conveyed the impression or belief that said respondents make or manufacture said scarfs or that the scarfs are made or manufactured in premises which the said respondents actually own or operate or directly and absolutely control.

PAR. 7. The aforesaid representation is false, misleading and deceptive. In truth and in fact respondents do not own, operate or control any plant or factory for the manufacture of the products offered for sale and sold by them as aforesaid, but are engaged in the sale and distribution of said scarfs made, processed, and manufactured by, and purchased from others.

PAR. 8. There is a marked preference on the part of purchasers for resale and a substantial portion of the purchasing public for dealing directly with and buying products from the manufacturer thereof.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive representation with respect to their said scarfs, as alleged in paragraph 6, has had and now has the tendency and capacity to mislead and deceive and has misled and deceived purchasers and prospective purchasers into the erroneous and mistaken belief that

such representations are true and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said scarfs.

PAR. 10. Among the products offered for sale and sold by the respondents, in commerce as aforesaid, are some which are composed wholly or in part of rayon.

PAR. 11. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate natural fibers in texture and appearance and fabrics manufactured from such rayon fibers simulate natural fiber fabric in texture and appearance. Garments manufactured from such rayon fabrics have the appearance and feel of natural fiber garments, and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from natural fibers. Consequently such rayon garments are readily accepted by some members of the purchasing public as natural fiber products.

PAR. 12. Products manufactured from silk, the product of the cocoon of the silk worm, have for many years been held and still are held in great public esteem because of their outstanding quality and there has been for many years and still is a public demand for such products.

PAR. 13. The respondents sell in commerce, as aforesaid, scarfs composed wholly or in part of rayon, which scarfs simulate in texture and appearance scarfs composed wholly or in part of silk, the product of the cocoon of the silk worm. Respondents do not inform the purchasing public of the fact that the scarfs which resemble silk in texture and appearance are made wholly or in part of rayon and not of silk.

PAR. 14. The practice of respondents in offering for sale and selling said scarfs manufactured wholly or in part of rayon which resemble in texture and appearance scarfs manufactured from silk, in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that the said scarfs are composed wholly or in part of rayon, is misleading and deceptive and many members of the purchasing public are thereby led to believe that said garments are composed wholly or in part of silk, the product of the cocoon of the silk worm.

PAR. 15. The use by the respondents of the acts and practices, as alleged in paragraph 13, has had and now has the capacity and tendency to and does mislead and deceive purchasers and prospective purchasers as to the fiber content of their said product and as a result of this said deception, substantial quantities of respondents' products are purchased in the belief that they are composed of silk, the product of the cocoon of the silk worm.

PAR. 16. The aforesaid acts and practices of the respondents, as

herein alleged, are all to the prejudice and injury of the public and respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

COMPLAINT DISMISSED by the following order:

This matter came on to be heard by the Commission upon the complaint, respondents' answer thereto, testimony and other evidence taken before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner recommending dismissal of the complaint, and a memorandum from the Chief, Division of Litigation of the Commission's Bureau of Anti-deceptive Practices, stating that counsel for respondents and counsel supporting the complaint both concur in the recommendation of the hearing examiner and further stating that respondents have discontinued the sale of the products involved in this proceeding.

The complaint herein alleges that in connection with the sale of scarfs, in commerce, respondents have engaged in the following unfair methods of competition and unfair and deceptive acts and practices which have had the tendency and capacity to cause a substantial portion of the purchasing public to purchase their scarfs because of the erroneous beliefs caused by such unfair acts, practices, and methods: (1) used in their advertisements a picture of a girl wearing a scarf, which picture through prior use had become identified in the minds of the purchasing public with the products of a competitor; (2) used the word "manufacturing" as a part of their trade name although the said products are manufactured by others; and (3) failed to inform the purchasing public that said scarfs, which simulated silk in texture and appearance, were in fact rayon.

The record shows that the only similarity between respondents' advertising and that of the competitor, Beau Brummell Ties, Inc., was respondents' use of a picture of a girl wearing a scarf, which picture had previously been used by Beau Brummell Ties, Inc., in its advertising. Respondents' use of this picture was limited to its order blanks, which blanks were sent only to dealers. All of these order blanks state in bold type that they are literature of the "Moglen Manufacturing Company." There is no evidence that this picture has become identified in the minds of purchasers with scarfs by Beau Brummell Ties, Inc. Nor is there anything so unique or unusual about the picture as to cause and likelihood of it becoming so identified or fixed in the minds of purchasers. Furthermore, inasmuch as this picture was only used by respondents on their order blanks sent to dealers, any possibility of deception is largely limited to such dealers. And inasmuch as these blanks can only be used to order scarfs from the Moglen Manufacturing Co., it is difficult to see how any

dealer could prepare such an order and continue to be deceived as to the source of the scarfs ordered. The Commission, therefore, is of the opinion, that the allegations of the complaint that respondents' use of this picture has had the tendency and capacity to mislead purchasers as to the source of said scarfs is not sustained by this record.

The record further shows that with the exception of the embroidering of the insignia on the scarfs and the occasional use of outside help when their plant capacity was overtaxed, respondents did perform all of the manufacturing processes required to produce their scarfs. Therefore, the allegations of the complaint as to their use of the word "manufacturing" in their trade name are not sustained.

The record further shows that respondents' scarfs were composed of rayon, that they did simulate silk in texture and appearance, and that respondents did not mark or otherwise identify said scarfs as being made of rayon until nine months prior to the issuance of the complaint herein. Starting at that time respondents, by printed matter accompanying each scarf and appearing upon each box in which said scarfs were packed, disclosed the rayon content of their scarfs. The Commission has been advised that since the time of the hearings held herein, respondents have discontinued the sale of said scarfs and are now engaged in another business. The Commission has no reason to believe that respondents will resume the sale of unmarked rayon products which simulate silk and, therefore, is of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time.

It is ordered, Therefore, that the complaint herein be, and it hereby is, dismissed.

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

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

Mr. S. John Block, of New York City, for respondents.

THE ANGOSTURA-WUPPERMANN CORP. Complaint, September 12, 1950. Order, June 26, 1952. (Docket 5809.)

CHARGE: Advertising falsely that product was made solely from lemons or from lemon juice, and the flavor derived wholly from lemons, in connection with the sale and distribution of its powdered beverage flavoring preparation "Drylem."

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Angostura-Wuppermann Corp., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would

DISMISSALS—ANGOSTURA-WUPPERMANN CORP.—COMPLAINT 1603

be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, the Angostura-Wuppermann Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 157 Chambers Street in the city of New York, N. Y.

PAR. 2. Respondent is now and for more than one year last past has been engaged in the sale and distribution of a beverage flavoring preparation designated as "Drylem," the ingredients of which are dehydrated lemon juice, dehydrated whole ground lemon, lemon oil from lemon rind, corn sirup solids, citric acid, calcium phosphate, and U. S. certified color. It is a powder, which for use is intended to be dissolved in water, 10 ounces of powder to approximately 1 gallon of water.

Respondent causes its said product, when sold, to be transported from its place of business in New York to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said flavoring preparation in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of its aforesaid business subsequent to March 21, 1938, respondent has disseminated, and has caused the dissemination of various advertisements concerning its said product, "Drylem," by United States mails, by their insertion in periodicals having a general circulation, and also by circulars and other printed matter, all of which were distributed in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said product; and has disseminated, and has caused the dissemination of advertisements concerning its said product by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisement disseminated and caused to be disseminated, as aforesaid, are the following:

True flavor of 110 fresh lemons in 10-oz. bottle.

A lemon juice base any barman can use with confidence.

Drylem, a high quality almost uniform product that captures the true flavor of fresh lemons.

Drylem is prepared from dehydrated lemon juice so your customers get true lemon flavor and you save 70 to 75% of the cost of fresh lemons.

Produced by a special process which captures and imprisons the fresh flavor of fresh lemons.

Now at last a lemon juice base you can use with confidence . . . not a synthetic . . . not an "acid mixer." It's the real McCoy backed by a quality house.

Drylem is a lemon mix made with fresh fruit as a base. When you serve Drylem you get true lemon flavor but you save 60 to 70% of the cost of fresh lemons.

Drylem is not a synthetic or ersatz or a so-called emulsion "acid mixer." It is an actual concentrate in powder form which captures and imprisons the fresh flavor of fresh lemons.

PAR. 4. Through the use of the advertisements containing the statements hereinabove set forth, and others similar thereto not specifically set out herein, and the name "Drylem," respondent has represented directly and by implication that its product is made solely from lemons, is made solely from lemon juice, and that the flavor is derived wholly from lemons and is the flavor of fresh lemons.

PAR. 5. The aforesaid advertisements are misleading in material respects and constitute "false advertisements," as that term is defined in the Federal Trade Commission Act.

In truth and in fact, respondent's product "Drylem" is not made solely from fresh lemon juice or lemons, nor is its flavor derived solely from lemons and is not the flavor of fresh lemons.

PAR. 6. The use by the respondent of the aforesaid false advertisements has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements contained therein are true, and have caused a portion of the purchasing public to purchase substantial quantities of respondent's product because of such erroneous and mistaken belief.

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

ORDER approving stipulation and dismissing complaint without prejudice, follows:

It appearing to the Commission that the respondent, The Angostura-Wuppermann Corp., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation as to the facts and agreement to cease and desist; and

It further appearing that said stipulation and agreement cover substantially all the acts and practices charged in the complaint as violations of the Federal Trade Commission Act; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action at the present time:

DISMISSALS—ANGOSTURA-WUPPERMANN CORP.—ORDER 1605

It is ordered, That the said stipulation as to the facts and agreement to cease and desist be, and the same hereby is, accepted and approved.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to issue another complaint and institute such other and further proceedings as future facts warrant.

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

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