

Consent Settlement

IN THE MATTER OF
DICTOGRAPH PRODUCTS, INC.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6095. Complaint, Apr. 24, 1953—Decision, Aug. 5, 1953

Where a corporation engaged in the manufacture and in the competitive interstate sale and distribution of its "Acousticon" hearing aids; in advertising the same through radio and television commercials, and in newspapers and periodicals, circulars, pamphlets, bulletins, and other advertising media, including newspaper mats, reprints of advertisements used by it, radio and television scripts, circulars, pamphlets, and bulletins furnished by it to its distributors, who used the same to advertise said product, it paying a portion of said distributors' advertising expenses; directly or by implication—

- (a) Falsely represented that the Government, through the U. S. Public Health Service, had made an investigation of hearing aids;
 - (b) Falsely represented that a booklet entitled "U. S. Government Exposé of Hearing Aids" was published by the Government and contained a report by it on such products;
 - (c) Falsely represented that as a result of such investigation the Government said all one-performance hearing aids were failures; when in fact the Government had neither held that such type or any other class of hearing aids were failures; and
 - (d) Falsely represented that with the exception of its own product no hearing aids had been improved in recent years and that only its product gave satisfactory hearing help; and
 - (e) Falsely represented that its said aids were recommended by the Government:
- Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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

Mr. Edward F. Downs for the Commission.

Mr. Theodore F. Tonkonogy, of New York City, for respondent.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 24, 1953, issued and subsequently served its complaint on the respondent named in the caption hereof,

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on August 5, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondent desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth and in lieu of the answer to said complaint hereby:

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

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

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dictograph Products, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business and its factory at Jamaica, Long Island, New York.

PAR. 2. Respondent is now and for several years last past has been, engaged in the manufacture, distribution and sale of hearing aids. Such hearing aids are advertised and sold by respondent under the trade name "Acousticon."

Respondent causes and has caused said hearing aids when sold to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia and at all times mentioned herein has maintained a course of trade in said hearing aids in commerce among and between the various States of the United States

and in the District of Columbia. Respondent's volume of business in said hearing aids in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent has been and is now engaged in substantial competition with other corporations and with firms, partnerships and individuals likewise engaged in the manufacture, distribution and sale of hearing aids in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its hearing aids, in commerce as "commerce" is defined in the Federal Trade Commission Act, respondent has made certain statements and representations by radio and television commercial announcements, by advertisements in newspapers and magazines, and by circulars, pamphlets, bulletins and other advertising media. Said statements and representations were also contained in newspaper mats, reprints of advertisements used by respondent, radio and television scripts, circulars, pamphlets and bulletins furnished by respondent to its distributors who used them to advertise respondent's hearing aids with respondent paying a portion of such distributors' advertising expenses. Among and typical, but not all inclusive, of such statements and representations were the following:

The whole story of the U. S. Government's investigation and exposé of hearing and hearing aids is yours—absolutely free—in a new 20-page booklet published by Acousticon Research Laboratories.

**DON'T BUY A
HEARING AID
UNTIL YOU
READ THIS FREE BOOK!**

Picture of booklet
entitled "U. S.
Government Exposé
of Hearing Aids"

Save money—up to \$200! Save trouble, disappointment! Protect your hearing! Get the facts—know the truth about hearing aids. Read what the UNITED STATES GOVERNMENT says about them.

You can now read this astounding story of the Government's investigation and exposé of hearing aids.

Read how the U. S. Government branded one-performance hearing aids as appalling failures. Read what the Government declared *must be done* to give truly scientific help to the hard of hearing. Read the 8-point program recommended by the Government . . .

Only ACOUSTICON did the job recommended by the U. S. GOVERNMENT to give you Scientific Hearing Help!

The United States Public Health Service—gave the hearing aid industry a clear-cut, eight-point program that had to be followed . . .

The vital program laid down by the U. S. Public Health Service was followed by *only one* hearing aid manufacturer—ACOUSTICON.

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The conditions revealed by the U. S. Public Health Service are still true today—with the single exception of Acousticon, who alone fulfilled the Government's recommendations.

For only \$69.50 you can now have the kind of scientific hearing help recommended by the U. S. Government.

Your Government Recommended This Hearing Aid Be Built.

Acousticon—and *only* Acousticon—is equipped to give you the help you need as recommended by The U. S. Public Health Service.

PAR. 5. By means of the aforesaid statements and representations, and others of similar import not herein specifically set out, respondent has represented directly or by implication that the United States Government, through the United States Public Health Service made an investigation of hearing aids; that a booklet entitled "U. S. Government Exposé of Hearing Aids" was published by the United States Government, and contained a report by the Government on hearing aids; that as a result of the aforesaid investigation the United States Government said all one-performance hearing aids were appalling failures; that with the exception of respondent's hearing aids no hearing aids have been improved in recent years; that only respondent's hearing aids give you satisfactory hearing help; and that respondent's hearing aids are recommended by the United States Government.

PAR. 6. The foregoing statements and representations are false, deceptive and misleading, and constitute disparagement of competitive products. In truth and in fact, the United States Government has not made an investigation of hearing aids through the United States Public Health Service or otherwise. The United States Government did not publish the booklet entitled "U. S. Government Exposé of Hearing Aids" nor does said booklet contain a report on hearing aids by the United States Government or any of its branches. The United States Government has never held that all one-performance hearing aids or any other class of hearing aids were failures. Many hearing aids, other than respondent's have been improved in recent years, and many of them give as much satisfaction to the hard of hearing as do respondent's hearing aids. Respondent's hearing aids have not been recommended by the United States Government or any branch thereof.

PAR. 7. The use by respondent of the aforesaid false, deceptive and misleading statements and representations, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondent's hearing aids in preference to the hearing aids sold by competitors of respondent. As a result thereof, trade has been unfairly diverted to respondent from its competitors. In consequence

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thereof, substantial injury has been done to respondent's competitors in commerce.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's 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.

ORDER TO CEASE AND DESIST

It is ordered, That respondent, Dictograph Products, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hearing aids in commerce, do forthwith cease and desist from representing directly or by implication:

(a) That the United States Government, through the United States Public Health Service or any other branch of the Government made an investigation of hearing aids.

(b) That booklets published by respondent are published by the United States Government or any branch thereof.

(c) That booklets published by respondent contain a report on hearing aids by the U. S. Government or any branch thereof.

(d) That the United States Government or any branch thereof has branded any class of hearing aids as failures.

(e) That said hearing aids are the only ones on the market that are satisfactory.

(f) That said hearing aids are recommended by the United States Government or any branch thereof.

(g) That competitors' hearing aids have not been improved in recent years.

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

DICTOGRAPH PRODUCTS, INC.,
(Sgd) By STANLEY OSSERMAN,
Stanley Osserman, Chairman of
Board of Directors and General
Manager.

Date 7/22/53.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 5th day of August 1953.

IN THE MATTER OF
BENJAMIN D. RITHOLZ ET AL. T. A. DR. RITHOLZ & SONS
COMPANY, ETC.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 5759. Complaint, Mar. 28, 1950—Decision, Aug. 6, 1953

Where eight partners engaged in the interstate sale and distribution of sunglasses or goggles and field glasses, in advertising their said products in various magazines and periodicals—

- (a) Falsely represented the alloy gold content of the frames, mountings, and other metal parts of their sunglasses, marked "gold filled," as 1/10/12 karat, and that the frames would not tarnish;

When in fact such content was less than 1/20th of the entire product and was below the Bureau of Standards commercial standard which provides that no article having an alloy gold content of less than 1/20th of the entire product shall be marked "gold filled," and the deposit of gold on the frames, mountings, and other metal parts of their sunglasses, thus marked was not of any definite quality or substantial thickness, and consisted only of sufficient gold to impart thereto a gold color; and said frames would tarnish;

- (b) Falsely represented that the lenses of their sunglasses were "ground and polished" and that they "would not break";

- (c) Falsely represented that their sunglasses regularly sold at retail at prices as high as \$5 or more and were of a \$15 or \$8.50 value and that, when offered for sale at a price of \$3.89, constituted the biggest sunglass bargain in America;

When in fact they were of a type and quality that regularly retailed at from \$1.50 to \$3;

- (d) Falsely represented that the frames and mountings of their sunglasses were manufactured by Bausch & Lomb, American Optical Company, or Shuron Optical Company;

The facts being that a significant number of their said products were not manufactured by said concerns;

- (e) Falsely described certain products offered by them as "Binoculars";

When in fact they were not binoculars but field glasses which, unlike the others, are not equipped with prisms;

- (f) Falsely represented that their said product eliminated light loss due to surface reflection by 50 percent and that the field of vision thereof was 150 yards at a distance of 1,000 yards;

When in fact the light loss due to surface reflection in their said glasses was reduced not more than 15 percent and the field of vision was 125 yards at said distance;

- (g) Falsely represented that their said field glasses were war surplus and a \$10 value;

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

Decision

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

Mr. J. R. Phillips, Jr., *Mr. George M. Martin* and *Mr. Frederick J. McManus* for the Commission.

Mr. Benjamin D. Ritholz, of Chicago, Ill., for respondents.

Mr. Frank E. Gettleman, of Chicago, Ill., also representing Clark Optical Co., Dr. Ritholz & Sons Co. and Dr. Ritholz Optical Co.

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 August 6, 1953, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 28, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Thereafter a hearing was held in Chicago, Illinois, on June 13, 1950, at which a stipulation as to the facts was agreed upon between counsel supporting the complaint and respondent Benjamin D. Ritholz, acting as counsel for all respondents, which was then incorporated into the record. Thereafter, upon motion of counsel supporting the complaint, said stipulation was, by order of the hearing examiner dated July 23, 1952, stricken from the record, which order was, upon appeal by the respondents, confirmed by the Commission on October 8, 1952. Subsequently Frank E. Gettleman entered his appearance as counsel for the respondents, and agreed with counsel supporting the complaint upon another stipulation as to the facts, which was submitted to the hearing examiner and by his order incorporated into the record as of May 14, 1953. Under the terms of this stipulation, it was agreed between counsel that the facts therein stated might be taken as the facts in this proceeding in lieu of evidence in support of the allegations of the complaint or in opposition thereto, and that the hearing examiner might, without the filing of proposed findings as to the facts and conclusions or the presentation of oral argument thereon, proceed to issue his initial decision disposing of this proceeding. After the submission of said stipulation, counsel for the respondents filed a motion requesting that the complaint be dismissed as to Clark Optical Company and respondents Dr. Ritholz & Sons

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Company and Dr. Ritholz Optical Company, to which counsel supporting the complaint filed an answer. Now the hearing examiner, having duly considered the record herein, including the stipulation as to the facts, motion to dismiss and answer thereto, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, Sophie Ritholz, Jacob Bedno (erroneously designated in the complaint as Jacob Ritholz), and Anna Ritholz Bedno are individuals, trading as copartners, under the names Dr. Ritholz & Sons Company and Dr. Ritholz Optical Company, by which names the said individuals and copartners are known and under which their business is principally conducted at their headquarters and principal place of business at 1148-1160 West Chicago Avenue, Chicago, Illinois. Said respondents have also traded individually and as copartners under the additional trade names of Midwest Scientific Company, Clark Optical Company, Chicago Goggle Sales Company, Regent Optical Company, Parker Optical Company, Veterans' Emporium, and Goertz Company.

The use of the trade name Parker Optical Company by respondents was discontinued in 1949. The use of the trade name Veterans' Emporium by respondents was discontinued in July 1948. The use of the trade name Goertz Company by respondents was discontinued in August 1949. The use of the trade name Chicago Goggle Sales Company by respondents was discontinued in July 1952. The use of the trade name Regent Optical Company by respondents was discontinued in April 1952.

Donald A. Ritholz and Vera R. Ritholz were never members of the partnership referred to above.

PAR. 2. The respondents, except Donald A. Ritholz and Vera R. Ritholz, are now, and have been for more than 3 years last past, engaged in the sale and distribution of sunglasses or goggles, and field glasses. Said respondents cause their products, when sold, to be transported from their said place of business in the State of Illinois to purchasers thereof located in various other 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 said products in commerce between and among the various States of the United States and in the District of Columbia. The volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the sale of their said sunglasses, goggles and field glasses, said respondents have made numerous statements and representations with respect thereto in advertisements inserted in various magazines and periodicals, among and typical of which are the following:

SURPLUS SALE!

JUST RECEIVED ANOTHER
SHIPMENT OF 8,000 BRAND NEW
AIR CORPS TYPE
SUN GLASSES

Picture of a man
wearing glasses

\$3.89

* * *

Every pair manufactured to exacting optical standards! 14 Karat Gold Plated frames with Perloid Sweat Bar and adjustable rocking nose pads. Lenses are sage green meniscus curved with ground and polished surfaces. Large Aviation type, priced for a quick sell-out. Only 8,000 left. Buy now, while they last! Don't pass up biggest Sun-Glass bargain in America!

DR. RITHOLZ OPTICAL CO.
Main Office and Factory
1148-1160 W. Chicago Ave.

Said advertisement was also disseminated by respondents through the use of their trade name:

VETERANS EMPORIUM Dept. D2
1148-1160 W. Chicago Ave.,
Chicago 22, Ill.

* * * * *

WAR SURPLUS

13,000 BRAND NEW AIR CORPS TYPE
SUN GLASSES

With Genuine
War Surplus
Comfort Cable Temples

BAUSCH & LOMB

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Picture of a pair of glasses

Picture of a man
wearing glasses

\$3.89

Picture of a case
for glasses

* * *

* * *

EASILY WORTH \$9.95

Every pair manufactured to exacting optical standards! 24 Karat Gold Plated frames with Pyralin Sweat Bar and adjustable rocking nose pads. Lenses are sage green meniscus curved with ground and polished surfaces. Large Aviation type, priced for a quick sell-out. Only 13,000 left. Buy now, while they last! Don't pass up biggest Sun-Glass bargain in America!

VETERAN'S EMPORIUM Dept. D1
1148-1160 W. Chicago Ave.,
Chicago 22, Ill.

* * * * *

Best
Buy Under
The Sun

U. S. Army Air Force Type
SUN GLASSES

Picture of a pair of glasses
and a case for the glasses

Men's and
Women's sizes

Genuine Leatherette
Case Included

FORMERLY \$8.50 VALUE

Super-Sensationally Priced at only ----- \$1.88

Postpaid

*Cool Green meniscus curved,
polished lenses.

*Gold Plated adjustable frames

* * *

*Lenses meet specification of U. S. Gov't.
Bureau of Standards.

CHICAGO GOGGLE SALES CO., Dept 100

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MAKE UP TO \$10 ON EVERY SALE!

AIR
Corps SUN
TYPE
GLASSES

Picture of a man
wearing glasses

Picture of a pair of glasses

\$5.00 SELLS
EVERYWHERE
UP TO \$15 and MORE!

Just released for civilian use! Here are genuine 12 Karat gold filled, Air Corps Type SUN GOGGLES complete with "Mother of Pearl" sweat bar, brow rest and rocking pads, scientific ray-absorbent "No Glare" ground and polished sage green lenses, dropped before curving, and self-adjusting comfort cable ear pieces. * * * Send for your sample pair of these fine Sun Goggles—only \$5.00, postage pre-paid. Or send no money. Just deposit \$5.00 with your own postman, plus postage—your money back if not delighted.

MIDWEST SCIENTIFIC CO. Dept. 61-A, 1148-1160 W. Chicago Ave.,
Chicago 22, Ill.

* * * * *

1/10/12 KARAT GOLD FILLED AIR CORPS TYPE
SUN GLASSES

Genuine 1/10-12K Pink Gold Filled * * *
\$3.95 . . . ground and polished lenses.

* * * * *

HARD-AS-ROCK

Sun Glasses

hard as the Rock of Gibraltar

* * * Guaranteed to withstand shock and strain Without Breaking.

* * * * *

14 Gold Plated
24 Gold Plated
12K Gold Filled.

* * * * *

Please do not compare these fine genuine 12K Gold Filled Sun Glasses with Cheap inferior nickel or gold plated goggles * * * all our sun glasses are fully warranted to be genuine 12K PINK gold filled, guaranteed against tarnishing and to stand acid.

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Scoop!	WAR	SURPLUS	SUN GLASSES

* * * * *

BRAND NEW
WAR SURPLUS
SUN GLASSES

24 Karat

Gold

Plated

136,115 Pairs

GI frames purchased from War Assets Administration, U. S. Sales Depot (Sales Doc. #6698178). Manufactured for U. S. Army Medical Department by leading manufacturers; Bausch & Lomb Optical Co., American Optical Co., and Shuron Optical Co. to meet U. S. Army Specifications. Lenses are sage green meniscus curved, conform to specifications of National Bureau of Standards (CS-79-40). These Sun Glasses are 24 Karat Gold-plated * * *.

* * * * *

SURPLUS SALE!

Only \$3.49 * * *

Easily worth \$9.95 * * * 24K Gold Plated Frame. Lenses are sage green meniscus curved with ground and polished surfaces * * * Biggest Sun Glass Value in America.

* * * * *

Picture of Binoculars

WITH COATED
LENSES
AND INTERPUPILLARY
ADJUSTMENT

\$10.00 Value

only

\$4.98

Picture of Binoculars

Plus

20%

Fed. Tax.

Sensation of the year! Many features of high priced Binoculars. Heavy duty, all-purpose; precision. Carrying case, shoulder straps. SEND NO MONEY, pay Postman plus charges. Send remittance with order and we send postpaid. Ideal gift. Money back if not satisfied.

GOERTZ CO., Dept. Gi, 1148 W. Chicago Ave., Chicago 22, Ill.

LIKO BINOCULARS

Coated Lenses, reduces glare, eliminates light loss due to surface reflection by 50% or more.

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WAR SURPLUS SUN GLASSES
24 K Gold Plated
With Hard as Rock Non-breakable Lenses.

MAKE UP TO \$10.00 ON EVERY SALE

Picture of a Man

Air
Corps SUN
Type GLASSES

Picture of Glasses

\$5.00

SELL EVERYWHERE up
to \$15.00 and MORE!

* * * * *

MIDWEST SCIENTIFIC CO. Dept. 61-A, 1148-1160 W.
Chicago Ave., Chicago 22, Ill.

* * * * *

* * * Sun Glasses \$1.88 Postpaid * * * Cool Green meniscus polished lenses
* * * Lenses meet specifications of U. S. Government Bureau of Standards.

* * * * *

Binoculars \$4.98 * * * \$10.00 Value.

* * * * *

LIKO BINOCULARS
FIELD OF VISION

The lenses of Liko Binoculars are scientifically ground and polished in order to afford the greatest magnification and field of vision. The unusually large 45 mm. objective lenses give a wider field depth of vision, for objects close by or at a greater distance. The field of vision in the Liko Binoculars is 150 yards, which means that at a distance of 1,000 yards, an area of 150 yards in width is plainly visible.

PAR. 4. Samuel J. Ritholz is an active partner in the above-described partnership, and is licensed to practice the profession of optometry under and by virtue of the laws of the State of Illinois, and is consequently entitled to use the title Doctor.

PAR. 5. The alloy gold content of the frames, mountings, and other metal parts of respondents' sunglasses marked "gold filled" is less than 1/20th of the entire product and is below the Bureau of Standards' commercial standard, which provides that no article having alloy gold content of less than 1/20th of the entire product shall be marked "gold filled."

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PAR. 6. The deposit of gold on the frames, mountings, and other metal parts of respondents' sunglasses marked "gold plated" is not of any definite quality or substantial thickness and consists only of sufficient gold to impart to the frames, mountings and other metal parts a gold color. The frames of said sunglasses will tarnish.

PAR. 7. The lenses of the sunglasses sold by respondents, which are represented to be "ground and polished," are not in fact ground and polished. The lenses of said sunglasses will break.

PAR. 8. The sunglasses sold by respondents are of a type and quality that regularly retail at a price ranging from \$1.50 to \$3. The said sunglasses do not regularly sell at retail at prices as high as \$5 or more, nor are said sunglasses of \$15 or \$8.50 values. The said sunglasses, when offered for sale at a price of \$3.89, do not constitute the biggest sunglass bargain in America.

PAR. 9. The frames and mountings of a significant number of sunglasses sold by respondents were not manufactured by Bausch & Lomb, American Optical Company, or Shuron Optical Company.

PAR. 10. The product "Liko Binoculars," advertised and offered for sale by respondents, is not binoculars, but field glasses. Field glasses differ from binoculars in the manner in which they are constructed. Binoculars are equipped with prisms, and field glasses do not contain prisms. The product sold by respondents as "Liko Binoculars" contains no prisms. The light loss due to surface reflection in respondents' glasses is reduced not more than 15 percent. The field of vision of respondents' field glasses is 125 yards at a distance of 1,000 yards. The field glasses sold by respondents are not war surplus and are not a \$10 value.

PAR. 11. Benjamin D. Ritholz and Morris I. Ritholz are veterans of World War I.

PAR. 12. The respondent Benjamin D. Ritholz, doing business as Clark Optical Company, was, as is alleged in Paragraphs 8, 9, and 10 of the complaint, engaged in the sale and advertising for sale of spectacles, and in connection therewith furnished customers with certain devices known as "Self-Test Optometer" and "Cardboard Eye Tester." On May 21, 1951, Benjamin D. Ritholz, as owner of Clark Optical Company in answer to a complaint issued by the Post Office, executed an "Affidavit of Discontinuance."

PAR. 13. The use by respondents, other than Donald A. Ritholz and Vera R. Ritholz, of the foregoing false, misleading, and deceptive statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were true, resulting in the purchase of respondents' products because of such erroneous and mistaken belief.

CONCLUSIONS

In view of the fact, as herein found, that respondents Donald A. Ritholz and Vera R. Ritholz were never members of the copartnership hereinabove referred to, it is concluded that respondents' motion to dismiss the complaint as to Donald A. Ritholz and Vera R. Ritholz should be granted.

In view of the fact, as herein found, that respondent Samuel J. Ritholz is licensed to practice the profession of optometry under and by virtue of the laws of the State of Illinois, and to use the title "Doctor" in connection therewith, it is concluded that the allegation of the complaint relating to respondents' misuse of the title "Doctor" or the abbreviation "Dr." has not been proven, and therefore that respondents' motion to dismiss the complaint insofar as it relates thereto should be granted.

In view of the fact, as herein found, that respondent Benjamin D. Ritholz, doing business as Clark Optical Company, did, on May 21, 1951, execute an "Affidavit of Discontinuance" in response to a complaint issued by the Post Office Department, concerning the sale and advertising for sale of spectacles, in connection with which said respondent furnished customers with certain devices known as "Self-Test Optometer" and "Cardboard Eye Tester," it is concluded that there is no further public interest in the continuance of the instant proceeding insofar as it relates thereto; and, accordingly, it is concluded that respondents' motion to dismiss the complaint as to respondent Benjamin D. Ritholz, doing business as Clark Optical Company, should be granted.

In view of the fact, as herein found, that respondents Benjamin D. Ritholz and Morris I. Ritholz are veterans of World War I, it is concluded that the allegation of the complaint that no one of the respondents trading under the name of Veterans Emporium is a veteran of World War I or II should be dismissed.

It is further concluded that the acts and practices of respondents, with the exceptions hereinabove set forth, 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 respondents Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, Sophie Ritholz, Jacob Bedno (erroneously designated in the complaint as Jacob Ritholz), and Anna Ritholz Bedno, individually and as copartners trading as Dr. Ritholz & Sons Company, Dr. Ritholz Optical Company, and under other names, their representatives,

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

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

a. That the alloy gold content of the frames, mountings and other metal parts of their sunglasses is 1/10/12 Karat or 1/10/12 K, or any other percentage of gold content, unless and until said products actually contain the percentage of gold so represented;

b. That their sunglasses are gold plated, when the deposit of gold on the frames, mountings, and other metal parts thereof is not of any definite quality and substantial thickness;

c. That the frames of their sunglasses will not tarnish, when the metal parts thereof are of such composition that they will in fact tarnish;

d. That the lenses of their sunglasses are ground and polished, unless and until such is in fact true;

e. That the lenses of their sunglasses are nonbreakable, unless and until such is in fact true;

f. That their products are of a type and quality regularly retailing at prices as high as \$5 or more, or that such products are of a value of \$8.50, \$10, or \$15, or any other specific amount, unless and until such is in fact true;

g. That the frames and mountings of their sunglasses are manufactured by Bausch & Lomb, American Optical Company, Shuron Optical Company, or any other manufacturer, unless and until such frames and mountings are in fact so manufactured;

h. That their product designated "Liko Binoculars," or that product or any substantially similar product designated by any name, is binoculars, unless and until such product is so constructed as to contain prisms;

i. That their product designated "Liko Binoculars," or that product or any similar product designated by any name, eliminates light loss due to surface reflection by 50 per cent, or any other percentage, unless and until such is in fact true;

j. That the field of vision of their product designated "Liko Binoculars," or of that or any similar product designated by any name, is 50 yards, or an area of 150 yards at a distance of 1,000 yards, or any other specific area or distance, unless and until such is in fact true;

k. That their products are war surplus, or purchased or received from the Air Corps, Air Force, War Assets Administration, or other Government agency, unless and until such is in fact true;

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said products, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That the complaint herein, insofar as it relates to respondents Donald A. Ritholz and Vera R. Ritholz, be, and the same hereby is, dismissed.

It is further ordered, That the complaint herein, insofar as it relates to respondents' use in their trade name or advertising of the title "Doctor" or the abbreviation "Dr.," be, and the same hereby is, dismissed.

It is further ordered, That the complaint herein, insofar as it relates to respondent Benjamin D. Ritholz trading as Clark Optical Company, be, and the same hereby is, dismissed.

It is further ordered, That the complaint herein, insofar as it relates to respondents' use of the word "Veterans" in the trade name "Veterans Emporium," or in any other manner relating to respondents' service in the Armed Forces, be, and the same hereby is, dismissed.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, Sophie Ritholz, Jacob Bedno (erroneously designated in the complaint as Jacob Ritholz), and Ann Ritholz Bedno, individually and as copartners trading as Dr. Ritholz & Sons Company, Dr. Ritholz Optical Company, and under other names, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of August 6, 1953].

IN THE MATTER OF
ROBERT HALL CLOTHES, INC., ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 5985. Complaint, May 8, 1952—Decision, Aug. 19, 1953

Where a corporation engaged in the operation of two clothing factories and one warehouse, and of numerous subsidiary corporations, engaged in the operation of many retail clothing stores located in many of the States, and in the shipment of clothing made by it and purchased from others to said retail stores; and three individuals, officers thereof; competitively engaged as aforesaid; in newspaper advertisements of their said clothing, in which they inserted the name of the particular retail store concerned, they paying the cost of publication—

- (a) Falsely represented that the regular prices for the clothing thus offered were greater than those prices at which it was being offered in said advertisements;
- (b) Falsely represented that because said corporation had reduced the prices of the clothing so advertised, purchasers of such clothing would save money; when in fact the prices had not been reduced; and
- (c) Falsely represented that said corporation's clothing thus advertised was of a specific value which was in excess of the price charged therefor by it:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Stroock & Stroock & Lavan, of New York City, for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 8, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commis-

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on August 19, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

sion's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

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

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

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

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Robert Hall Clothes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at 1241 Broadway, New York City, New York.

Respondents Harold Rosner, Frank B. Sawdon, and Achilles Suyker are now, and were during all the times hereinafter stated officers and directors of said respondent corporation, and as such direct and have directed the activities of respondent corporation, and formulate and control and have formulated and controlled its policies, practices and affairs including the advertising representations made in connection therewith.

PAR. 2. Respondent Robert Hall Clothes, Inc., is now, and for more than 1 year last past has been the owner of all the issued and outstanding capital stock of numerous subsidiary corporations engaged in the operation of many retail clothing stores located in many of the States, and is engaged in the operation of two clothing factories and one warehouse. The activities of the aforesaid subsidiary corpora-

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tions are controlled and directed by respondent Robert Hall Clothes, Inc.

The aforesaid retail stores sell men's, women's, and children's clothing to the purchasing public, some of which clothing is manufactured by corporate respondent's subsidiary manufacturing corporations and some of which is purchased by said respondent from other manufacturers.

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

The aforesaid retail stores are engaged in the sale of clothing and the shipment of certain thereof in commerce as "commerce" is defined in the Federal Trade Commission Act, to purchasers located in States other than that in which such shipments have or had their origin.

The corporate 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.

PAR. 3. In the course and conduct of the business as aforesaid, and for the purpose of inducing the purchase of the aforesaid clothing, respondents, other than A. Harry Feldman, caused advertisements to be published in newspapers circulated among prospective purchasers in various of the several States of the United States. Among and typical, but not all inclusive of the representations made in such advertisements so published and circulated, are the following:

39.95 Gabardines and All-Wool Coverts with 100% Wool Liners 29.95
 49.95 All-Wool Gabardines with 100% All-Wool Liners 34.95
 Rush to Robert Hall
 31,000 BRAND NEW All-Wool Winter Coats Regularly from \$23.95 to \$43.95
 13.95 18.95 23.95
 Saves 33% at ROBERT HALL
 Boys 5.95 Gabardine Slacks 3.99
 Luxurious All-Wool 2-Ply Worsted Suits
 Regular 39.95 Value 29.95
 Pure Wool lavishly fur-trimmed coats
 Regular 50.00 value 37.95
 This week Robert Hall slashes prices on thousands of fine winter coats!
 Now pay only 13.95, 18.95 or 23.95 for regular 23.95 to 43.95 coats.

When respondents caused such advertisements to be published and circulated as aforesaid the name of the respective retail store was inserted therein and respondent corporation paid the cost of said publication.

PAR. 4. Through the use of the aforesaid statements, and others similar thereto not specifically set forth herein, corporate respondent represented directly or by implication:

(a) That its regular prices for the clothing offered for sale in such advertisements were greater than those prices at which such clothing was being offered for sale in said advertisements.

(b) That because it had reduced the prices of the clothing so advertised, purchasers of such clothing would save money.

(c) That its clothing as so advertised was of a specific value which was in excess of the prices charged for such clothing by corporate respondent.

PAR. 5. The statements and representations made by respondents, other than A. Harry Feldman, in the aforesaid advertisements are false, misleading, and deceptive. In truth and in fact:

(a) Corporate respondent's regular prices for the clothing offered for sale in said advertisements were not greater than the prices at which it offered such clothing for sale in said advertisements.

(b) Corporate respondent had not reduced the prices of the clothing offered for sale in said advertisements so that the purchasers thereof could not save money from its regular prices for such clothing.

(c) Corporate respondent's clothing offered for sale in said advertisements was not of the value ascribed thereto by them in said advertisements.

PAR. 6. In the course and conduct of their business, corporate respondent and the aforesaid retail stores have been at all times mentioned herein, in substantial competition with other corporations, firms and individuals engaged in the business of selling clothing, in commerce among and between the various States of the United States.

PAR. 7. The use by respondents, other than A. Harry Feldman, of the foregoing statements and representations, and others similar thereto, 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 such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the clothing sold by corporate respondent through its retail stores. As a result of said respondents' practices as aforesaid, injury has been done to competition in commerce among and between the various States of the United States.

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CONCLUSION

The acts and practices of respondents, other than A. Harry Feldman, as herein found are all to the prejudice and injury of the public and of the competitors of corporate respondent, 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 TO CEASE AND DESIST

It is ordered, that respondent, Robert Hall Clothes, Inc., a corporation, and its officers, representatives, agents, and employees and respondents Harold Rosner, Frank B. Sawdon, and Achilles Suyker, as officers and directors of said corporate respondent, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clothing in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication that the regular price of corporate respondent's clothing is any amount in excess of the price at which such clothing is being offered for sale or has been sold by corporate respondent in recent regular course of business.

2. Representing, directly or by implication, that any price which does not constitute a reduction from corporate respondent's former prices for its clothing affords any savings to purchasers from corporate respondent's regular prices, or misrepresenting in any manner the amount of savings afforded to purchasers of corporate respondent's clothing.

3. Representing, directly or by implication, that the value of corporate respondent's clothing is any amount in excess of its actual value. *Provided, however*, That nothing contained in this order shall prevent respondents from advertising or otherwise representing that corporate respondent's merchandise is worth or of a value in excess of the stated price, provided such worth or value is based upon the price of comparable merchandise sold by other retailers in the same trade territory.

4. Cooperating or participating with corporate respondent's subsidiary retail stores in disseminating any advertisement containing any representation prohibited by this order.

It is further ordered, That the complaint herein be and it hereby is dismissed without prejudice as to respondent A. Harry Feldman.

It is further ordered, That respondents Robert Hall Clothes, Inc., Harold Rosner, Frank B. Sawdon, and Achilles Suyker shall, within sixty (60) days after service upon them of this order, file with the

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Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

By (Sgd) ROBERT HALL CLOTHES, INC.,
HAROLD ROSNER,
President.
(Sgd) Harold Rosner,
HAROLD ROSNER,
(Sgd) Frank B. Sawdon,
FRANK B. SAWDON,
(Sgd) A. Harry Feldman,
A. HARRY FELDMAN,
(Sgd) Achilles Suyker,
ACHILLES SUYKER.

Date: _____.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 19th day of August 1953.

IN THE MATTER OF
AMERICAN TACK COMPANY, INC., ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 5758. Complaint, Mar. 23, 1950—Decision, Aug. 21, 1953

Where a corporate manufacturer, and a second corporate concern, engaged as purchasing, selling, and distributing agent for the former, and four individuals who formulated, directed, and controlled the policies and practices of both, engaged in the sale and distribution of thumbtacks made by said manufacturer; and in the sale and distribution also of finished thumbtacks imported from Germany, which they imported in bulk, removed from the original shipping cases, and packaged in small boxes labeled "Solid Head Nickel Plated Thumbtacks"—

Sold said thumbtacks last referred to to jobbers and dealers for resale to the general public, without any imprinting, labeling, or marking on the boxes or packages in which they were packed to indicate to purchasers that they were of foreign or German origin; with tendency and capacity to mislead and deceive members of the purchasing public into the false belief that said products were of domestic manufacture and origin, and into the purchase thereof in reliance on such erroneous belief:

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

Before *Mr. Frank Heir*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Rosenbaum & Gellar, of New York City, for respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 23, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the filing by respondents of their joint answer to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission, theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. On July 14, 1952, the hearing examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an appropriate disposition of the proceeding, placed

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this case on the Commission's own docket for review and on January 16, 1953, it issued and thereafter served on the parties its order affording the respondents an opportunity to show cause why the initial decision should not be altered in the manner and to the extent shown in the tentative decision attached to said order. Respondents subsequently filed memorandum interposing their objections to the alterations aforesaid and counsel supporting the complaint filed memorandum in reply thereto. The Commission having considered and ruled on such objections, this proceeding regularly came on for final consideration by the Commission upon the record here on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. American Tack Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its post office address and principal place of business at 3-7 Cross Street, Suffern, New York. Michael Markman, Edward H. Weinberg, Molly Markman, and James L. Weinberg are President, Vice President, Secretary, and Treasurer, respectively, of said corporation. The business address of said individuals is the same as that of the corporation.

Markwin Industries, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its address and principal place of business at 3-7 Cross Street, Suffern, New York. It is a purchasing, selling and distributing agent for American Tack Company, Inc. Harold M. Weinberg, Michael Markman, Anna Weinberg, and Molly Markman are the Chairman of the Board, President, Secretary, and Treasurer, respectively, of said corporation. The business address of said individuals is the same as that of the corporation.

These respondent individuals formulate, direct, and control the policies and practices of the corporations with which they are connected and have cooperated in putting into effect the practices hereinafter enumerated.

PAR. 2. The respondents are now, and have been for several years last past, engaged in the manufacture, sale and distribution of thumbtacks manufactured by respondent American Tack Company, Inc., and also in the sale and distribution of finished thumbtacks imported from Germany. Respondents cause their said products, when sold, to

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be shipped from their place of business in the State of New York to jobbers and dealers located in various other States of the United States. Said jobbers sell to dealers which dealers, in turn, sell said thumbtacks to the general public. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said products in commerce between and among the various States of the United States. Their volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents, through Markwin Industries, Inc., purchase and import thumbtacks from Germany in bulk quantities. The respondents remove the tacks from the original shipping cases, package them in small boxes labeled "Solid Head Nickel Plated Thumbtacks." At no place on the container or otherwise is the fact disclosed that said tacks are of foreign origin.

PAR. 4. There has been, and now is, among members of a substantial segment of the buying and consuming public throughout the United States, including purchasers of thumbtacks, a substantial, sincere and subsistent preference for thumbtacks which are of wholly domestic manufacture or origin as distinguished from products of foreign manufacture or origin, although the preponderance of evidence in the record in this proceeding indicates that such preference does not exist on the part of the entire purchasing public or even the greater portion thereof.

PAR. 5. There is substantial evidence that purchasers of respondents' product described hereinabove in Paragraph 3 have actually purchased and may purchase under the impression, upon visual inspection, that the contents of such packages were in fact made in the United States. Furthermore, since the dominant word in the corporate name "American Tack Company" is "American" and since it is known in the trade to be the largest domestic producer of thumbtacks, the fact that it sells the product described in Paragraph 3 manifestly would tend to further the impression on the part of members of the trade buying from it directly that such products are of domestic manufacture even though this respondent's name has not appeared on individual packages thereof.

PAR. 6. There is no reliable, probative, or substantial evidence that it has been the custom of respondents to commingle tacks manufactured by them with imported tacks and to designate such mixture as "made in U. S. A." as charged in the complaint.

PAR. 7. There is no reliable, probative, or substantial evidence that the respondents' thumbtacks, designated as "Saf-T-Hed Thumbtacks," and represented on the containers thereof to have extra metal caps, do not in fact have such extra metal caps as represented.

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PAR. 8. The complaint alleged that respondents Anna Weinberg, James L. Weinberg, Edward H. Weinberg, and Molly Markman, trading as co-partners under the name of Tackanail Company, have distributed and sold their merchandise as agent for respondent American Tack Company, Inc. The record discloses, however, that Tackanail Company is a jobber and has resold to retailers products acquired by it from American Tack Company, Inc., and it further appears that this concern has not distributed any of the solid head nickel plated thumbtacks referred to in Paragraph 3 above. Although it has been concluded that respondents Ann Weinberg, James L. Weinberg, Edward H. Weinberg, and Molly Markham have cooperated, as hereabove described, in putting into effect and performing the acts and practice there referred to, it does not appear that they ever engaged in such acts or practice in connection with the offering for sale of merchandise which was distributed by Tackanail Company.

PAR. 9. The practice of respondents, as hereinabove described in Paragraphs 3, 4, and 5, in offering for sale, selling and distributing thumbtacks of foreign origin without any imprinting, labeling, or marking on the boxes or packages in which they are packed to indicate to purchasers that said thumbtacks are of German origin, has had and has the tendency and capacity to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said thumbtacks are of domestic manufacture and origin and into the purchase thereof in reliance thereon of such false and erroneous belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as hereinabove 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.

The Commission is of the opinion that those allegations of the complaint as they relate to the acts and practices engaged in by the respondents, Anna Weinberg, James L. Weinberg, Edward H. Weinberg, and Molly Markham, in connection with the offering for sale of merchandise distributed through Tackanail Company are not supported by the record.

ORDER

It is ordered, That respondent American Tack Company, Inc., a corporation, and its officers; respondents Michael Markham, Edward H. Weinberg, Molly Markman, and James L. Weinberg, individually and as officers and directors of respondent American Tack Company, Inc.; respondent Markwin Industries, Inc., a corporation, and its of-

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ficers; and respondents Harold M. Weinberg, Michael Markham, Anna Weinberg, and Molly Markham, individually and as officers and directors of said Markwin Industries, Inc., and the aforesaid respondents' 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 thumbtacks, or other similar products, do forthwith cease and desist from offering for sale or selling any such products of foreign origin without clearly and conspicuously disclosing on the packages or other containers in which they are sold to the purchasing public, the country of origin of such products.

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

Commissioner Mason dissenting and stating that he is in accord with the ruling of the hearing examiner as approved by the United States Court of Appeals for the Seventh Circuit in Docket 4795—R. J. Reynolds Tobacco Company.

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IN THE MATTER OF
SIDNEY LENET DOING BUSINESS AS M & M SPRING
COMPANY

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6029. Complaint, Aug. 14, 1952—Decision, Sept. 1, 1953

Where an individual engaged in the interstate sale and distribution to dealers, for resale, of automobile springs which were composed of some new and some old and previously used parts, and which had the appearance of having been made entirely from new and previously unused parts through the addition of new metal covers, in competition with concerns engaged in manufacturing and selling entirely new springs—

- (a) Offered and sold its said springs to dealers with no label, marking, or designation stamped thereon or attached thereto to indicate to the purchasing public or to dealers that said springs, which were resold to said public with no such disclosure, were made or assembled as aforesaid; and
- (b) In some instances sold to dealers as and for new springs, assembled and made entirely from new and previously unused parts, his said product:

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

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

Mr. Edward F. Downs for the Commission.

Halfpenny, Hahn & Cassedy, of Washington, D. C., for respondent.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondent's appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 6029, September 1, 1953, follows:

This matter came on to be heard by the Commission upon respondent's appeal from the initial decision of the hearing examiner and upon briefs in support of and in opposition to said appeal, oral argument not having been requested.

In support of his appeal respondent contends that (1) the admissions contained in his answer to the complaint were made on the condition that no order would be issued herein by the Commission until final decision in another matter, Docket No. 5964, in which matter, at the time of the filing of the appeal herein, the Commission's decision was on appeal and was not final, (2) the Commission does not have the power to require respondent to affirmatively disclose that his automobile springs contain used parts, and (3) the order is unrea-