

IN THE MATTER OF
RAY BUSCH AND PAUL MUELLER, JR., DOING BUSINESS
AS NATION-WIDE SEWING MACHINE AND SUPPLY
COMPANY

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6117. Complaint, Aug. 7, 1953—Decision, Jan. 20, 1955

Order requiring partners in Chicago to disclose the country of origin conspicuously on Japan-made sewing machines and sewing machine heads they sold to retailers; to cease using the trade name "Universal" for their products; and to cease representing in advertising matter furnished to dealers a wholly fictitious price as the normal retail price.

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Taggaret and *Mr. Michael J. Vitale* for the Commission.

Mr. Daniel S. Tauman, of Chicago, Ill., for respondents.

INITIAL DECISION BY JOHN LEWIS, 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 the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of said Act. The said respondents failed to file answer to the complaint and failed to appear at the time and place fixed for hearing. At said hearing before the above-named hearing examiner, theretofore duly designated by the Commission, the attorney in support of the complaint moved that the hearing be closed without the taking of testimony and that the hearing examiner proceed, in due course, to find the facts to be as alleged in the complaint and issue an order to cease and desist in the form set forth in the "Notice" portion of said complaint. It appearing that the aforesaid "Notice" provided that the failure of respondents to file timely answer and to appear at the time and place fixed for hearing would be deemed to authorize the Commission and the hearing examiner to find the facts to be as alleged in the complaint and to issue an order in the form therein set forth, the hearing examiner granted said motion and the hearing was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by the said hear-

ing examiner upon the complaint and said motion of the attorney in support of the complaint; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and, pursuant to Rules V and VIII of the Rules of Practice of the Commission, makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Ray Busch and Paul Mueller, Jr., were, at all times material hereto, copartners, doing business under the name of Nation-Wide Sewing Machine and Supply Company, with their office and principal place of business located at 3551 West Fullerton Avenue, Chicago, Illinois.

PAR. 2. Said respondents were, for several years last past, engaged in the sale and distribution of sewing machines, of which heads imported from Japan are a part, under the brand or trade names, "Dress-maker," "New Electric" and "Universal," to retailers, who, in turn, sell to the purchasing public. In the course and conduct of their business respondents caused their said products, when sold, to be transported from their place of business in the State of Illinois, to the retailers thereof located in various other States of the United States. The volume of trade in said commerce has been substantial.

PAR. 3. When the sewing machine heads were received by respondents, the words "Japan" or "Made in Japan" appeared on back of the vertical arm. Before the heads were sold to the purchasing public as a part of a complete sewing machine, it was necessary to attach a motor to the head, in the process of which the aforesaid word or words were covered by the motor so that they were not visible. In some instances, said heads, when received by respondents, were marked with a medallion placed on the front of the vertical arm upon which the words "Japan" or "Made in Japan" appeared. These words were, however, so small and indistinct that they did not constitute adequate notice to the public that the heads were imported. Respondents placed no other marks on their imported sewing machine heads or on complete sewing machines of which said heads were a part, showing foreign origin before sale.

PAR. 4. When sewing machines or sewing machine heads are exhibited and offered for sale to the purchasing public and such products are not labeled or otherwise marked clearly showing they are of foreign origin, or if marked and the markings are covered or otherwise concealed, such purchasing public understands and believes such products to be wholly or substantially of domestic origin.

Findings

51 F. T. C.

There is among the members of the purchasing public a substantial number who have a decided preference for sewing machines and sewing machine heads which are manufactured in the United States over such products originating in whole or in substantial part in foreign countries, where other considerations such as style and quality are equal.

PAR. 5. Respondents have used the word "Universal" and other well known domestic names as trade or brand names for their sewing machine heads and complete sewing machines, which words were printed or embossed on the front horizontal arm of the head in large, conspicuous letters, and used said trade or brand names in their advertising matter. The word "Universal" and other well known names so used are the names, or parts of the names of, or used as trade names, marks or brands by, one or more business organizations transacting and doing business in the United States, which are and have been well and favorably known to the purchasing public and which are and have been well and long established in various industries.

PAR. 6. By using a trade or brand name such as "Universal" and other well known domestic names, respondents have represented, directly or by implication, that their product is manufactured by, or connected in some way with, the well and favorably known American firm or firms with which said names have long been associated, which is contrary to the fact.

PAR. 7. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the word "Universal" and other well known domestic names. The use of said trade or brand names by respondents on their sewing machines and heads has enhanced the belief on the part of the public that the said sewing machines are of domestic origin.

PAR. 8. Respondents, in advertising matter furnished to dealers, have made such statements as the following:

(Picturization of a portable electric
sewing machine)

\$169.50

For a Lifetime of Service

By and through the use of the aforementioned statement, respondents represented, that their portable electric sewing machines were customarily sold to the members of the purchasing public for the sum of \$169.50.

The aforesaid representations were false, misleading and deceptive. In truth and in fact, the sum of \$169.50 is greatly in excess of the amount usually and ordinarily charged for the said sewing machines by retailers and is a wholly fictitious price.

PAR. 9. Respondents, by placing in the hands of dealers their said imported sewing machine heads and completed sewing machines, of which said heads are a part, and advertising material showing a fictitious retail price for their sewing machines, have provided said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads and the customary retail price of their sewing machines.

PAR. 10. Respondents, in the course and conduct of their business, were, at all times material hereto, in substantial competition in commerce with the makers and sellers of domestic sewing machines and also the sellers of imported sewing machines, some of whom adequately disclose to the public that their machines or parts thereof are of foreign origin.

PAR. 11. The failure of respondents adequately to disclose on the sewing machine heads that they are manufactured in Japan and also the use of trade or brand names such as "Universal" and other prominent domestic names have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and is manufactured by the well and favorably known firm or firms with which said trade or brand names have long been associated and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, because of this erroneous and mistaken belief. Further, the use of fictitious retail prices has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that the fictitious prices are the amounts usually and ordinarily charged for the said sewing machines by retailers.

As a result 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 acts and practices of respondents, as hereinabove found, are all to the prejudice and injury of the public and the respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Opinion

51 F. T. C.

ORDER

It is ordered, That the respondents, Ray Busch and Paul Mueller, Jr., individually and as copartners, doing business as Nation-Wide Sewing Machine and Supply Company, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Offering for sale, selling or distributing foreign-made sewing machines, or sewing machines of which foreign-made heads are a part, without clearly and conspicuously disclosing on the heads the country of origin thereof, in such a manner that it cannot readily be hidden or obliterated.

2. Using the word "Universal," or any simulation thereof, as a brand or trade name to designate, describe or refer to their sewing machines or sewing machine heads; or representing, through the use of any other word or words or in any other manner, that their sewing machines or sewing machine heads are made by anyone other than the actual manufacturer.

3. Placing in the hands of others a means or instrumentality by and through which the purchasing public may be misled or deceived as to the usual and customary retail price of their sewing machines.

SPECIAL CONCURRING OPINION

By MASON, *Commissioner*:

Respondents having failed to file answer to the complaint and having failed to appear at the time and place fixed for hearing, and an order of default having been entered against them, the rules of the Commission provide:

"In the 'Notice' portion of the complaint there may be set forth a provisional order to cease and desist which the Commission shall have reason to believe should issue if the facts in the record shall be found to be as alleged in the complaint. If the complaint contains such order, it shall also state that such order shall issue, unless the respondent shall file an answer within the time designated in the complaint; shall appear at the time and place so fixed; and shall show cause why the said order to cease and desist should not be entered by the Commission, * * *."

Such order, in my opinion, applies the same sanctions and responsibilities to respondents that would be assessed against them were an

adversary hearing conducted with the presentation of evidence. Default or consent orders, in my opinion, carry equal validity with all others insofar as respondents are concerned. Such orders lack, however, that substantial guidance looked for by practicing lawyers and businessmen accorded both the public and courts under the rule of *stare decisis*—the legal doctrine which “attaches great weight to decisions which have invited those who administer governmental affairs to depend on them as correct expositions of the law, and which likewise incline those who deal with governmental bodies to determine their demands and courses of action on the decisions already announced. *Noonan v. City of Portland*, 88 P. 2d 808, 818, 161 Or. 213.” (Words and Phrases, p. 605.)

The doctrine of *stare decisis* is a rule of precedent stated in its general and simplest terms. It expresses the policy of the courts not to disturb settled points. It is not a rigid compulsion but a deference to precedent.¹

True deference is always based on an earned respect. The settlement of issues which have not been subjected to the cleansing fire of full presentation of both sides of a controversy hardly could be expected to carry the weight of a decision based on complete advocacy of two conflicting points by the champions of each cause.

The instant order was the outcome of silence and absence on the part of the respondents, and its entry is in the public interest for the purpose of terminating the particular controversy as it affects the parties litigant.

As to consent orders, they are encouraged by limiting the sanctions to those agreed to and specifically excluding the use of the decision in any other proceedings (as for instance, consent orders often provide they cannot be used as a basis for treble damage in other actions).

I feel called upon to make these observations at this time because the general questions involved in the present decisions have been the subject of two other consent orders already entered (Docket Nos. 6013² and 6064³) and one contested case (Docket No. 5888⁴) still pending before the Commission on the merits. It is to this latter that my comments are directed, for both the instant case and the pending contested case involve (amongst other things) the claim of the prosecution that the Commission should ban the term “Universal” as a marking for imported sewing machines.

¹ See *Brown v. Rosenbaum*, 23 N. Y. S. 2d 161 (1940).

² *Del Mar Sewing Machine Co.*, 49 F. T. C. 1257.

³ *Mercury Vacuum Stores, etc.*, 50 F. T. C. 603.

⁴ See p. 1012 of this volume.

I take it that neither the default herein nor consent of parties to the other orders above mentioned can affect the rights or waive the protection of litigants in Docket No. 5888.

Those who elect to test the legality of their business methods through adversary proceedings are entitled to their "day in court" with all of the legal and judicial protection that such a phrase implies. It is upon this basis that I concur in the above order.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter coming on to be heard by the Commission upon its review of the hearing examiner's initial decision herein; and

The Commission having duly considered the entire record and being of the opinion that said initial decision is adequate and appropriate to dispose of the proceedings:

It is ordered, That the initial decision of the hearing examiner shall on January 20, 1955, become the decision of the Commission.

It is further ordered, That the respondents Ray Busch and Paul Mueller, Jr., 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.

Opinion

IN THE MATTER OF
VULCANIZED RUBBER AND PLASTICS COMPANY

Docket 6222. Complaint, June 25, 1954—Order, Jan. 20, 1955

Interlocutory order denying as unjustified respondent's appeal from the hearing examiner's denial of its motion for suspension of the hearings and referral of the matter to the Commission's Bureau of Industry Cooperation for authorization of a trade practice conference.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. Charles S. Cox for the Commission.

Chapman, Walsh & O'Connell, of Washington, D. C., and *Mr. Joseph Sawyer*, of New York City, for respondent.

Mr. I. Louis Wolk, of Los Angeles, Calif., for Dayton Rubber Co., amicus curiae.

Arthur, Dry & Dole, of New York City, for United States Rubber Co., amicus curiae.

OPINION OF THE COMMISSION

Per CURIAM:

This is an interlocutory appeal by the respondent from a ruling of the hearing examiner denying respondent's motion for suspension of the hearings herein and the referral of this matter to the Commission's Bureau of Industry Cooperation for the authorization of a trade practice conference. Respondent contends that its appeal is justified under Rule XX of the Commission's Rules of Practice. Oral argument on the appeal is requested by respondent.

Under the Commission's Rules of Practice interlocutory appeals from rulings of the hearing examiner may be prosecuted only when it is shown to the satisfaction of the Commission that a prompt decision of the appeal is necessary to prevent unusual expense and delay. In order to justify such an appeal it must be shown that the unusual expense and delay involved is other than that usual and necessary in an adversary proceeding.

Respondent contends that its appeal is justified under the Commission's Rules because if the issues in this proceeding could be settled by a trade practice conference the expense and delay incident to a continuation of the proceeding will be obviated. This argument obviously is based on pure speculation. The appeal, not being supported by the showing of a likelihood that trade practice conference rules covering the practices alleged to be unlawful would be promulgated, or that the respondent would comply with such rules if they were promulgated, or that the Commission, in any such event, would find

Order Denying, etc.

it to be in the public interest for this proceeding to be dismissed, has not been justified. Under the circumstances, oral argument on the appeal would serve no useful purpose.

An order will be entered denying respondent's appeal and the request for oral argument thereon.

Mr. Howrey did not participate.

ORDER DENYING RESPONDENT'S APPEAL FROM HEARING EXAMINER'S
RULING

This matter having come on to be heard by the Commission upon respondent's appeal from a ruling of the hearing examiner denying respondent's motion for suspension of the hearings herein and the referral of this matter to the Commission's Bureau of Industry Cooperation for the authorization of a trade practice conference, and briefs of counsel in support of, and in opposition to said appeal; and

The Commission having determined, for the reasons appearing in the accompanying opinion of the Commission, that the appeal has not been justified, and that oral argument on the appeal, which was requested by the respondent, would serve no useful purpose:

It is ordered, That respondent's appeal from the hearing examiner's ruling denying respondent's motion for suspension of the hearings herein and the referral of this matter to the Commission's Bureau of Industry Cooperation, and the request for oral argument thereon be, and they hereby are, denied.

Commissioner Howrey not participating.

Complaint

IN THE MATTER OF

PLASTIQ FINISHES CO.; ROBERT ERDMANN; AND ROBERT VAN WORP TRADING AS LINSEED WHITE CO. AND MARY CARTER PAINT ORGANIZATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6187. Complaint, Mar. 4, 1954—Decision, Jan. 21, 1955

Consent order requiring the operators of retail stores in New York, New Jersey, and Florida, to cease representing falsely in advertising an exclusive process of preparation, the quality, comparative pricing, linseed oil content, consumer demand, and tests and approval by independent research laboratories, of their "Mary Carter" paint products.

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

Mr. Jesse D. Kash for the Commission.

Mr. Webster Ballinger, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that PlastiQ Finishes Co., a corporation, Robert Erdman, individually and as an officer of said corporation, and Robert Van Worp, individually and as an officer of said corporation and trading as Linseed White Co. and Mary Carter Paint Organization, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent PlastiQ Finishes Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located on Route 34, Matawan, New Jersey. A portion of its business is transacted under the name Linseed White Co. located at the same address. Said corporate respondent has various retail stores in New York and New Jersey.

The individual respondents, Robert Erdman and Robert Van Worp, are the principal officers of PlastiQ Finishes Co., and formulate, direct and control the acts, policies and practices of said corporate respondent.

Respondent Robert Erdman has his principal place of business located on Route 34, Matawan, New Jersey.

Respondent Robert Van Worp has his principal place of business located at 4806 Hesperides, Drew Park, Florida. Said individual respondent trades under the name Linseed White Co. and Mary Carter Paint Organization and uses the trade name "Mary Carter" for the paint products sold by him and allows the said trade name to be used by respondent PlastiQ Finishes Co., trading as Linseed White Co.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the manufacture, sale and distribution of paints sold under the name "Mary Carter."

In the course and conduct of their business, respondents cause and have caused a substantial quantity of their paints, when sold, to be transported from their aforesaid places of business in the States of New Jersey and Florida to purchasers thereof located in various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their said businesses, and for the purpose of inducing the purchase of their said products, respondents have made numerous claims and statements concerning their products in advertisements inserted in newspapers and in other advertising media circulated generally among the public.

By and through the use of the said statements appearing in said advertising matter, respondents represented, directly and by implication:

(1) That their paint products are made by an exclusive new process which mixes or prepares paint in an entirely different manner than that used by all other manufacturers of paint products.

(2) That their paint products are equal to the highest quality paint on the market.

(3) That savings of \$6.00 to \$8.00 on every two gallons are afforded to purchasers of respondents' paints from the prices of competitive paints of comparable quality.

(4) That their paint products are made with linseed oil and are linseed-oil paints.

(5) That they have a million or more customers.

(6) That they sell their paints at retail, at factory prices.

(7) That their paint products have been tested and approved by an independent research laboratory.

PAR. 4. The statements set out in Paragraph Three above were false, misleading and deceptive. In truth and in fact:

(1) The process employed by respondents in mixing or preparing their paint is neither new nor exclusive. On the contrary, such process has been used, and is now being used, by many paint manufacturers.

(2) Respondents' paints are not equal in quality to many other paint products on the markets.

(3) Savings, if any, in the purchase of two gallons of respondents' paint, as compared to the price of two gallons of competitive paint of comparable quality will be much less than \$6.00.

(4) Respondents' paints do not contain sufficient linseed oil to properly characterize them as linseed-oil paints or as being made with linseed oil.

(5) Respondents' customers number many less than a million.

(6) Respondents do not sell their paint at factory prices.

(7) Respondents' paints have not been tested or approved by an independent research laboratory.

PAR. 5. At all times mentioned herein, respondents have been and now are in substantial competition with other corporations and with firms and individuals in the sale of paint in commerce.

PAR. 6. The use by respondents of the foregoing false and misleading representations have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations were true and caused a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said products. As a result thereof, substantial trade has been unfairly diverted to respondents from their competitors. In consequence thereof, substantial injury has been and is being done to respondents' competitors in commerce.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated January 21, 1955, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

Order

51 F. T. C.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondents with certain violations of the Federal Trade Commission Act. A stipulation has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the answer heretofore filed by respondents is withdrawn, together with their motion to dispose of the proceeding by means of a stipulation and agreement to cease and desist, and that the complaint and present stipulation shall constitute the entire record in the proceeding; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, respondents specifically waiving any and all right, power and privilege to challenge or contest the validity of such order; that the complaint may be used in construing the terms of the order; and that the order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

It is further stipulated that respondent Robert Erdmann (referred to in the complaint as Robert Erdman) severed his official connection with the corporate respondent, PlastiQ Finishes Co., on October 7, 1954, selling and conveying his entire stock in the corporation to respondent Robert Van Worp.

It appearing that the proceeding is in the public interest, the stipulation is hereby accepted and made a part of the record and the following order issued:

ORDER

It is ordered, That the respondents, PlastiQ Finishes Co., a corporation, and its officers, and Robert Erdmann, individually, and Robert Van Worp, individually and as an officer of said corporation and also trading as Linseed White Co. and Mary Carter Paint Organization, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their paint products designated "Mary Carter" or any other paint product of substantially similar

637

Order

composition, whether sold under said name or any other name, do forthwith cease and desist from representing, directly or by implication:

1. That their paint products are made by an exclusive or new process or are made in a different manner from that used by other manufacturers of paint products.

2. That their paint products are equal to the highest quality paints on the market unless such be a fact.

3. That savings of \$6.00 to \$8.00 are afforded to purchasers of two gallons of respondents' paints in comparison with the prices charged by others selling paints of comparable quality, or otherwise misrepresenting the amount of savings afforded to purchasers of their paint products.

4. That their products are linseed oil paints unless and until such is a fact.

5. That they have a million customers or any other number of customers in excess of the actual number.

6. That the prices at which they sell their paint products at retail are factory prices.

7. That their paint products have been tested and approved by an independent research laboratory, unless and until such is a fact.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 [as required by said declaratory decision and order of January 21, 1955].

IN THE MATTER OF
FREDERICK CLUTHE TRADING AS CHARLES CLUTHE
& SONS; AND CHARLES CLUTHE & SONS

MODIFIED ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 3512. Modified Order, Jan. 25, 1955

Order reopening proceeding in which findings and order originally issued April 10, 1939, 28 F. T. C. 1390, and modifying Paragraph Four of said Findings and said Cease and Desist Order to permit respondent to advertise that the "Cluthe Truss" could give certain relief from reducible inguinal ruptures.

*Mr. Charles S. Cox and Mr. William M. King for the Commission.
Miller & Chevalier, of Washington, D. C., for respondents.*

ORDER REOPENING PROCEEDING AND GRANTING MOTION FOR MODIFICATION
OF FINDINGS AS TO THE FACTS AND OF ORDER TO CEASE AND DESIST

This matter coming on to be heard upon motion of the Director, Bureau of Litigation, filed August 26, 1954, to reopen the proceeding and to modify the findings as to the facts and order to cease and desist, and upon answer filed by respondents interposing no objection to the granting of such motion; and

The Commission having duly considered the matter and having determined, for the reasons set forth in the accompanying opinion, that the request for modification of Paragraph 4 of the findings as to the facts and for modification of the order to cease and desist should be granted and that the proceeding accordingly should be reopened for that purpose:

It is ordered, That said motion to reopen should be, and it hereby is, granted.

It is further ordered, That Paragraph 4 of the findings as to the facts originally entered herein be modified to read as follows:

"PAR. 4. The representations thus made by the respondents are false and misleading. In truth and in fact, the use of said device (a) will not overcome rupture troubles; (b) will not fit all ruptures, but can be expected to fit most reducible inguinal ruptures; (c) will not cure ruptures; (d) will not provide an effective treatment for ruptures; (e) will not end rupture worries; (f) will not prevent the intestines from passing through all forms of ruptures, but will prevent the intestines from passing through most reducible inguinal ruptures; (g) will not enable a ruptured person to engage safely in severe forms of