

Order

50 F. T. C.

IN THE MATTER OF  
STANDARD MOTOR PRODUCTS, INC.

*Docket 5721. Order and opinion, Jan. 29, 1954*

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

*Mr. Eldon P. Schrup*, *Mr. James E. Corkey* and *Mr. Francis C. Mayer* for the Commission.

*Mr. Edward S. St. John*, of New York City, for respondent.

ORDER DISPOSING OF APPEALS FROM ORDERS OF THE HEARING EXAMINER

This matter having come on to be heard by the Commission upon appeals, under Rule XVI of the Commission's Rules of Practice, by P. Sorensen Manufacturing Co., Inc., P. and D. Manufacturing Co., Inc., and the respondent, Standard Motor Products, Inc., from orders of the hearing examiner pertaining to certain subpoenas duces tecum issued by him at the request of the respondent; and

The Commission having duly considered said appeals, briefs of counsel, and pertinent portions of the record herein, and being of the opinion, for the reasons appearing in the accompanying opinion of the Commission, that the appeals of P. Sorensen Manufacturing Co., Inc., and P. and D. Manufacturing Co., Inc., should be sustained and that the appeal of the respondent, Standard Motor Products, Inc., should be denied, and being of the further opinion that oral argument on the appeals, which was requested by P. Sorensen Manufacturing Co., Inc., and P. and D. Manufacturing Co., Inc., is unnecessary:

*It is ordered*, That the said appeals of P. Sorensen Manufacturing Co., Inc., and P. and D. Manufacturing Co., Inc., be, and they hereby are, granted, and that the requests for oral argument on said appeals be, and they hereby are, denied.

*It is further ordered*, That the said appeal of respondent Standard Motor Products, Inc., be, and it hereby is, denied.

*It is further ordered*, That the subpoenas duces tecum issued by the hearing examiner on October 19, 1953, directing P. Sorensen Manufacturing Co., Inc., and P. and D. Manufacturing Co., Inc., to produce specified documents and records be, and they hereby are, quashed, but with the understanding that, if respondent so requests, new subpoenas, limited as indicated in the accompanying opinion, will be issued.

## OPINION OF THE COMMISSION

By CARRETTA, Commissioner:

During the course of the hearings in this matter, the hearing examiner, upon the request of the respondent, issued a subpoena duces tecum directing P. Sorensen Manufacturing Co., Inc. (herein referred to as Sorensen) to produce specified documents and records pertaining to Sorensen's transactions with certain of its customers during certain years. A subpoena duces tecum was also issued by the hearing examiner, at the request of the respondent, directing the P. and D. Manufacturing Co., Inc. (herein referred to as P. and D.) to produce similar documents and records pertaining to its transactions with certain of its customers during certain years. Upon the return of these subpoenas, Sorensen and P. and D. each filed a motion with the hearing examiner requesting that the subpoenas be quashed; that respondent be required to establish which, if any, of the documents demanded are relevant and material to the respondent's alleged defense; or that the subpoenas be limited in their scope and effect. After hearing argument on the motions, the hearing examiner entered orders on the record limiting the scope and effect of the subpoenas in certain respects and otherwise denying the motions. Appeals from these orders have been filed under Rule XVI of the Commission's Rules of Practice by Sorensen and P. and D. and also by the respondent. Oral argument is requested in the appeals of Sorensen and P. and D.

Respondent Standard Motor Products, Inc., is charged in the complaint in this proceeding with violation of Section 2 (a) of the Clayton Act, as amended, by selling its automotive parts and supplies to some customers at higher and less favorable prices than it sold said products and supplies to other customers. As one of its defenses to the charge of price discrimination, respondent alleges that any discounts or allowances granted by it were made solely for the purpose of meeting price competition from its competitors. Respondent contends that the documents and records demanded in the subpoenas as originally issued are necessary to enable it to establish its said defense. Sorensen and P. and D., competitors of the respondent, contend in their appeals that the subpoenas as originally issued, and also as subsequently limited by the hearing examiner, require them to produce documents and records which are in no way relevant or material to the issues in this proceeding; that respondent should be required to establish which, if any, of the numerous documents demanded by the subpoenas are relevant and material to its defense; that the only records of theirs which are rele-

vant to the respondent's defense are those pertaining to transactions with concerns who were customers of the respondent at the time and to whom the respondent gave a lower price than it gave to other customers; and that any data which they are required to produce with respect to their transactions with such customers should be limited to the year in which the lower prices were given by the respondent.

The respondent is entitled to subpoenas directing the production of such documents and records as are relevant to its defense that its lower prices were made in good faith to meet a lawful equally low price of a competitor. Respondent is not entitled to access to documents and records of its competitors which are not relevant to that defense. The question for determination in these appeals is whether or not respondent has made an adequate showing that the documents and records demanded by the subpoenas as originally issued, or as subsequently limited by the hearing examiner, are relevant to respondent's said defense.

In order to establish its defense under Section 2 (b) of the Clayton Act, respondent must show that the lower prices which constituted the basis for the price discrimination charge were made in good faith to meet a lawful equally low price of a competitor. The lower prices given by the respondent must be shown to have been the direct result of specific offers by respondent's competitors to the customers receiving the lower prices. The subpoenas as originally issued, and also as limited by the hearing examiner, demand the production of data pertaining to transactions with concerns which were formerly customers of the respondent as well as with concerns which have never been customers of the respondent. Respondent states that these documents and records are desired for the purpose of showing the pricing practices of its competitors. There is no showing as to how the pricing practices of its competitors with respect to customers to whom the respondent does not sell and did not sell are relevant to the respondent's alleged defense.

The record in this proceeding contains evidence that respondent has made sales to certain customers at prices lower than those charged other customers. Under all the circumstances, the Commission is of the opinion that unless and until the respondent shows the relevancy to its defense of data pertaining to transactions by competitors with concerns other than those to whom the respondent has sold at the lower prices, any subpoenas directing a competitor of the respondent to produce documents and records should be limited to documents and records pertaining to sales and offers to sell by such competitors to customers of the respondent who the record shows were sold at the lower prices.

Any such subpoenas should be further limited to requiring the production of documents and records pertaining only to sales and offers to sell during the time period in which the respondent sold at the lower prices which make out the prima facie case.

In view of the foregoing, the Commission is of the opinion that subpoenas issued by the hearing examiner directing Sorensen and P. and D. to produce specified documents and records should be quashed, but with the understanding that, if respondent so requests, new subpoenas, limited as herein indicated, will be issued.

The Commission is of the further opinion that oral argument on the appeals, which was requested by Sorensen and P. and D., is unnecessary.

IN THE MATTER OF  
CUSTOM UPHOLSTERING & CARPET CO., INC., ET AL.

*Docket 6111. Complaint, July 27, 1953—Decision, Jan. 30, 1954*

Charge: Advertising falsely as to prices and free goods or service; in connection with the business of selling upholstery materials and upholstering furniture.

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

*Mr. Jesse D. Kash* for the Commission.

*Mr. Frank A. Kaufman* and *Frank & Oppenheimer*, of Baltimore, Md., for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the hearing examiner shall, on January 30, 1954, become the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 27th day of July 1953, issued and subsequently served its complaint in this proceeding upon the respondent Custom Upholstering & Carpet Company, Inc., a corporation, and respondents Charles D. Weisberg, Melvin Weisberg, and Seymour S. Weisberg, individually, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which evidence in support of and in opposition to the allegations of said complaint was introduced before the above-named hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answer thereto, testimony and other evidence, and proposed findings of fact and conclusion presented by counsel for the respondents, counsel in support of the complaint not submitting proposed findings of fact or conclusion.

The respondents are engaged in the business of reupholstering furniture with their main office at 4103 Reisterstown Road, Baltimore, Maryland, and branch offices in Washington, D. C., and Philadelphia,

Pennsylvania. They have used three types of special advertising. In the first type they offer big savings, "as much as \$100," on reupholstery and slipcover work; in the second type they offer to reupholster a third chair free in connection with the reupholstering of a three-piece living room suite; in the third type they offer for \$7.50 a chair valued up to \$149 if the customer has a two-piece suite reupholstered at the regular price.

Since the imposition of price controls in 1951 by the U. S. Government, the respondents have maintained regular, uniform prices for products and services and approximately two-thirds of their business has been conducted at these regular prices. The balance of their business has been conducted pursuant to their special advertising offers and the evidence establishes clearly that during the periods when such advertising was effective sales were made and work performed strictly in accordance with the terms of the special offers. Numerous invoices of actual sales were presented in evidence which clearly establish that fact.

The advertising relating to "free" goods and services was discontinued in the latter part of 1952. However, respondents stated, through their counsel, that it was their expectation in the future to make use of the word "free" and other similar words strictly in accordance with the decision of the Commission in the matter of Walter J. Black, Inc., Docket No. 5571, which use would be in conformity with the new trade practice rule on use of the word "free" as adopted by the Commission on December 3, 1953. Respondents' past use of the word also was in conformity with this rule.

The reliable, probative and substantial evidence does not establish that the respondents have violated any of the provisions of the Federal Trade Commission Act and the complaint must therefore be dismissed.

#### ORDER

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

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IN THE MATTER OF  
HEARN DEPARTMENT STORES, INC.

*Docket 3453. Complaint, June 8, 1938—Order, Feb. 1, 1954*

Charge: Advertising falsely and misbranding as to nature and composition of product; in connection with the sale of fabrics, garments, etc.

Before *Mr. Edward E. Reardon*, hearing examiner.

*Mr. George W. Williams* and *Mr. R. P. Bellinger* for the Commission.

*Mr. Jay Leo Rothschild*, of New York City, for respondent.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter coming on to be heard by the Commission upon a motion, filed by counsel in support of the complaint, requesting that the complaint herein be dismissed without prejudice, which motion was unopposed by the respondent; and

It appearing from said motion and from the record that the complaint was issued in June 1938 and was based upon practices alleged to have been engaged in prior to that time; that the case was placed upon the Commission's suspense calendar on December 14, 1944, pending the final disposition of Docket No. 4934, Celanese Corporation of America, and that the Celanese case was finally disposed of by the Commission on August 2, 1953; and

The Commission being of the opinion that because of the lapse of time since the complaint was issued there is now insufficient public interest in the subject matter to warrant a continuance of the proceeding at this time:

*It is ordered* that the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to take such further action against the respondent at any time in the future as may be warranted by the then existing circumstances.

IN THE MATTER OF  
ASSOCIATED GREETING CARD DISTRIBUTORS OF  
AMERICA ET AL.

*Docket 5983. Complaint, May 8, 1952—Order, etc., and opinion, Feb. 3, 1954*

Charge: Conspiring with respect to prices, terms and conditions of sale of greeting cards, gift-tying ribbons and gift wrapping paper.

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

*Mr. Floyd O. Collins* for the Commission.

*Dunning, Nellis & Lundin*, of Washington, D. C., for respondents.

ORDER DISPOSING OF APPEALS FROM INITIAL DECISION OF HEARING  
EXAMINER, AND DECISION OF THE COMMISSION DISMISSING COM-  
PLAINT

This matter came before the Commission upon cross-appeals of counsel for respondents and counsel supporting the complaint from an initial decision of the hearing examiner dismissing all of the allegations of the complaint except those relating to respondents' alleged use of their combined purchasing power to secure discounts and advertising allowances.

For the reasons stated in the written opinion of the Commission which is issued herewith, the Commission is of the opinion that the appeal of counsel supporting the complaint should be denied and that respondents' appeal should be granted and the complaint herein dismissed.

The Commission has considered all of the exceptions of counsel and is of the opinion that the rulings of the hearing examiner are free of prejudicial error. In reaching its decision, Commission's Exhibit 126 for identification, which contains the opinion of the Secretary of the respondent Association that all of the large distributors in the field belong to the Association, was fully considered.

*It is ordered*, therefore, that respondents' appeal from the initial decision is hereby granted; that the appeal of counsel supporting the complaint is hereby denied; and that the allegations of the complaint are hereby dismissed.

OPINION OF THE COMMISSION

Chairman HOWREY delivered the opinion of the Commission:

This case is before us upon cross appeals of counsel for respondents and counsel supporting the complaint from an initial decision of the hearing examiner dismissing all but one phase of the case.

Twenty-seven wholesale distributors of greeting cards and accessories throughout the United States, all members of the Associated Greeting Card Distributors of America, are charged with hindering and suppressing competition in violation of Section 5 of the Federal Trade Commission Act. Also named as respondents are the Association's Secretary-Treasurer, members of its merchandise committee, and Charmcraft Publishers, Inc., a corporation owned by members of the Association through which they buy certain of their greeting cards and related products.<sup>1</sup> This line of merchandise, which is especially designed and produced for respondents by a variety of manufacturers, is designated "Charmcraft" and is handled by Association members exclusively.

Respondent Association members compete with wholesalers who are not members of the Association and with manufacturers who sell directly to the retail trade. In some instances, members compete with each other in the buying and selling of their products. In an industry which does a total volume of approximately 250 million annually, respondents, whose total annual sales are something like \$3,000,000, are not, as the Examiner found, in either a dominant or a monopolistic position.<sup>2</sup>

The case involves six practices alleged in Paragraph Eight of the Complaint. At the completion of the case-in-chief of counsel supporting the complaint, the hearing examiner ruled<sup>3</sup> that a *prima facie* case had been made out on only one phase of the case; namely that respondents had obtained favorable prices on Charmcraft lines and were awarded discounts and advertising allowances based on their combined purchasing power. The examiner dismissed the remaining charges in the complaint, including the general allegation in the initial paragraph of Paragraph Eight to the effect that respondents had conspired to suppress competition.

An examination of the record shows that his ruling dismissing all of the other allegations of the complaint was correct.<sup>4</sup>

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<sup>1</sup> One Association member testified that Charmcraft cards accounted for 12% of his total requirements; another testified that about 15% of his needs were supplied by Charmcraft.

<sup>2</sup> There are no figures in the record, however, indicating total annual sales by wholesalers, and there are no figures showing the number of wholesalers of greeting cards in the United States.

<sup>3</sup> The examiner's failure to issue an initial decision following this ruling as requested by counsel in support of the complaint is subject to an exception by Commission's counsel. However, we fail to see that anyone has been prejudiced by the ruling.

<sup>4</sup> The complaint alleges that respondents have falsely represented that they are publishers of Charmcraft cards. Counsel supporting the complaint was able to show that respondents' salesmen had been furnished pictures of press rooms and printing equipment not owned by respondents. The examiner disregarded this evidence because there was no showing that such pictures were ever used. In any event, however, while the use of such pictures might well imply that respondents own their own printing facilities, it does not establish that they are publishers as that term is used and understood in the greeting card trade.

After completion of respondents' case, the examiner filed his initial decision containing the same ruling in substance and an order which prohibited respondent from exerting the influence of their combined purchasing power to obtain any price discount or other preferential treatment not allowed, accorded or made available by such manufacturer or manufacturers to competitors of respondent or any of them. The examiner's order also prohibited respondents from misrepresenting the volume of purchasing power<sup>5</sup> and from receiving any discount or other preferential treatment as a result of the use of such misrepresentation or combined purchasing power.

While the complaint charges respondents with misrepresenting themselves as publishers and with engaging in certain other unlawful practices, the crux of the case against respondents is that, by pooling their combined purchasing power to obtain favorable prices and terms on greeting cards, tying ribbons and wrapping paper, they have engaged in unfair methods of competition in violation of Section 5 of the Act.

We may assume that collusive activity by buyers to coerce a seller or sellers, through boycott, threat of boycott, intimidation, or like means, is unreasonable and therefore unlawful. See *Eastern States Lumber Association v. United States*, 234 U. S. 600 (1914); *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457 (1941); *United States v. Southern California Grocers' Association*, 7 F. 2d 944 (S. D. Calif. 1925); *Arkansas Wholesale Grocers' Association et al. v. F. T. C.*, 18 F. 2d 866 (C. A. 8, 1927) (*cert. den.* 275 U. S. 533); *Southern Hardware Jobbers' Association et al. v. F. T. C.*, 290 Fed. 773 (C. A. 5, 1923); *Wholesale Grocers' Association v. F. T. C.*, 277 Fed. 657 (C. A. 5, 1922).

The record in this case, however, contains none of these elements of illegality. There is no evidence, moreover, showing injury to competing wholesalers or to the manufacturing segment. Likewise, there is no evidence that retailers have been adversely affected.

The facts indicate nothing more than a relatively simple practice of joint purchasing by small business wholesalers in an industry marked by the predominant use of other distribution methods. These small concerns have purchased Charmcraft greeting cards and accessories as a result of open bargaining, and such purchases have been made from numerous manufacturers. Furthermore, individual association

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<sup>5</sup> We find no allegation in the complaint affording any basis for this part of the order except the reference to the use of "pretense of cooperative purchasing" in Paragraph Eight (B). The examiner found, however, and we think properly so, that "The record does not establish \* \* \* that \* \* \* 'pretense of cooperative purchasing' \* \* \* (was) used by respondents \* \* \* ". We conclude, therefore, that there is no basis for a provision in the order prohibiting misrepresentations of the volume of purchasing power.

members have continued to buy from the regular stock of manufacturers, including many that have never produced Charmcraft merchandise.

In brief, this appears to be an instance in which a few small concerns have joined together as buyers in a non-collusive effort to wage competition, not to restrict it.<sup>6</sup>

Quite unlike the present case was *United States v. New York Great A. & P. Tea Co.*, 173 F. 2d 79 (C. A. 7, 1949), (affirming 67 F. Supp. 626), in which it was the use of monopoly power to obtain preferences in price and other terms that brought the grocery chain's buying practices within the purview of the Sherman Act. See also *United States v. Crescent Amusement Company et al.*, 323 U. S. 173 (1944);<sup>7</sup> *Schine Chain Theatres, Inc., et al. v. United States*, 334 U. S. 110 (1948); *United States v. Griffith*, 334 U. S. 100 (1948); *United States v. Paramount Pictures, Inc.*, 334 U. S. 131 (1948), which involved the use of mass buying power to obtain first runs and other preferences in the motion picture industry.

At the hearing, evidence was adduced in an attempt to show that certain of the discounts and allowances received by respondents were justified by savings in cost. However, the hearing examiner found that these discounts and allowances were not justified by savings in view of the fact that, while they were based upon the total purchases of all members of the association, there was no single billing or delivery point. Assuming these facts as found by the examiner to be correct, we are unable to agree that it follows that Section 5 of the Federal Trade Commission Act has been violated. This is not a case brought under Section 2 (f) of the Clayton Act. If there is reason to believe that respondents have knowingly induced or received the granting of a discriminatory price in violation of the Clayton Act, then such a violation should be pleaded and proved. Suffice it to say that the evidence does not persuade us that Section 5 of the Federal Trade Commission Act has been violated.

It should be noted that the case involves no issue as to intermediaries or of brokerage, or discounts in lieu thereof, under Section 2 (c) of the Clayton Act, as amended.

The complaint should be dismissed.

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<sup>6</sup> The Commission's order in the *Southern Jobbers' Hardware* case, *supra*, which involved a conspiracy among the members of a hardware jobbers association to dominate the wholesale and jobbing trade, was issued to protect an association of retail dealers who, like the respondents in this case, were organized for the purpose of obtaining their supplies from manufacturers to effect savings.

<sup>7</sup> The Supreme Court in the *Crescent Amusement* case appears to have had in mind the kind of situation before us here and intimates that it would not consider it unlawful. "It will not do to analogize this to a case where purchasing power is pooled so that the buyers may obtain more favorable terms. The plan here was to crush competition and to build a support for the exhibitors." 323 U. S. at page 183.

IN THE MATTER OF  
MELVIN MARCUS, DOING BUSINESS AS TELERON COM-  
PANY, AND CECIL C. HOGE ET AL., DOING BUSINESS AS  
HUBER HOGE AND SONS

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

*Docket 6083. Complaint, Feb. 19, 1953—Decision, Feb. 4, 1954*

Where an individual, and an advertising agency and mail order promotion house, engaged, under an agreement entered into between them, in the competitive interstate sale and distribution of a television accessory originally designated as an "Interference Absorber" and later as a "TV Wave Trap" or "Teloron TV Wave Trap"; in advertising their said product in newspapers and other periodicals—

- (a) Represented that the same was a new invention or development, notwithstanding the fact that high pass filters, the technical name of the device, had been in use since 1946 and was standard equipment on some TV sets;
- (b) Represented that the use of said product would immediately and permanently eliminate all forms of TV interference and enable owners of TV sets to get picture-clear reception at all times;

The facts being that while it would block out certain types of interference, there were a number of forms that it would not eliminate and some that it would only partially eliminate; and since they could not determine the forms of interference that might be present in the case of any owner, they could not truthfully claim that the use of their product would enable any owner to get picture-clear reception at any time; and

- (c) Represented that the regular price of their product was \$5; notwithstanding the fact that the price thereof was \$3 and not \$5:

*Held*, That such acts and practices constituted unfair and deceptive acts and practices in commerce and unfair methods of competition therein.

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

*Mr. W. J. Tompkins* for the Commission.

*Mr. Joseph A. Mitschel*, of Ridgewood, Queens, N. Y., for Melvin Marcus.

*Mr. George Landesman, Mr. James R. Withrow, Jr., Mr. Thomas J. McFadden and Donovan, Leisure, Newton & Irvine*, of New York City, for Huber Hoge and Sons.

CONSENT SETTLEMENT <sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 19, 1953, issued and subsequently served its complaint on the respondents named in the cap-

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<sup>1</sup> See footnote on following page.

## Consent Settlement

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tion hereof, charging them with unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of said Act.

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 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 answers to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are 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 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, or that such acts and practices, if engaged in, would 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.

4. Severally assert:

(a) That the respondent copartners have ceased advertising and selling the product here involved, namely, a television accessory designated "Teloron TV Wave Trap";

(b) That the respondent Melvin Marcus, although still engaged in selling the said product, has eliminated from his advertising matter relating thereto the statements and representations alleged in the complaint herein to be false, deceptive and misleading.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission has reason to believe are 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:

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<sup>1</sup> 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 February 4, 1954, and ordered entered of record as the Commission's findings as to the facts, conclusions, 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.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Melvin Marcus is an individual doing business under the trade name of Teleron Company, with his office and principal place of business located at 21-02 122nd Street, College Point, Long Island, New York. Respondents Cecil C. Hoge, John Hoge, Sidney C. Hoge and Barbara Obolensky are individuals and copartners and, prior to October 1, 1952, were engaged in business as an advertising agency and mail order promotion house under the trade name of Huber Hoge and Sons, with their office and principal place of business at 699 Madison Avenue, New York, New York. Effective October 1, 1952, the business known as Huber Hoge and Sons was incorporated under the laws of the State of New York as Huber Hoge & Sons, Inc., with respondents Cecil C. Hoge, Sidney C. Hoge and John Hoge as directors and president, vice president and secretary, respectively.

PAR. 2. In the year 1950 respondent Melvin Marcus began advertising and selling a television accessory originally designated as an Interference Absorber and later denominated as a TV Wave Trap or Teleron TV Wave Trap. In February 1952 respondent Melvin Marcus entered into an agreement with respondents Cecil C. Hoge, John Hoge, Sidney C. Hoge and Barbara Obolensky, doing business as Huber Hoge and Sons, whereby he agreed to give the latter the exclusive right to advertise the aforesaid product. Respondent Melvin Marcus further agreed to purchase from the respondent copartners all of the orders they received for the product at a price of \$1.75 per order, later reduced to \$1.65 per order. Beginning in February, 1952, the respondents engaged in the sale and distribution of the said TV accessory under the aforementioned agreement.

PAR. 3. At all times mentioned herein, respondents have been in substantial competition with other firms and individuals and with corporations in the sale and distribution of similar television accessories in commerce.

PAR. 4. In the course and conduct of their respective businesses respondents caused their said product, when sold, to be transported from the State of New York to purchasers thereof located in other states of the United States and in the District of Columbia. Respondents at all times mentioned herein have maintained a substantial course of trade in their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their respective businesses, as aforesaid, and for the purpose of inducing the purchase of their TV accessory, respondents have made numerous statements and repre-

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sentations concerning their said product by means of advertisements caused to be published in newspapers and other periodicals having a large circulation outside the State of New York. Among and typical of such statements and representations, but not all inclusive thereof, are the following:

STOP TV INTERFERENCE AT ONCE

STOP IT FOR GOOD

2 WAYS TO STOP TV INTERFERENCE FOR GOOD

The only way to permanently remove your interference is to block it out, before it reaches your set, in exactly the same way sunlight glare is blocked out by sunglasses before it reaches your eyes!

Either you can go out and purchase a custom-made electronic interference absorber and have it installed in your set by your repairman. This will stop your TV interference. It will cost you anywhere from \$30 to \$40.

Or you can do what thousands of other TV owners did—you can fix your set yourself in just 45 seconds—simply by clipping onto the back of your set a newly invented bypass filter called the Teleron Wave Trap. This new miracle of modern science, automatically blocks out interference waves before they can reach your set, and is guaranteed to stop TV interference once and for all.

WHICH OF THESE TV HEADACHES DO YOU WANT TO STOP FOR  
GOOD—IN JUST 5 MINUTES?

(Here follow six picturizations of TV interferences designated as Streaks, Distortion, Wavy Lines, Borer Effect, Snow and TV Static.)

PICTURE-CLEAR RECEPTION 365 DAYS A YEAR!  
ORDER TODAY AND SAVE \$2.00

If you order your TELERON WAVE TRAP today, you do not pay the \$5 that 350,000 other TV owners paid. Due to mass demand and mass production for the TELERON WAVE TRAP, this amazing invention is now yours for only \$2.98 with this amazing no-risk guarantee.

PAR. 6. By and through the use of the foregoing statements and representations, and others of similar import but not specifically set out herein, respondents have represented, either directly or by implication, that their product, technically known as a high pass filter, is a new invention or development; that it will immediately and permanently eliminate all forms of TV interference; that it will enable owners of TV sets to get picture-clear reception at all times; and that the regular price of their product has been \$5.00.

PAR. 7. The aforesaid statements, representations and implications, as set forth in Paragraph Five hereof, are false, misleading and deceptive. In truth and in fact, respondents' product is not a new invention or development. High pass filters have been in use since the year 1946

and are standard equipment on some TV sets. There are a number of forms of TV interference that will not be eliminated by respondents' product and some forms that will be only partially eliminated. It will, however, block out certain types of interference. Respondents cannot determine the forms of interference that may be present in the case of any television owner and consequently cannot truthfully claim that the use of their product will enable any TV owner to get picture-clear reception at any time. The regular selling price of respondents' product has been \$3.00 and not \$5.00.

PAR. 8. The use by respondents of the foregoing false, misleading and deceptive statements and representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce the purchasing public to purchase substantial quantities of respondents' product as a result of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

#### CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

#### ORDER TO CEASE AND DESIST

*It is ordered*, That the respondent Melvin Marcus, doing business as Teleron Company, or under any other name, and respondents Cecil C. Hoge, John Hoge, Sidney C. Hoge and Barbara Obolensky, individually and as copartners doing business as Huber Hoge and Sons, or under any other name, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their TV accessory designated as Interference Absorber, TV Wave Trap or Teleron TV Wave Trap, or designated by any other name, or any other product of substantially similar design, do forthwith cease and desist from representing directly or by implication:

1. That the said product is a new invention or development;
2. That the use of said product will eliminate or reduce interference with television reception irrespective of the form of interference;

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3. That the use of said product will result in picture-clear television reception, irrespective of circumstances;

4. That any price is, or was, the customary or usual price for said product which is in excess of the price at which it is, or was, customarily sold by respondents in the usual course of business.

*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.

(Sgd.) Melvin Marcus,  
MELVIN MARCUS, doing  
business as Teleron  
Company.

Dated: Nov. 10, 1953.

(Sgd.) Cecil C. Hoge,  
CECIL C. HOGE.

Dated: Oct. 20, 1953.

(Sgd.) John Hoge,  
JOHN HOGE.

Dated: Oct. 21, 1953.

(Sgd.) Sidney C. Hoge,  
SIDNEY C. HOGE.

Dated: Oct. 23, 1953.

(Sgd.) Barbara Obolensky,  
BARBARA OBOLENSKY,  
Individually and as co-  
partners doing business  
as Huber Hoge and  
Sons.

Dated Oct. 23, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on the 4th day of February, 1954.

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3. That the use of said product will result in picture-clear television reception, irrespective of circumstances;

4. That any price is, or was, the customary or usual price for said product which is in excess of the price at which it is, or was, customarily sold by respondents in the usual course of business.

*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.

(Sgd.) Melvin Marcus,  
MELVIN MARCUS, doing  
business as Teleron  
Company.

Dated: Nov. 10, 1953.

(Sgd.) Cecil C. Hoge,  
CECIL C. HOGE.

Dated: Oct. 20, 1953.

(Sgd.) John Hoge,  
JOHN HOGE.

Dated: Oct. 21, 1953.

(Sgd.) Sidney C. Hoge,  
SIDNEY C. HOGE.

Dated: Oct. 23, 1953.

(Sgd.) Barbara Obolensky,  
BARBARA OBOLENSKY,  
Individually and as co-  
partners doing business  
as Huber Hoge and  
Sons.

Dated Oct. 23, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on the 4th day of February, 1954.

## Decision

IN THE MATTER OF  
DALE A. CARDNER DOING BUSINESS AS CARDNER  
SUPPLY COMPANY

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

*Docket 6113. Complaint, Aug. 7, 1953—Decision, Feb. 4, 1954*

Where an individual engaged in the interstate sale and distribution of drug and cosmetic preparations for the treatment of the hair and scalp; in advertising a combination of his said preparations under the designation "Bash's Formula Eight" in circulars, leaflets, radio continuities, and other advertising matter, directly and by implication—

- (a) Falsely represented that the use thereof would eliminate the cause of falling hair, prevent baldness or partial baldness, and cause the growth of hair on bald and partially bald heads;
- (b) Falsely represented that baldness was caused only by fungus infection;
- (c) Falsely represented through the use of the designation "Doctor" or the abbreviation "Dr." that said preparations had been made according to the formula or under the supervision, advice, or control of a doctor of medicine;
- (d) Falsely represented that the manufacturer of said "Bash's Formula Eight" was an outstanding authority on fungus infections of the hair:

*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. Earl J. Kolb*, hearing examiner.

*Mr. Michael J. Vitale* for the Commission.

*Mr. Don Marlin*, of Los Angeles, Calif., for respondent.

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 February 4, 1954, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 7, 1953, issued and subsequently served its complaint in this proceeding upon respondent, Dale A. Cardner, an individual doing business as Cardner Supply Company, charging him with the use of unfair and deceptive acts and prac-

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tices in commerce in violation of the provisions of said Act. The respondent filed his answer which was later amended upon the record in which answer as amended, he admitted all material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to the 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 answer thereto, all intervening procedure having been waived 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, conclusion drawn therefrom, and order :

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dale A. Cardner is an individual, doing business under the name of Cardner Supply Company with his principal office and place of business located at 14516 South Ibex Avenue, in the city of Norwalk, State of California.

PAR. 2. Respondent for more than two years immediately prior to the filing of the complaint herein was engaged in the sale and distribution of drug and cosmetic preparations for the treatment of the hair and scalp of human beings as drug and cosmetic preparations are defined in the Federal Trade Commission Act. Subsequent to the issuance of the complaint herein respondent discontinued said business and is no longer disseminating or causing the dissemination of any advertisements by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. The designation used by respondent for the drug and cosmetic preparations for the hair and scalp sold and distributed by him as aforesaid and the formula and directions for said preparations are as follows :

Designation : "Bash's Formula Eight"

Formula : *Detergent Shampoo*

1 Gallon Acidolate

8 ounces Triacetin

*Solution No. 1.*

1 lb. Sodium Perborate

1 lb. Urea

1 qt. Triethanolamine Phenolphthalein used as color indicator.

5 gal. Distilled Water.

*Solution No. 2.*

1% Aminoacetic Acid

1% Acetylsalicylic

Formula: *Detergent Shampoo*—Continued*Solution No. 2*—Continued

1% Glacial Acetic Acid

10 c. c. Thiamin Chloride (100 mgs. to 1 c. c.)

10 c. c. Ascorbic Acid (100 mgs. to 1 c. c.)

10 c. c. B Complex

(Vit. B<sub>1</sub> 10 mgs. to 1 c. c.)(Vit. B<sub>2</sub> 10 mgs. to 1 c. c.)

(Niacin 10 mgs. to 1 c. c.)

(Vit. B<sub>6</sub> 10 mgs. to 1 c. c.)

1 c. c. Pituitary Substance (Antuitrin 500 units per c. c.)

1 c. c. Anterior Pituitary Substance (Pituitrin 10 I units per c. c.)

1 gal. Solution 777 (an emulsion) and water sufficient to make one gallon Lotion 777;

Cetyl alcohol..... 30 grams

Urea ..... 10 grams

Benzoic Acid..... 2 grams

Defatted Lanolin ..... 15 grams

Oil of sweet almonds..... 10 c. c.

Mineral Oil..... 10 c. c.

Water to make..... 1000 c. c.

*Solution No. 3.*

1 gal. of Emulsion 777

10 c. c. Rubramin (Vitamin B<sub>12</sub>-30 Micrograms per c. c.)

8 oz. Wheat Germ Oil

4 oz. Triacetin

## Directions:

First: Use Special Shampoo twice weekly. Moisten hair first, then rub a little Special Shampoo in well. Allow to dry for 2 to 3 minutes, then rinse with warm water.

Second: Apply Solution No. 1 of Formula Eight to the scalp each morning. Apply directly to the scalp with medicine dropper, fingertips, or dab of cotton and allow to dry.

Third: Apply thin coat of Special Booster every day, any time between morning and night solutions, over thinning and denuded areas and massage gently until completely absorbed. Best results obtained if steamed in with warm towels for approximately 15 minutes.

Fourth: Apply Solution No. 2 of Formula Eight to the scalp at night before retiring. Apply directly to the scalp with medicine dropper, fingertips or dab of cotton and allow to dry.

PAR. 4. Respondent caused said drug and cosmetic preparations designated "Bash's Formula Eight," when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States. At all times mentioned herein respondent has maintained a course of trade in said preparations in commerce between and among the various States of the United States.

PAR. 5. In the course and conduct of the aforesaid business, the respondent has disseminated and has caused the dissemination of

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advertisements concerning his said preparations "Bash's Formula Eight" by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to circulars, leaflets, radio continuities and other advertising matter for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said preparation; and the respondent has also disseminated, and has caused the dissemination of advertisements concerning said preparations, by various means, including but not limited to the means aforesaid for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, are the following:

Almost beyond belief, at the end of the six months' contest, was the announcement that hair had started to grow again on every one of the bald heads.

Formula Eight has caused hair to grow again on thousands of bald heads in all age groups, both men and women!

Actually, we have yet to find a condition of baldness that has failed to respond to proper application of Formula Eight. \* \* \* Then you will understand why we sincerely believe that Formula Eight holds a promise of hope to millions afflicted with baldness—Why we believe that Formula Eight will restore normal, healthy hair to bald scalp areas.

Bash's Formula Eight is so compounded that it not only arrests incipient baldness but can help recovery from partial or complete baldness regardless of how long the condition has existed.

It will, properly used, eliminate the cause of falling hair very promptly, and by faithful and continued use will help nature regain its proper balance and help promote the regrowth of hair.

\* \* \* a substance that will actually grow hair on bald heads.

\* \* \* my barber gave my new hair its first "haircut" last week!

The Bash theory—that baldness is caused by an invisible fungus infection of the scalp—now establishes that baldness is not hereditary—that falling hair and other scalp conditions leading to baldness can be quickly stopped and hair cells helped to grow hair again.

Yes; Bash's Formula Eight holds a promise of hope to millions now afflicted with partial or complete baldness, regardless of how long the condition has existed.

The story of Dr. Bash's Formula Eight.

Dr. I. J. Bash has, through intensive research in Bio-chemistry, emerged as an outstanding authority on the subject of fungus infection of the hair.

Dr. Bash's Formula Eight is the revolutionary new product that actually helps nature restore hair oils to function as nature intended—to grow healthy hair again!

PAR. 6. Through the use of the aforesaid statements and representations and others of similar import and meaning, not specifically set

out herein, respondent represented, directly and by implication, that the use of his preparations will eliminate the cause of falling hair; will prevent baldness or partial baldness and cause the growth of hair on bald and partially bald heads; and that baldness is caused only by fungus infection.

PAR. 7. The aforesaid representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of respondent's hair preparations will not eliminate the cause of falling hair, will not prevent baldness or partial baldness and will not cause the growth of hair on bald or partially bald heads. Baldness is not caused solely by fungus infection.

PAR. 8. Respondent, by the use of the designation "doctor," or the abbreviation thereof "Dr.," in advertisements and representations referring to the manufacturer of his preparations designated as "Bash's Formula Eight" thereby represents or implies that such preparations have been made according to the formula or under the supervision, advice or control, of a doctor of medicine. In truth and in fact, the manufacturer of the preparations designated as "Bash's Formula Eight," is not a physician or doctor of medicine duly licensed as such to practice medicine by a recognized governmental authority, and does not possess any degree, or title of doctor, nor have the preparations designated as "Bash's Formula Eight" been made according to the formula or under the supervision, advice or control, of a doctor of medicine or any doctor. Further, respondent's statement that the manufacturer of "Bash's Formula Eight" is an outstanding authority on fungus infections of the hair is false for the reason that the person referred to is not an authority in any sense on said subject.

PAR. 9. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has 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 preparations because of such erroneous and mistaken belief.

#### CONCLUSION

The 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 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, Dale A. Cardner, an individual, doing business as Cardner Supply Company or under any other name, and his representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparations known as "Bash's Formula Eight," or any other preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

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

(a) That the use of said preparations will eliminate the cause of falling hair; will prevent baldness or partial baldness; or will promote growth of hair on bald or partially bald heads.

(b) That baldness or partial baldness is caused only by fungus infection.

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

*It is further ordered*, That the respondent, Dale A. Cardner, an individual, doing business as Cardner Supply Company or under any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparations known as "Bash's Formula Eight," or any other drug or cosmetic preparation for treatment of the hair or scalp, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the word "Doctor," or any abbreviation or simulation thereof, to designate, describe or refer to any such preparation not made in accordance with the formula or under the supervision of a member of the medical profession; or otherwise representing, directly or by implication, that any such preparation has been so made.

(2) Representing, directly or by implication, that the manufacturer of said preparations is an authority on fungus infections of the hair.

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## Order

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That the respondent, Dale A. Cardner, an individual, doing business as Cardner Supply Company, 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 declaratory decision and order of February 4, 1954].

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IN THE MATTER OF  
U. S. PRINTING & NOVELTY CO., INC., ET AL.

## MODIFIED CEASE AND DESIST ORDER

*Docket 5647. Order, Feb. 5, 1954*

Order, following per curiam decision of the Court of Appeals and order of said Court dated June 4, 1953, 204 F. 2d 737, modifying the Commission's order issued on Sept. 4, 1952, Docket 5647, 49 F. T. C. 190, by substituting the words "*which are to be used, or which, due to their design, are suitable for use*" for the words "*which are designed or intended to be used*" in the sale or distribution of merchandise to the public by means of a game of chance, etc.

Before *Mr. Clyde M. Hadley* and *Mr. Abner E. Lipscomb*, hearing examiners.

*Mr. J. W. Brookfield, Jr.*, for the Commission.

*Nash & Donnelly*, of Washington, D. C., for respondents.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by a hearing examiner of the Federal Trade Commission upon the complaint of the Commission and respondents' substituted answer waiving the taking of testimony and other procedure; and said hearing examiner having filed his initial decision; and counsel for respondents having filed with the Commission an appeal from said initial decision; and the Commission having considered the proceeding upon the record herein, including briefs in support of and in opposition to the appeal; and the Commission, after granting said appeal in part and denying it in part, having made its findings as to the facts and conclusion drawn therefrom and on September 4, 1952, issued an order to cease and desist against respondents U. S. Printing & Novelty Co., Inc., Benjamin Blush, and Jack Blush, and an order dismissing the complaint as to respondent Hyman Abramowitz; and

Respondents U. S. Printing & Novelty Co., Inc., Benjamin Blush, and Jack Blush, having filed in the United States Court of Appeals for the District of Columbia Circuit their petition to review and set aside said order to cease and desist; and the Court having heard the matter on briefs and oral argument and having thereafter, on October 22, 1953, served upon the Commission an order dated June 4, 1953 (petition for writ of certiorari filed by respondents having been denied by the Supreme Court of the United States on October 12, 1953), modifying said order to cease and desist, and having thereafter, on November 18, 1953, entered another order enforcing, as modified, said order to cease and desist; and