

Consent Settlement

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IN THE MATTER OF
ARTHUR DOCTOR ET AL. TRADING AS
ARTHUR DOCTOR & CO.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT

Docket 6120. Complaint, Aug. 25, 1953—Decision, Oct. 1, 1953

Where three partners engaged in the manufacture and interstate sale and distribution of certain wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain ladies' or misses' coats in that they were not stamped tagged, or labeled as required by said Act and the Rules and Regulations promulgated thereunder;
- (b) Misbranded certain coats in that they were tagged as containing "100% Cashmere" and "100% Imported Cashmere," whereas they did not contain any of the hair of the cashmere goat but were made from fabrics composed of a mixture of sheep's wool, silk fibers and rabbit hair;
- (c) Misbranded certain of such coats in that they were labeled or tagged as containing "100% Cashmere" when they were manufactured from fabrics composed of a blend of cashmere combined with the wool of the sheep;
- (d) Misbranded certain of such coats in that they were labeled or tagged as containing "100% Virgin Wool," and, separately, as "Imported Cashmere," whereas they were manufactured from fabrics composed of a blend of wool of the sheep, silk fibers and rabbit hair; and
- (e) Misbranded certain of said products in that the percentages or amounts of the constituent fibers, cashmere and sheep wool, were not separately set forth on stamps, tags, etc., as required by the Rules and Regulations promulgated pursuant to said Act:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices in commerce.

Mr. George E. Steinmetz for the Commission.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on August 25, 1953, issued and subsequently served its complaint upon the respondents named in the caption hereof, charging

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 October 1, 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.

them with the use of unfair and deceptive acts and practices in violation of the provisions of said Acts.

The respondents, 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, 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 answer to said complaint, 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 the 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 the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Arthur Doctor, Theodore Doctor, and Celestine Doctor are individuals and copartners trading and doing business under the name and style of Arthur Doctor & Co. with their offices and principal place of business located at 250 West 39th Street, New York, New York.

PAR. 2. Subsequent to the effective date of said Wool Products Labeling Act of 1939, and more especially since 1951, respondents have manufactured for introduction, introduced, sold, distributed, delivered for shipment, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged, or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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PAR. 4. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of the Wool Products Labeling Act of 1939, and of the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among such misbranded wool products were ladies' or misses' coats labeled or tagged by respondents as containing "100% Cashmere" and "100% Imported Cashmere"; whereas in truth and in fact, said wool products did not contain any of the hair or fiber of the Cashmere goat but were manufactured from fabrics composed of a blend or mixture of wool of the genus sheep, together with silk fibers and rabbit hair.

Further, among such misbranded wool products were ladies' or misses' coats labeled or tagged by respondents as containing "100% Cashmere"; whereas in truth and in fact, said wool products did not consist of 100% Cashmere, the hair or fiber of the Cashmere goat, but were manufactured from fabrics composed of a blend of said cashmere combined with the wool of the genus sheep.

PAR. 5. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among such misbranded wool products were ladies' or misses' coats labeled or tagged by respondents as containing "100% Virgin Wool," together with a separate and additional label or tag setting forth the contents thereof as "Imported Cashmere"; whereas in truth and in fact, said wool products were not composed of 100% virgin wool nor imported cashmere but were manufactured from fabrics composed of a blend of wool of the genus sheep, combined with silk fibers and rabbit hair.

PAR. 6. Certain of said wool products were further misbranded in that the percentages or amounts of the constituent fibers of cashmere and sheep's wool were not separately set forth on stamps, tags, or labels or other means of identification, in the manner, form, and extent required by Rule 19 of the Rules and Regulations promulgated pursuant to said Wool Products Labeling Act.

CONCLUSION

The acts and practices of respondents as herein found were and are in violation of the said Wool Products Labeling Act of 1939 and of 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 TO CEASE AND DESIST

It is ordered, That the respondents, Arthur Doctor, Theodore Doctor, and Celestine Doctor, individually and trading and doing business under the firm name of Arthur Doctor & Co., or under any other name or names, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' or misses' coats or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner;

- (a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum 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 is five percentum or more, and (5) the aggregate of all other fibers;

- (b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

- (c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as containing hair or fleece of the Cashmere goat;

4. Stamping, tagging, labeling, or otherwise identifying such products as containing hair or fleece of the Cashmere goat without setting out in a clear and conspicuous manner on each such stamp, tag, label, or other identification the percentage of such Cashmere therein;

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Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939: *and provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

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

/s/ Arthur Doctor
/s/ Theodore Doctor
/s/ Celestine Doctor,
each individually,
and as copartners
trading as Arthur
Doctor & Co.

Date: Sept. 18, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 1st day of October, A. D., 1953.

Dismissal

IN THE MATTER OF

PURITY BAKERIES CORP., AMERICAN BAKERIES CO.,
INC., LEWIS A. CUSHMAN AND GEORGE L. BURR

Docket 6025. Complaint, Aug. 7, 1952—Order, Oct. 6, 1953

Charge: Interlocking directorates in violation of Section 8 of the Clayton Act; in connection with the manufacture and sale of bakery products.

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

Mr. Paul R. Dixon for the Commission.

Davies, Hardy, Schenck & Soons, of New York City, for Purity Bakeries Corp., Lewis A. Cushman and George L. Burr.

Spalding, Sibley, Troutman & Kelley, of Atlanta, Ga., for American Bakeries Co., Inc.

ORDER DISMISSING COMPLAINT

This matter is before the Commission upon respondents' appeal from the initial decision of the hearing examiner, briefs and oral argument of counsel in support of and in opposition to said appeal, and upon memorandum of counsel supporting the complaint filed subsequent to the presentation of arguments on the appeal.

The complaint charges a violation of Section 8 of the Clayton Act. It alleges, among other things, that the individual respondents have served simultaneously, and that the corporate respondents have permitted the individual respondents to be elected and to serve simultaneously, as directors in both of the corporate respondents. The material facts were stipulated. The hearing examiner filed his initial decision in which he found that the acts and practices of the respondents have been, and are now, in violation of Section 8 of the Clayton Act, and ordered the practices discontinued. Within the time permitted by the Commission's Rules of Practice, respondents filed an appeal from said initial decision. Oral argument on the appeal was heard by the Commission on June 4, 1953.

Counsel supporting the complaint, by memorandum filed on August 12, 1953, advised that, as of June 15, 1953, respondent American Bakeries Company, Inc., was merged with Purity Bakeries Corporation and that the name of the surviving corporation was changed to American Bakeries Company. The Commission is of the opinion that, as a result of the merger of the two corporate respondents, no further proceedings in this matter are warranted and that the complaint should be dismissed. Such disposition of this case renders it

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unnecessary to rule upon each of the points raised by the said appeal.

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.

Commissioner Gwynne not participating for the reason that oral argument on respondents' appeal from the initial decision of the hearing examiner was heard prior to his appointment to the Commission.

FLORIDA PLANTERS, INC.

Decision

IN THE MATTER OF
FLORIDA PLANTERS, INC.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C) OF
THE CLAYTON ACT AS AMENDED

Docket 6104. Complaint, June 17, 1953—Decision, Oct. 6, 1953

Where a cooperative corporation, engaged in the sale of potatoes and other vegetables produced by its grower members through four methods, namely, (1) by utilizing intermediaries or brokers to whom, as compensation for services rendered in effecting sales to buyers, including numerous customers who purchase in smaller volume, it paid brokerage fees ranging from 5¢ to 10¢ per cwt.; (2) by making sales to a broker for his own account for resale, on which sales it paid or allowed substantially the same commission or brokerage fee as that first above described; (3) by making sales to certain favored buyers, who usually purchase in larger volume, for resale, in connection with which said buyers deducted from the amount invoiced to them at the regular market price a brokerage commission, remitting the difference, accepted as full payment; and (4) by selling to certain other buyers, including chain store organizations, or direct buyers, who usually purchase in larger volumes for their own account for resale, and to whom it allowed a lower price in lieu of brokerage or commissions which were substantially the same as that allowed in other transactions above described: *Held*, That in the making of such payments or commission or brokerage fees and in the charging of lower prices in lieu thereof, as above set forth, to such buying agents and direct buyers, it violated Sec. 2 (c) of the Clayton Act as amended.

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

Mr. C. G. Miles and *Mr. Peter J. Dias* for the Commission.

Mr. Julian C. Calhoun, of Palatka, Fla., for respondent.

DECISION OF THE COMMISSION

Pursuant to "Decision of the Commission and Order to File Report of Compliance," dated October 6, 1953, which, following the Commission's review of the initial decision in the instant matter and its consideration of the entire record, set forth its opinion that said decision was "adequate and appropriate to dispose of the proceeding," said initial decision of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Act of Congress entitled "an Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914

(the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C. Sec. 13), the Federal Trade Commission on June 17, 1953, issued and subsequently served its complaint in this proceeding upon Florida Planters, Inc., a corporation, charging it with violation of subsection (c) of Section 2 of said Act as amended. On July 14, 1953, respondent filed its answer, in which answer it admitted all of the material allegations of facts set forth in said complaint and elected not to contest the same. Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner theretofore duly designated by the Commission upon said complaint and the admission answer thereto, proposed findings and conclusions not having been submitted by counsel, and oral argument not having been requested. The Hearing Examiner, having duly considered the record herein, makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Florida Planters, Inc., hereinafter sometimes referred to as the respondent, is a cooperative corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at Hastings, Florida.

PAR. 2. The respondent is now and continuously for seven or eight years last past has been engaged in the business of selling potatoes and other vegetables, hereinafter sometimes referred to as food products, produced in the State of Florida by its grower-members. It sells and distributes these food products by four separate and distinct methods described as follows:

(a) The first and principal method is by utilizing intermediaries or brokers who act as respondent's agents in negotiating the sale of respondent's food products, at respondent's prices and on respondent's terms. Such intermediaries or brokers usually transmit purchase orders for such food products to the respondent, who thereafter invoices and ships the food products to the customers. The respondent pays such intermediaries or brokers for their services in negotiating and making such sales for respondent's account a commission or brokerage fee. A large number of the customers sold through this method are sometimes referred to as small buyers who purchase in smaller volume. This method of respondent's business was not challenged by the complaint and is here adverted to solely for illustrative purposes as hereinafter appears.

(b) A second method is where respondent makes certain sales to a broker for his, the broker's, own account for resale (hereinafter sometimes referred to as a buying broker), on which sales the respondent pays or allows the same, or substantially the same, commission or brokerage fee that it allows a broker for effecting sales as described under method (a) above.

Illustrative of such are cited certain sales of potatoes which took place during April and May of 1951, between respondent and one of its intermediaries or brokers, located in Philadelphia, Pa. In these transactions the respondent invoiced such intermediary or broker, and such intermediary or broker paid for the potatoes, at prices which were the same, or substantially the same, as those charged other buyers purchasing at or about the same time; but in connection with such sales to such intermediary or broker for his own account, respondent paid him brokerage in the same manner, and in the same amounts, as it paid him brokerage in connection with sales of potatoes to buyers effected through him as its, the respondent's, intermediary or broker.

(c) A third method employed by respondent is sales to certain favored buyers for resale who usually buy in larger volume. The respondent invoices these favored buyers at the regular market price, but in making payment therefor these buyers deduct a brokerage commission from the face of the invoiced amount and remit the difference, which different amount is accepted by respondent as full payment. Upon receipt thereof a pencil notation is made on the invoice designating the difference as brokerage.

Illustrative of such sales are those which took place during April and May, 1951, between respondent and two of its favored buyers, one located in Newark, New Jersey, and the other located in Detroit, Michigan. In these transactions the respondent invoiced such favored buyers for the potatoes at prices which were the same or substantially the same as those charged other buyers purchasing at or about the same time; but in making payment therefor the respondent allowed these favored buyers to deduct brokerage in the same or substantially the same amount as it paid or allowed its broker for effecting sales for it, as described in paragraph 2 (a) above, and to remit the difference, which difference was accepted as full payment for the invoiced amount.

(d) A fourth method employed by respondent is sales to other buyers, including chain store organizations, hereinafter sometimes referred to as direct buyers, who usually purchase in larger volumes for their own account for resale. To these direct buyers the respondent allows a lower price in lieu of brokerage or commission which is substantially the same as the brokerage allowed in other transactions described herein.

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Illustrative of such sales are those which took place during April, May, and June, 1951, between respondent and several direct buyers, including chain store organizations and food processors. In these transactions respondent invoiced such buyers at, and such buyers paid, prices which varied from time to time; but in all, or substantially all, instances such prices were lower by amounts ranging from approximately five to ten cents per hundredweight than those at which other buyers purchasing at or about the same time were invoiced and paid.

The brokerage fees, commissions or compensation, or allowances in lieu thereof, paid by respondent in all four methods described above range from 5¢ to 10¢ per hundredweight.

PAR. 3. In the course and conduct of its business, the respondent herein sold and transported, or caused such food products to be transported, from its place of business or from elsewhere in the State of Florida, to the places of business of such buyers, some of whom were located in Florida, but most of whom were located elsewhere in the United States other than the State of Florida. Such sales and transportation to these buyers occurred during the three or four years last past.

PAR. 4. In making payments of commissions or brokerage fees as found in Paragraphs Two (b) and (c), and in charging lower prices in lieu of brokerage as found in Paragraph Two (d), the respondent, in the course and conduct of its business in commerce, as "commerce" is defined in the aforesaid Clayton Act, paid, granted or allowed something of value as a commission, brokerage or other compensation, or allowance or discount in lieu thereof, in connection with the sale of its food products to other parties to such transactions or to their agents, representatives or other intermediaries therein who were, in fact, acting for or in behalf of, or subject to the direct or indirect control of such other parties.

CONCLUSION

The acts and practices of the respondent as above found violate subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, Section 13).

ORDER

It is ordered, That the respondent, Florida Planters, Inc., a corporation, and its officers, directors, agents, or employees, directly or through any corporate or other device, in connection with the sale of potatoes, or any other vegetable, in interstate commerce, do forthwith cease and desist from :

1. Making payments to brokers on purchases for their own accounts in amounts which are the same as the amounts of brokerage fees paid to brokers effecting sales, as agents, to other purchasers, or in any other amounts which are also paid as brokerage, whether such payments are made upon being billed therefor or otherwise;

2. Selling to any purchaser at prices which are lower than the prices at which sales are made to other purchasers in amounts which are the same or substantially the same as the amounts of brokerage fees paid to brokers effecting sales, as agents, to such other purchasers or in any other amounts which also are in lieu of brokerages whether such lower prices are charged by invoicing at a lower price or by permitting the purchaser to make a deduction from the regular invoice price in remitting payment or by any other device.

3. Paying or granting anything of value as a commission, brokerage or other compensation or allowance or discount in lieu thereof to the other parties to such transactions, or to their agents, representatives or other intermediaries therein who in fact act for or in behalf, or are subject to the direct or indirect control, of such other parties.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent, Florida Planters, Inc., 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 order to cease and desist [as required by said decision and order of October 6, 1953].

IN THE MATTER OF
CHARLES SAMUEL BERNSTEIN D. B. A. AMERICAN
LABOR DIGEST

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

Docket 6105. Complaint, June 30, 1953—Decision, Oct. 6, 1953

Where an individual with principal office and place of business in Baltimore and with mailing address in Washington, D. C., engaged in the publication and dissemination of a magazine entitled "American Labor Digest" and in the sale of advertising space therein to numerous individuals and concerns in various States; through statements in said magazines and through oral statements of solicitors employed by him to solicit the purchase of advertising space, directly and by implication—

(a) Represented that said American Labor Digest was published and distributed regularly every month to members of the reading public, and was supported by subscriptions and advertising therein, that single copies were available for 50¢, and that annual subscriptions were available for \$5.00; and that it was widely circulated and distributed throughout the United States;

The facts being that it was not a magazine in the sense in which said designation is generally understood; while it carried the volume and number designation, it was not published monthly nor regularly, and said designations did not indicate the actual volumes or numbers published, which were in fact substantially less than indicated; and it was not available on newsstands nor at any place or store where magazines are offered for sale to the general purchasing public; had no subscriptions, and was mailed only to advertisers therein; and, while mailed to such persons and concerns located throughout the United States, was not distributed or available to members of the general reading public; and

(b) Falsely represented or stated that it represented and was published in the interest and support of labor and harmonious labor management and that it maintained an office in Washington, D. C.;

When in fact it did not represent labor generally, was not supported by it or any labor organization, and maintained no Washington office, but was merely a subscriber to a mailing address service located in said city; and

(c) Represented through certain form letters mailed to individuals and concerns throughout the United States that the respondents had authorized or approved the insertion of an advertisement in a prior edition of American Labor Digest and that a renewal of said advertisement was being solicited; and on many occasions mailed statements of account to persons and concerns located in many states, which purported to be charges for advertisements authorized by the recipients;

When in fact many of such recipients had never authorized such insertion and the sending of said form letters constituted a part of a scheme calculated to cause the recipients to contract for the publication of advertisements in the mistaken belief that in doing so they were renewing advertisements for which payment had been previously made; many of the

recipients of said statements of account had never authorized the insertion of advertisements in respondents' publication nor agreed to pay therefor and had in fact no knowledge that such insertion had been made; and those who did authorize such insertion and agreed to pay therefor would not have done so had they been informed of the true facts with respect to the nature and purpose of said American Labor Digest:

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. James A. Purcell*, hearing examiner.

Mr. William L. Pencke for the Commission.

DECISION OF THE COMMISSION

Pursuant to "Decision of the Commission and Order to File Report of Compliance," dated October 6, 1953, which, following the Commission's review of the initial decision in the instant matter and its consideration of the entire record, set forth its opinion that said decision was "adequate and appropriate to dispose of the proceeding," said initial decision of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 30, 1953, issued and subsequently served its complaint in this proceeding upon the respondent, Charles Samuel Bernstein, an individual, doing business as American Labor Digest, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. On August 5, 1953, respondent filed his answer to the complaint, wherein he admitted all of the material allegations of fact set forth in said complaint and specifically waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated by the Commission, upon said complaint and the answer thereto, and said Hearing Examiner, having duly considered the record herein, 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. Respondent Charles Samuel Bernstein is an individual, trading and doing business under the firm name and style of American Labor Digest. His principal office and place of business

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is located at 508 Snow Building, Baltimore, Maryland. Respondent also maintains a mailing address at Room 422, Washington Building, Washington, D. C.

PAR. 2. For more than one year last past, respondent has been and is now engaged in the publication and dissemination of a magazine entitled American Labor Digest and, in connection therewith, in the sale of advertising space in said magazine to numerous individuals, business firms, and corporations located in various States of the United States.

PAR. 3. In the course and conduct of said business, respondent causes said magazine to be transported from his place of business in the State of Maryland to purchasers of said advertising space located in other States.

PAR. 4. Said magazine, American Labor Digest, contains, among others, the following statements:

A Non-Partisan Labor Magazine of Modern America

This magazine * * * is supported by subscription and advertising revenue; * * *

and:

The American Labor Digest, published monthly; * * * Address all communications to 422 Washington Building, Washington 5, D. C. Single copy—50 cents, Annual Subscription, by mail \$5.00. S. B. Charles, Editor.

Don Carlos, Editor.

PAR. 5. In the course and conduct of said business, as aforesaid, respondent employs solicitors who call upon prospects for the purpose of soliciting the purchase of advertising space and in connection therewith represent to such prospective purchasers that said American Labor Digest is a regularly published monthly magazine; that it represents or is supported or recognized by American labor or labor organizations; and that it has a wide distribution and circulation throughout the United States.

PAR. 6. Respondent also makes use of form letters which are mailed to individuals, firms, and corporations throughout the United States, of which the following is representative:

AMERICAN LABOR AND MANAGEMENT TEAMWORK

AMERICAN LABOR DIGEST

A Non-Partisan Free Enterprise Labor Magazine of Modern America

422 Washington Building,

Washington 5, D. C.

GENTLEMEN:

We are writing to you relative to advertising in the annual Easter Edition of the American Labor Digest.

May we count on the same support of a \$ — representation that we have had from you in the past? We can assure you that it will be greatly appreciated.

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Thanking you for your kind consideration and pledging mutual cooperation in Labor Management Teamwork, we are,

Cordially yours,

DON CARLOS,
Business Manager.

Dedicated to the American Way of Life and Harmonious
Labor-Management Relationship.

On many occasions, respondent also mails statements of account to individuals, firms, and corporations located in many States of the United States which purport to be charges for advertisements authorized by the recipients thereof.

PAR. 7. By means of the statements appearing in said magazine and others of similar import, not specifically set out herein, and the oral statements of his solicitors, respondent has represented, directly and by implication, that said American Labor Digest is published and distributed regularly every month to members of the reading public; that it is supported by subscriptions and advertising revenue; that single copies are available for 50¢ and that annual subscriptions are available for \$5.00; that it represents and is published in the interest and support of labor and harmonious labor management; that respondent maintains an office in Washington, D. C., and that said magazine is widely circulated and distributed throughout the United States. By means of said form letters respondent had represented that the recipients thereof had authorized or approved the insertion of an advertisement in a prior edition of American Labor Digest and a renewal of said advertisement was being solicited; and by means of said statements of account respondent represented that the recipients thereof had authorized or approved the insertion of advertisements in said magazine and that said statements represented the cost of such advertisements; that said magazine was supported, approved or recognized by labor organizations and had its principal office in Washington, D. C.

PAR. 8. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact said American Labor Digest is not a magazine in the sense in which said designation is generally understood. While it carries a volume and number designation, it is not published monthly nor regularly, and said designations do not indicate the actual volumes or numbers published, and which are in fact substantially less than indicated. Said Digest is not available on news stands nor at any other place or store where magazines are offered for sale to the general purchasing public, nor has it a circulation among subscribers. There are in fact no subscriptions, the magazine being mailed only to those individuals, firms, and corporations whose advertisements appear therein; and while said individuals,

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firms, and corporations are located throughout the United States, said Digest is not distributed or available to members of the general reading public.

Said magazine does not represent labor generally nor is it supported by labor or any labor organization. Respondent does not maintain an office in the city of Washington, D. C., but is merely a subscriber to a mail address service located in said city.

Many of the recipients of said form letters requesting payment had never authorized the insertion of advertisements; and the sending of said form letters constitutes a part of a scheme calculated to cause the recipients thereof to contract for the publication of advertisements in the mistaken belief that in doing so they were renewing advertisements for which payment had been previously made; and many of the recipients of said statements of account had never authorized the insertion of advertisements in respondent's publication nor agreed to pay therefor and had, in fact, no knowledge that such insertion had been made. Moreover, the individuals, firms, and corporations who did authorize the insertion of advertisements in said Digest and agreed to pay therefor would not have done so, had they been informed of the true facts with respect to the nature and purpose of said American Labor Digest.

PAR. 9. The use by respondent of the aforesaid false, misleading, and deceptive statements had the tendency and capacity to lead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to pay substantial amounts of money for advertising in respondent's said American Labor Digest.

CONCLUSION

The aforesaid acts and practices of 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, Charles Samuel Bernstein, an individual, his agents, representatives and employees, in connection with the publication of the American Labor Digest, or any other similar publication, and in connection with the offering for sale and sale of advertising space in said American Labor Digest and the dis-

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Order

tribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the American Labor Digest is a regular monthly publication or that single copies thereof may be purchased;

(b) That the American Labor Digest has subscribers, is supported by subscriptions, is distributed to subscribers, or to the general reading public;

(c) That the American Labor Digest is a publication representing labor or is supported or recognized by labor or any labor organization or labor union;

(d) That respondent maintains an office in Washington, D. C., or any other city when such is not the fact;

(e) That any advertisement for which respondent is requesting payment through statements of account or otherwise has been inserted with the authorization of the advertiser contrary to the fact;

(f) That any advertisement appearing in a prior edition of respondent's publication has been inserted with the authorization of the advertiser or paid for by him contrary to the fact;

2. Requiring or demanding payment for advertisements which have not been authorized or approved.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondent, Charles Samuel Bernstein, 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 decision and order of October 6, 1953].

IN THE MATTER OF
BENNETT COAT CO., INC. ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT

Docket 6108. Complaint, July 9, 1953—Decision, Oct. 6, 1953

Where a corporation and two officers thereof, engaged in the manufacture and interstate sale and distribution of certain wool products as defined in the Wool Products Labeling Act;

- (a) Misbranded certain ladies' coats in that they were not stamped, tagged, or labeled as required by said Act and the Rules and Regulations promulgated thereunder;
- (b) Misbranded said coats in that, labeled or tagged as containing "100% Wool," they were composed of blended fabrics containing both wool and rayon fibers; and
- (c) Misbranded said coats in that the percentage or amount of the constituent fibers of interlinings thereof were not separately set forth on stamps, tags, etc. as required by Rule 24 of said Rules and Regulations:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act.

Before *Mr. William L. Pack*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

DECISION OF THE COMMISSION

Pursuant to "Decision of the Commission and Order to File Report of Compliance," dated October 6, 1953, which, following the Commission's review of the initial decision in the instant matter and its consideration of the entire record, set forth its opinion that said decision was "adequate and appropriate to dispose of the proceeding," said initial decision of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on July 9, 1953, 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 those Acts. On August 12, 1953, respondents filed their answer, in which they admitted all of