

IN THE MATTER OF
NOVELTY KNITTING MILLS, INC., ET AL.

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

Docket 6171. Complaint, Feb. 11, 1954—Decision, Jan. 29, 1955

Consent order requiring a manufacturer of wool products in Philadelphia, Pa., to cease violating the Wool Products Labeling Act through falsely tagging wool products as to the character and proportion of their constituent fibers, failing to label products with the information required by the Act, and furnishing false guaranties; and to cease violating the Federal Trade Commission Act through labeling as "100% Cashmere", etc., men's sweaters which were composed of a blend of cashmere and wool of the sheep.

Before *Mr. J. Earl Cox* and *Mr. Loren H. Laughlin*, hearing examiners.

Mr. George E. Steinmetz for the Commission.

Sterling, Magaziner, Stern & Levy, of Philadelphia, Pa., for respondents.

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 29, 1955, the initial decision in the instant matter of hearing examiner Loren H. Laughlin, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on February 11, 1954, issued its complaint herein under the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, against the above-named corporate respondent and also against the now deceased respondent Martin J. Feld, both individually and as an officer of said corporate respondent, and doing business as Ascot Knitwear Company, charging them and each of them in several particulars in substance with engaging in unfair and deceptive acts and practices and unfair methods of competition in violation of the provisions of said Acts and of the Rules and Regulations of the Commission promulgated under said Wool Products Labeling Act by misbranding, advertising and selling in commerce certain wool prod-

ucts as "Cashmere." Said complaint was duly served upon each of said respondents and on June 21, within time extended therefor by the hearing examiner then assigned to the case, the respondent Novelty Knitting Mills filed its answer. The answer in substance admits the jurisdiction of the Commission; alleges its own corporate capacity and admits its business to be the manufacture and sale of sweaters as alleged in the complaint; alleges that it is and for many years past has been a closed family corporation of the Feld family; alleges the death of the respondent Martin J. Feld on April 24, 1954, and that he was the sole active participant in the corporate affairs and business prior to his death by reason of certain trusts of the capital stock of said corporation theretofore created (and referred to more particularly later herein); that the other officers and stockholders, Rose Feld and Isaac Feld, the parents of Martin J. Feld, had no part in the active management of the corporation and had no knowledge of its business practices and further, said corporate respondent avers it had no knowledge of the acts complained of which pertain to the alleged violations charged, and denies the allegations of its competitive status with other corporations and individuals in commerce.

On August 5, 1954, the undersigned, Loren H. Laughlin, was duly designated as the hearing examiner to hear and initially decide this proceeding in the place and stead of J. Earl Cox, the hearing examiner theretofore appointed for such purposes. On October 12, 1954, a hearing was held pursuant to notice duly given, at Philadelphia, Pennsylvania, before the undersigned hearing examiner upon the issues presented by said complaint and answer. At such hearing the respondent corporation appeared by its above-named attorney of record and it was stipulated between counsel supporting the complaint and the said corporate respondent by its said attorney that in lieu of the introduction of oral testimony and other evidence by the parties the proceeding would be submitted for decision on the basis of a "Stipulation as to the Facts" entered into by said counsel at said hearing on October 12, 1954. It was stipulated therein that the hearing examiner might proceed upon such stipulated facts to make his initial decision, stating his findings as to the facts, including inferences he might draw therefrom and his conclusions based thereon, and enter his order disposing of the proceeding without the filing of proposed findings and conclusions or the presentation of oral argument; and further, that the Commission might, if the proceeding should come before it upon appeal from the initial decision of the hearing examiner or by review upon the Commission's own motion, that the stipulation might in its discretion be set aside and the case remanded for further proceeding under the

complaint. It was still further stipulated that the complaint, insofar as it relates to the deceased respondent Martin J. Feld, individually and as an officer of Novelty Knitting Mills, Inc., and doing business as Ascot Knitwear Company, might be dismissed, and that the hearing examiner might upon the basis of the stipulated facts issue an order to cease and desist against said corporate respondent in form and substance as that set out in the "Notice" portion of the Complaint herein.

Said stipulation and also a "Stipulation of Counsel" dated September 27, 1954, entered into as a result of a pre-hearing conference, which stipulation incorporated attached true copies of the two trust agreements referred to later herein, were each offered in evidence without objection and each was accepted by the hearing examiner and received in evidence. No other evidence was presented. In connection with the presentation of such stipulations, however, brief oral statements were made by the respective counsel. Counsel for respondent in his oral statement in substance recited the history of the Novelty Knitting Mills, Inc. as a closed family corporation of the Feld family wherein Rose Feld, the mother of Martin J. Feld, now deceased, was the owner of approximately two-thirds of the shares of the issued outstanding stock of the company and the other approximate one-third of such stock was owned by the said Martin J. Feld; that Rose Feld on September 24, 1941, established an irrevocable trust under the terms of which her husband Isaac Feld, the father of Martin J. Feld, was the life income beneficiary, and Martin J. Feld and his children in the sequence stated in said trust were the beneficiaries of the remainder; that the said Martin J. Feld on January 12, 1944, established a revocable trust of his shares of said corporate stock wherein he retained complete control of the shares he had deposited therein throughout his life, so that during the respective years of the said trusts Martin J. Feld until his death not only formulated, directed and controlled the business policies of the respondent corporation, but without restraint or control by his mother or father, operated the business of the corporation as if it were a wholly-owned sole proprietorship enterprise; that Rose Feld and Isaac Feld were even at the time of establishment of the Rose Feld trust, aged persons and were inactive in corporate affairs, except only as to formal matters requiring their official signatures.

The matter was thereupon submitted and the hearing closed. At the hearing, however, it was announced that the complaint was dismissed by the hearing examiner as to the deceased respondent Martin J. Feld, this to be confirmed later by written order incorporated in the initial decision.

And the proceeding now having come on for final consideration and initial decision upon the complaint, answer, stipulations and statements of counsel made at the hearing, and the hearing examiner having fully and carefully considered the whole record herein, finds that this proceeding is in the interest of the public; that the complaint as a whole and in each alleged particular therein states cause for complaint under the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated under the latter Act; and that the Commission has jurisdiction of the subject matter and of the corporate respondent, Novelty Knitting Mills, Inc. The hearing examiner therefore makes the following findings of facts from those agreed to and recited in the said stipulations, his conclusions drawn therefrom, and order:

FINDINGS OF FACTS

1. Respondent Novelty Knitting Mills, Inc., is and was at all times material hereto, a corporation duly organized under and by virtue of the laws of the Commonwealth of Pennsylvania. Its office and principal place of business is Fourth and Cumberland Streets, Philadelphia, Pennsylvania.
2. The officers of the corporate respondent Novelty Knitting Mills, Inc., during the period of time referred to in the complaint were: President and Treasurer, Isaac Feld; Vice President and Secretary, the said individual respondent Martin J. Feld; and the directors thereof were, during such period of time, Rose Feld, Isaac Feld, and Martin J. Feld.
3. During the times mentioned in the complaint, the individual respondent Martin J. Feld acted as Vice President and Secretary of said respondent corporation, Novelty Knitting Mills, Inc., and as such, formulated, directed and controlled the manufacturing, marketing and merchandising policies, acts and practices thereof.
4. Martin J. Feld, the individual respondent, died April 24, 1954.
5. Approximately two-thirds of the issued and outstanding capital stock shares of the said respondent corporation (238 and 3534/10,000) since February 24, 1941, have been and now are owned and registered on the books of the corporation in the name of designated trustees under an irrevocable inter vivos trust created February 24, 1941, by the prior owner thereof, Rose Feld, mother of the late Martin J. Feld, for the life income benefit of Isaac Feld, father of the late Martin J. Feld, and after the death of Isaac Feld the income to Martin J. Feld, with power to withdraw payments from principal in his discretion, and after the death of the survivor of them, the principal then remain-

ing and unconsumed income therefrom to the living issue of Martin J. Feld.

6. The remaining approximately one-third of the outstanding and issued shares (141.375) of the capital stock of the corporate respondent Novelty Knitting Mills, Inc., have been and now are owned and registered on the books of the said corporation in the name of designated trustees under a revocable inter vivos trust of Martin J. Feld, Settlor, dated January 12, 1944, for his own benefit during his life and thereafter for the benefit of his wife and children.

7. Both of said trusts respectively, that created February 24, 1941, by Rose Feld, and that of January 12, 1944, established by Martin J. Feld, now deceased, are still presently in existence and operative under their respective terms and ownership of said shares of such capital stock is presently held as respectively provided in each of said trusts.

8. Subsequent to the effective date of the Wool Products Labeling Act, and particularly during 1953, the corporate respondent Novelty Knitting Mills, Inc., manufactured for introduction, introduced, sold, distributed, delivered for shipment and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

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

10. Said wool products, namely, men's sweaters, were misbranded within the intent and meaning of said Act and the Rules and Regulations promulgated thereunder in that they were labeled or tagged by respondent as consisting of "100% Cashmere" and "100% Imported Cashmere"; whereas, in truth and in fact, said wool products did not consist of 100% Cashmere, being the hair or fleece of the Cashmere goat, but were composed of a blend of said cashmere combined with the wool of the genus sheep.

11. Respondent, Novelty Knitting Mills, Inc., filed with the Commission, as provided by Section 9 of the Wool Products Labeling Act, continuing guarantees in the form provided by the Commission applicable to its wool products for the year 1953 and other years. During the time the said guarantees were in effect, particularly during the year 1953, said respondent did manufacture for introduction, introduced, sold, transported and distributed in commerce the aforesaid misbranded wool products. Said respondent did not come within the

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exception provided by Section 9 of said Wool Products Labeling Act.

12. Respondent, in the offering for sale of certain sweaters, published advertisements in trade journals. Typical of the statements appearing in said advertisements are the following:

Cash in on Cashmeres by Novelty

Beautiful, soft cashmeres by Novelty offer the styling and craftsmanship that only 57 years of experience can bring. Feature these fine Cashmere Sweaters by Novelty—

These cashmeres come to you individually packaged in cellophane lined boxes.

13. Through the use of the word "cashmere," respondent represented that sweaters referred to in said advertisement were composed entirely of "Cashmere" as the term "cashmere" is generally understood by a substantial portion of the purchasing public, namely, the hair or fleece of the Cashmere or Kashmir goat. In truth and in fact, said sweaters contained a substantial percentage of the wool of the genus sheep.

CONCLUSIONS

The acts and practices of the respondent Novelty Knitting Mills, Inc., as stipulated and now found to be factually true, were and are in each particular, violative of the Wool Products Labeling Act of 1939, and the Rules and Regulations of the Commission promulgated thereunder. And they constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act, and fully justify the order hereinafter made. But since the respondent denies the allegations of the complaint as to its competitive status with other corporations and individuals in commerce and there is no proof, either of competition in commerce or of injury or tendency to injure competitors, it is concluded that respondent's acts and practices have not been proved to be unfair methods of competition in commerce within the intent and meaning of said Act. See *Federal Trade Commission v. Raladam Co.* (1931), 283 U. S. 643, 652-654.

The respondent Martin J. Feld having died on April 24, 1954, the complaint insofar as it relates to him individually and as an officer of said corporation, and doing business as Ascot Knitwear Company should be dismissed.

ORDER

It is ordered, That the respondent Novelty Knitting Mills, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in

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connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of sweaters or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding or misrepresenting such products by:

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

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

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five percentum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentages by weight of such fiber is five percentum or more and (5) the aggregate of all other fibers;

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

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

(3) Furnishing false guaranties when there is reason to believe the wool products so guaranteed may be introduced, sold, transported or distributed in commerce.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by Paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939.

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

It is further ordered, That the respondent, Novelty Knitting Mills, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other

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device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of sweaters or other wool products, do forthwith cease and desist from, directly or indirectly:

Using the term "Cashmere" or any other word or words of similar import and meaning, either alone or in connection or conjunction with any other word or words to designate, describe or refer to any product which is not composed entirely of the hair of the Cashmere goat: PROVIDED, however, that in the case of a product composed in part of the hair of the Cashmere goat and in part of other fibers, such term may be used as descriptive of the Cashmere content if there are used in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness, words truthfully designating such other constituent fibers.

It is further ordered, That the complaint, insofar as it relates to the deceased respondent Martin J. Feld, individually and as an officer of Novelty Knitting Mills, Inc., and doing business as Ascot Knitwear Company, should be, and the same hereby is, dismissed.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent Novelty Knitting Mills, Inc., a corporation, and its officers 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 29, 1955].

IN THE MATTER OF
BARNES METAL PRODUCTS COMPANY ET AL.

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

Docket 6225. Complaint, June 29, 1954—Decision, Feb. 8, 1955

Consent order requiring 19 manufacturers of rain-carrying and drainage equipment—known as “rain goods”—to cease engaging in any planned common and concerted course of action to fix and maintain prices, discounts, etc., of said products; selling their products in accordance with any geographical zone system of delivered prices where the purpose or effect is to fix or maintain prices, discounts, etc.; exchanging price lists and discount schedules and corresponding with respect to them or deviations from them; maintaining classifications of customers; and maintaining resale prices except as permitted by the McGuire Act.

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

Mr. Paul H. LaRue, *Mr. Lewis F. Depro* and *Mr. Everette MacIntyre* for the Commission.

Tenney, Sherman, Bentley & Guthrie, of Chicago, Ill., for Barnes Metal Products Co.

Whiteford, Hart, Carmody & Wilson, of Washington, D. C., for Berger Brothers Co., Lyon, Conklin & Co., Inc. and Benjamin P. Obdyke, Inc.

Rosenthal & Goldhaber, of Brooklyn, N. Y., for L. Bieler and Sons, Inc. and Sheet Metal Manufacturing Co., Inc.

Mr. Robert H. Duffy, of Terre Haute, Ind., for Braden Manufacturing Co., Inc.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for Cincinnati Elbow Co., Cincinnati Sheet Metal and Roofing Co., Inc. and The Ferdinand Dieckmann Co.

Mayer, Friedlich, Spiess, Tierney, Brown & Platt, of Chicago, Ill., for Inland Steel Products Co.

O'Connor, Thomas, McDermott & Wright, of Dubuque, Ia., for Klauer Manufacturing Co.

Johns, Roraff, Pappas & Flaherty, of La Crosse, Wis., for La Crosse Steel Roofing and Corrugating Co.

Mr. Howard W. Robbins, of Boston, Mass., for Lamb & Ritchie Co.

Irwin & Kevlin, of Philadelphia, Pa., for Benjamin P. Obdyke, Inc.

Benton, Benton, Luedeke & Rhoads, of Newport, Ky., for Newport Steel Corp.

Baker, Hostetler & Patterson, of Cleveland, Ohio, for Reeves Steel & Manufacturing Co.

Mr. H. C. Lumb, Mr. W. J. De Lancey and Mr. A. J. Gentholts, of Cleveland, Ohio, for Republic Steel Corp.

Mr. William W. Cohan and Mr. Morton J. Simon, of Philadelphia, Pa., for Samuel A. Schecter.

Schmidt, Hugus & Laas and Mr. J. E. Bruce, of Wheeling, W. Va., for Wheeling Corrugating Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties, hereinafter referred to as respondents, have violated the provisions of Section 5 of the said Federal Trade Commission 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 and states its charges in these respects as follows:

PARAGRAPH 1. The respondent, Barnes Metal Products Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4425 West 16th Street, Chicago, Illinois.

Respondent, Berger Brothers Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 229 Arch Street, Philadelphia, Pennsylvania.

Respondent, L. Bieler and Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 35-42 41st Street, Long Island City, New York.

Respondent, Braden Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 431 North 14th Street, Terre Haute, Indiana.

Respondent, Cincinnati Elbow Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 221 Eastern Avenue, Cincinnati, Ohio.

Respondent, Cincinnati Sheel Metal and Roofing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office

and place of business located at 230 East Front Street, Cincinnati, Ohio.

Respondent, The Ferdinand Dieckmann Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 180 Harrison Avenue, Cincinnati, Ohio.

Respondent, Inland Steel Products Company, a wholly owned subsidiary of Inland Steel Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 4101 West Burnham Street, Milwaukee, Wisconsin. This respondent was originally incorporated under the name of Milwaukee Corrugated Steel Company, and was acquired by the Inland Steel Company, after which the corporate name was changed to Inland Steel Products Company.

Respondent, Klauer Manufacturing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 9th & Washington Streets, Dubuque, Iowa.

Respondent, La Crosse Steel Roofing and Corrugating Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 227 Jay Street, La Crosse, Wisconsin.

Respondent, Lamb & Ritchie Company, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at Cambridge, Massachusetts.

Respondent, Lyon, Conklin & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at Race & McComas Streets, Baltimore, Maryland.

Respondent, The New Delphos Manufacturing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 102 South Pierce Street, Delphos, Ohio.

Respondent, Benjamin P. Obdyke Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 443-453 North 8th Street, Philadelphia, Pennsylvania.

Respondent, Newport Steel Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 9th & Lowell Streets, Newport, Kentucky.

Respondent, Reeves Steel & Manufacturing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 137 Iron Avenue, Dover, Ohio.

Respondent, Republic Steel Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. It is engaged in the manufacture, sale and distribution of rain carrying equipment, through the Berger Manufacturing Division, which maintains its principal office and place of business at 1038 Belden Avenue, N.E., Canton, Ohio. The Berger Manufacturing Division was originally an Ohio corporation, which was acquired by respondent, Republic Steel Corporation, in 1930, and thereafter dissolved and operated as a division of said respondent.

Respondent, Samuel A. Schechter, is an individual doing business under the trade name Schechter Brothers Company, with his principal office and place of business located at Hancock and Huntington Streets, Philadelphia, Pennsylvania.

Respondent, Sheet Metal Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 941-953 Myrtle Avenue, Brooklyn, New York.

Respondent, Wheeling Corrugating Company, a wholly owned subsidiary of Wheeling Steel Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at Wheeling Steel Building, Wheeling, West Virginia.

PAR. 2. Each of the above respondents manufactures, sells and distributes rain carrying and drainage equipment, hereinafter referred to as "rain goods."

There are two general categories of rain goods, namely, footage items and accessories. Footage items comprise conductor pipe, gutter and eaves trough. Included in the category of rain goods designated as accessories are elbows, shoes, mitres, end-pieces, caps, outlets, slip-joint connections, funnels, cutoffs, hangers, hooks, circles and strainers. Both categories of these products are fabricated from galvanized steel, 16 ounce copper, stainless steel and aluminum sheets, and from Toncan and Armco, which are registered trade-marks designating metal alloys manufactured by Republic Steel Corporation and the American Rolling Mill Company, respectively. Rain goods are manufactured by respondents in standardized sizes and weights.

Respondent manufacturers sell and distribute rain goods to each

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other and to other manufacturers of rain goods, and to jobbers and dealers (hardware stores and applicators or roofers) at different discounts for each of these classes of customers.

Footage items are sold by respondent manufacturers on a zone delivered price basis, with different delivered prices between zones, while accessories are sold at uniform delivered prices which are identical for all the respondents at any given time throughout the United States.

PAR. 3. In the course and conduct of their respective businesses, respondent manufacturers sell and distribute rain goods to purchasers thereof located in various States of the United States, and cause same, when sold, to be transported to purchasers thereof who are located in States other than the States of origin of said shipments. Respondent manufacturers maintain, and at all times herein mentioned, have maintained a regular course of trade in commerce in rain goods between and among the several States of the United States and in the District of Columbia.

PAR. 4. Respondent manufacturers, in the course and conduct of their businesses in the manufacture, sale and distribution of rain goods, are in substantial competition, except as such competition has been restrained or destroyed, as hereinafter set forth, with each other and with others who are likewise engaged in the manufacture, sale and distribution of rain goods in commerce.

Respondent manufacturers sell in excess of 50% of the dollar volume of rain goods produced in the United States, and have been and are now the dominant factor in the industry with power to determine and control, and have determined and controlled, the prices at which rain goods are sold to the various classes of purchasers of such products.

PAR. 5. Respondent manufacturers have entered into, and for more than three years last past, have been and are now carrying out a conspiracy, combination, agreement, understanding and planned common course of action to fix and maintain uniform delivered prices, discounts, terms and conditions of sale at which rain goods have been and are sold by respondent manufacturers with the purpose and effect of restricting, restraining and eliminating price competition in the offering for sale, sale and distribution of such products in interstate commerce.

PAR. 6. Pursuant to, and as a part of said conspiracy, combination, agreement, understanding and planned common course of action, and in furtherance thereof, respondents have adopted and carried out the following uniform policies:

1. fixing and maintaining uniform prices, discounts, terms and conditions of sale of rain goods;

2. fixing and maintaining standard list prices, discounts, terms and conditions of sale for accessories, so that all respondent manufacturers are enabled to, and do, sell such products at uniform and identical delivered prices throughout the nation;

3. maintaining a uniform system of zones, for the sale of footage items whereby the United States is divided into certain definite geographical zones which have been fixed on the basis of State, county, city and township lines. (As of September, 1952, the respondents had divided the country into seven geographical zones, with all of the respondents selling in one or more of said zones, and some of them selling in all zones. All of the respondents have, and do, designate the Central Zone as their base zone, which zone, as of the aforesaid date, included the States of Illinois, Indiana, Iowa, Kentucky, Ohio, Michigan, Minnesota, Wisconsin, parts of Missouri, New York, Pennsylvania and West Virginia, and the cities of Fargo, North Dakota; Sioux Falls, South Dakota, and Omaha, Nebraska. The boundaries of each of said zones are identical for each of the respondent manufacturers selling said products in that zone.) By the use of said uniform zone system, all respondents are enabled to and do offer for sale and sell said products at the same prices for all localities within a given zone, regardless of the point of origin of shipment of said products;

4. fixing and maintaining standard list prices and discount differentials between zones, as well as the terms and conditions of sale for all footage items; by the employment of such a policy, the respondents are enabled to, and do, offer for sale and sell, rain goods of this category at uniform and identical delivered prices for each class of purchasers located within a given zone;

5. maintaining as part of said uniform zone system, an arrangement for the sale of footage items whereby, regardless of the zone from which said items may be actually shipped by any respondent, the purchase thereof is required to pay a delivered price which the respondents have fixed for shipments originating in the Central Zone.

PAR. 7. Furthermore, as part of, and in order to effectuate and carry out said conspiracy, combination, agreement, understanding and planned common course of action, and the aforescribed policies, the respondents have performed, and are still performing, the following acts and practices:

1. have met together for the purpose of revising standard list prices and discounts (such a meeting was held by representatives of a majority of respondents on November 9, 1950, at Cincinnati, Ohio);

2. have agreed upon, and adopted, revised standard list prices and discounts for the sale of rain goods;

3. have disseminated and exchanged among themselves their respective price lists and discount schedules, in order to facilitate and maintain uniformity of delivered prices for rain goods;

4. have corresponded among themselves with respect to current list prices and discounts and deviations therefrom by any of respondent manufacturers;

5. have established and maintained uniform classifications of customers, in order to facilitate and maintain uniformity of delivered prices for rain goods;

6. have fixed, adopted and maintained prices, discounts, terms and conditions of sale at which respondent manufacturers have resold, and are now reselling, rain goods purchased from other respondent manufacturers.

PAR. 8. Each of the respondent manufacturers acted in concert with one or more of the other respondents in carrying out one or more of the policies, acts and practices hereinbefore described.

PAR. 9. The results and effects of the aforesaid conspiracy, combination, agreement, understanding and planned common course of action, and the policies, acts and practices adopted and carried out as part of and pursuant thereto, have been, and are, to tend:

1. to hinder, lessen and suppress competition in prices, terms and conditions of sale between and among respondent manufacturers of rain goods;

2. to duly enhance the prices of that category of rain goods designated footage items, inasmuch as all purchasers of same, who are located in zones other than the Central Zone, are required to pay higher prices in purchasing such products from those respondent manufacturers located in their respective geographical areas than they would have to pay but for the use of the zone system, under which delivered prices are arbitrarily determined as if all shipments originated in the Central Zone;

3. to further restrict competition between and among respondent manufacturers, since many of them, who are located in zones other than the Central Zone, find it unprofitable to absorb freight costs and thus refrain from making sales of footage items to prospective purchasers who are located in zones which would entail such absorption;

4. to deprive the purchasing public of the advantages which it would derive if competition between and among respondents in the sale of rain goods in "commerce" were not restrained and restricted in the manner and by the methods hereinbefore set forth.

PAR. 10. The acts and practices of respondent manufacturers, as hereinbefore alleged, have a dangerous tendency unduly to hinder competition, because they have promoted and contributed to the suppression, elimination and prevention of price competition between and among respondents in the manufacture and sale of rain goods in commerce, as "commerce" is defined in the Federal Trade Commission Act, and such acts and practices, all and singularly, are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 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 February 8, 1955, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint in this proceeding charges the respondents with having entered into and with having carried out, for three years last past, a combination, agreement, understanding and common course of action to fix and maintain uniform delivered prices, discounts, terms and conditions of sale at which rain goods have been sold by respondents, with the purpose and effect of restricting, restraining and eliminating price competition in the offering for sale, sale and distribution of such products in interstate commerce, in violation of the provisions of Section 5 of the Federal Trade Commission Act.

Rain goods are described in the complaint as being divided into "* * * two general categories, namely, footage items and accessories. Footage items comprise conductor pipe, gutter and eaves trough. Included in the category of rain goods designated as accessories are elbows, shoes, mitres, end-pieces, caps, outlets, slip-joint connections, funnels, cutoffs, hangers, hooks, circles and strainers. Both categories of these products are fabricated from galvanized steel, 16-ounce copper, stainless steel and aluminum sheets, and from Toncan and Armco, which are registered trade-marks designating metal alloys manufactured by Republic Steel Corporation and the American Rolling Mill Company, respectively. Rain goods are manufactured by respondents in standardized sizes and weights."

On December 8, 1954, all the respondents except Samuel Schechter, a copartner with Florence Schechter, Administratrix of the Estate of Morris Schechter, Deceased, trading as Schechter Brothers Co. (erroneously designated in the complaint as Samuel A. Schechter, an individual doing business as Schechter Brothers Company) entered into an agreement with counsel supporting the complaint and, pursuant thereto, submitted to the hearing examiner a Stipulation For Consent Order disposing of all the issues as to them involved in this proceeding. On the same date counsel supporting the complaint rested his case as to respondent Schechter without having presented any evidence in support of the allegations of the complaint insofar as they relate to said respondent, averring that the state of the potential evidence as to this respondent was such that he did not deem it in the public interest to proceed against this respondent alone. It appears, therefore, that the complaint insofar as it relates to respondent Schechter should be dismissed. Accordingly, as used hereinafter, the word "respondents" will refer only to those respondents who signed the Stipulation For Consent Order.

The respondents are identified therein as follows:

Respondent Barnes Metal Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4425 West 16th Street, Chicago, Illinois.

Respondent Berger Brothers Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 229 Arch Street, Philadelphia, Pennsylvania.

Respondent L. Bieler and Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 35-42 41st Street, Long Island City, New York.

Respondent Braden Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 431 North 14th Street, Terre Haute, Indiana.

Respondent Cincinnati Elbow Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 221 Eastern Avenue, Cincinnati, Ohio.

Respondent Cincinnati Sheet Metal and Roofing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and

place of business located at 230 East Front Street, Cincinnati, Ohio.

Respondent The Ferdinand Dieckmann Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 180 Harrison Avenue, Cincinnati, Ohio.

Respondent Inland Steel Products Company, a wholly-owned subsidiary of Inland Steel Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 4101 West Burnham Street, Milwaukee, Wisconsin. This respondent was originally incorporated under the name of Milwaukee Corrugated Steel Company, and was acquired by the Inland Steel Company, after which the corporate name was changed to Inland Steel Products Company.

Respondent Klauer Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 9th & Washington Streets, Dubuque, Iowa.

Respondent La Crosse Steel Roofing and Corrugating Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 227 Jay Street, La Crosse, Wisconsin.

Respondent Lamb & Ritchie Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at Cambridge, Massachusetts.

Respondent Lyon, Conklin & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at Race & McComas Streets, Baltimore, Maryland.

Respondent The New Delphos Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 102 South Pierce Street, Delphos, Ohio.

Respondent Benjamin P. Obdyke Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 443-453 North 8th Street, Philadelphia, Pennsylvania.

Respondent Newport Steel Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 9th & Lowell Streets, Newport, Kentucky.

Respondent Reeves Steel & Manufacturing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 137 Iron Avenue, Dover, Ohio.

Respondent Republic Steel Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. It is engaged in the manufacture, sale and distribution of rain-carrying equipment, through the Berger Manufacturing Division, which maintains its principal office and place of business at 1038 Belden Avenue, N. E., Canton, Ohio. The Berger Manufacturing Division was originally an Ohio corporation, which was acquired by respondent Republic Steel Corporation in 1930 and thereafter dissolved and operated as a division of said respondent.

Respondent Sheet Metal Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 941-953 Myrtle Avenue, Brooklyn, New York.

Respondent Wheeling Corrugating Company, a wholly-owned subsidiary of Wheeling Steel Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at Wheeling Steel Building, Wheeling, West Virginia.

Respondents admit all the jurisdictional allegations set forth in the complaint, and agree that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance therewith. They request, in effect, that their answers heretofore made to the complaint herein be withdrawn, and expressly waive hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other proceedings before the hearing examiner or the Commission to which they may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

It is agreed by respondents that the order contained in the stipulation shall have the same force and effect as if made after full hearing, presentation of evidence and findings and conclusions thereon. They specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with their stipulation. They also agree that said Stipulation For Consent Order, together with the complaint, shall constitute the entire record in this proceeding. Inasmuch as this initial decision, and the decision of

the Commission, if it affirms such initial decision, must hereafter also become part of the record, the aforesaid provision of the stipulation is interpreted to mean that it is agreed that the complaint and Stipulation For Consent Order shall constitute the entire record upon which the initial decision herein shall be based.

The stipulation sets forth that the complaint herein may be used in construing the terms of the aforesaid order, which may be altered, modified or set aside in the manner provided by statute for orders of the Commission.

The stipulation further provides that the signing of the Stipulation For Consent Order is for settlement purposes only, and does not constitute an admission by any respondent that it has violated the law as alleged in the complaint.

In view of the facts outlined above, and the further fact that the order embodied in said stipulation differs from the order accompanying the complaint only in that it contains a proviso which in no wise detracts from the effectiveness of the order, it appears that such order will safeguard the public interest to the same extent as could be accomplished by full hearing and all other adjudicative proceedings waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the hearing examiner accepts the Stipulation For Consent Order submitted herein; grants the request that respondents' answers heretofore made to the complaint herein be withdrawn; finds that this proceeding is in the public interest, and issues the following order:

It is ordered, That Barnes Metal Products Company, a corporation, Berger Brothers Company, a corporation, L. Bieler and Sons, Inc., a corporation, Braden Manufacturing Company, Inc., a corporation, Cincinnati Elbow Company, a corporation, Cincinnati Sheet Metal and Roofing Company, Inc., a corporation, The Ferdinand Dieckmann Company, a corporation, Inland Steel Products Company, a corporation, Klauer Manufacturing Company, a corporation, La Crosse Steel Roofing and Corrugating Company, a corporation, Lamb & Ritchie Company, a corporation, Lyon, Conklin & Company, Inc., a corporation, The New Delphos Manufacturing Company, a corporation, Benjamin P. Obdyke, Inc., a corporation, Newport Steel Corporation, a corporation, Reeves Steel & Manufacturing Company, a corporation, Republic Steel Corporation, a corporation, Sheet Metal Manufacturing Company Inc., a corporation, and Wheeling Corrugating Company, a corporation, respondents herein, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distri-

bution of rain goods in Commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common and concerted course of action, understanding, agreement, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts:

1. fixing, adopting, maintaining, or adhering to, by any means or methods, the prices, discounts, terms or conditions of sale of said products;

2. adopting, adhering to, maintaining, or selling in accordance with any geographical zone system of delivered prices where the purpose or effect, directly or indirectly, is to fix or maintain prices, discounts, terms or conditions of sale of said products;

3. disseminating or exchanging among themselves their respective price lists and discount schedules for the purpose or with the effect of fixing or maintaining prices for said products;

4. corresponding among themselves with respect to current list prices and discounts and deviations therefrom by any of respondent manufacturers, where the purpose or effect, directly or indirectly, is to fix or maintain prices, discounts, terms or conditions of sale of said products;

5. establishing or maintaining classifications of customers;

6. fixing, adopting, or maintaining prices, discounts, terms or conditions of sale at which any respondent manufacturer offers for resale or resells any of said products which he has purchased or secured from any other respondent manufacturer,

Provided, That nothing herein contained shall be construed to limit or otherwise affect any right with respect to resale price maintenance contracts or arrangements which any of the respondents may have under Section 5 of the Federal Trade Commission Act as amended by the McGuire Act (Public Law 542, 82d Cong., Chap. 745, Second Session, Approved July 14, 1952).

It is further ordered, That the answers to the complaint herein heretofore submitted by all respondents, except respondent Samuel Schecter, be, and the same hereby are, withdrawn from the record.

It is further ordered, That the complaint herein, insofar as it relates to respondent Samuel Schecter, be, and the same hereby is, dismissed.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Barnes Metal Products Company, a corporation, Berger Brothers Company, a corporation, L. Bieler and Sons, Inc., a corporation, Braden Manufacturing Company, Inc., a corporation, Cincinnati Elbow Company, a corporation, Cincinnati Sheet Metal and Roofing Company, Inc., a corporation, The Ferdinand Dieckmann Company, a corporation, Inland Steel Products Company, a corporation, Klauer Manufacturing Company, a corporation, La Crosse Steel Roofing and Corrugating Company, a corporation, Lamb & Ritchie Company, a corporation, Lyon, Conklin & Company, Inc., a corporation, The New Delphos Manufacturing Company, a corporation, Benjamin P. Obdyke, Inc., a corporation, Newport Steel Corporation, a corporation, Reeves Steel & Manufacturing Company, a corporation, Republic Steel Corporation, a corporation, Sheet Metal Manufacturing Company, Inc., a corporation, and Wheeling Corrugating Company, a corporation, 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 February 8, 1955].

IN THE MATTER OF
RUBEN SHAFFER TRADING AS B & W SALES
COMPANY

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

Docket 6257. Complaint, Nov. 3, 1954—Decision, Feb. 8, 1955

Consent order requiring a seller in Baltimore, Md., to cease supplying others with push cards, etc., and selling or otherwise disposing of any merchandise, including Scotch Koolers, aluminum tumblers, chairs, and cameras, by means of a game of chance.

Before *Mr. William L. Pack*, hearing examiner.
Mr. J. W. Brookfield, Jr., for the Commission.

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 Ruben Shaffer, an individual trading as B & W Sales Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ruben Shaffer is an individual trading and doing business as B & W Sales Company with his office and principal place of business located at 113 West Fayette Street in the city of Baltimore, Maryland. Respondent is now, and for more than six months last past has been, engaged in the sale and distribution of various articles of merchandise, including but not limited to Scotch Koolers, aluminum tumblers, chairs, and cameras and has caused said merchandise, when sold, to be transported from his place of business in Baltimore, Maryland, to purchasers thereof located in the various States of the United States other than in Maryland, and in the District of Columbia.

There is now and has been for more than six months last past a substantial course of trade by respondent in such merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in