

Complaint

52 F. T. C.

IN THE MATTER OF
LUXURIOUS WOOLLENS, LTD., ET AL.

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

Docket 6518. Complaint, Feb. 20, 1956—Decision, May 11, 1956

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act through misrepresenting the percentage of beaver fur in certain wool fabrics on sales invoices and shipping memoranda and on attached labels, and through furnishing similar labels to customers for attachment to garments manufactured from the fabrics; through furnishing false guaranties that certain of their wool products were not misbranded; and through failing to label certain wool products as required.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Donald R. Moore for the Commission.

Mr. Frederick E. M. Ballon, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Luxurious Woollens, Ltd., a corporation, Max Wasserman, individually and as an officer of said corporation, and Paul A. Raich, individually and as General Manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 Luxurious Woollens, Ltd., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Max Wasserman is president and secretary, and respondent Paul A. Raich is general manager of the corporate respondent and they formulate, direct and control the acts, policies and practices of the corporate respondent. Respondents have their principal place of business at 234 West 37th Street, New York, New York.

PAR. 2. Respondents, in the course and conduct of their business, are and were in competition with other corporations and with firms and individuals likewise engaged in the sale of wool products in commerce.

1328

Complaint

PAR. 3. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more specifically since January 1, 1954, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in that Act, wool products, as "wool products" are defined therein.

PAR. 4. Certain of those wool products were misbranded by respondents, within the intent and meaning of Section 4 (a) (1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such wool products were fabrics labeled or tagged by respondents as consisting of 65% Beaver Fur and 35% Wool; 60% Beaver Fur and 40% Wool; and 50% Beaver Fur and 50% Wool; whereas, in truth and in fact, the products were not composed of 65% Beaver Fur and 35% Wool; 60% Beaver Fur and 40% Wool; or 50% Beaver Fur and 50% Wool, as represented by the respondents.

PAR. 5. Certain of these wool products were further misbranded by respondents 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 and the Rules and Regulations promulgated thereunder.

PAR. 6. Respondents have also furnished false guaranties that certain of their wool products were not misbranded, in violation of Section 9 of the Wool Products Labeling Act. Respondents furnished such guaranties, having reason to believe that the wool products falsely guaranteed may be introduced, sold, transported or distributed in commerce.

PAR. 7. The acts and practices of the respondents, as set forth above, are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of wool products by manufacturers of garments and other wool products for resale to retailers and distributors in commerce, respondents have:

(a) Made various representations as to the fiber content of their wool products in sales invoices and shipping memoranda applicable thereto. Among and typical, but not all inclusive of such representa-

Decision

52 F. T. C.

tions, are the following: 65% Beaver Fur and 35% Wool; 60% Beaver Fur and 40% Wool; 50% Beaver Fur and 50% Wool.

(b) Furnished to customers labels to be attached to garments manufactured from certain of respondents' wool products, which labels represented the fiber content as follows: 60% Beaver Fur—40% Imported Lamb's Wool; 65% Beaver Fur—35% Imported Lamb's Wool.

PAR. 9. The aforesaid statements and representations on invoices, shipping memoranda and labels for use on garments manufactured from respondents' wool products, are false, misleading and deceptive. In truth and in fact, respondents' products do not contain beaver fur fibers and wool in the proportions represented; the products contain substantially smaller amounts of beaver fur fibers than represented and in addition appreciable quantities of undisclosed fur fibers; the products do not contain lamb's wool as represented.

PAR. 10. The false, misleading and deceptive representations on invoices, shipping memoranda and on labels furnished to customers have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were and are true, and to induce the purchase of such products on account of such belief induced as aforesaid. As a result thereof, substantial trade in commerce has been diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 11. By means of invoices, shipping memoranda and labels furnished to customers, as described in Paragraph Eight herein, respondents place in the hands of others the means and instrumentalities whereby such others may mislead and deceive members of the purchasing public as to the character and amount of the constituent fibers in their wool products.

PAR. 12. The acts and practices of the respondents, as set forth in Paragraphs Eight through Eleven herein, were 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.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 20, 1956, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act through the misbranding of certain wool products, the furnishing of false guaranties that wool products are

1328

Decision

not misbranded, and the making of false, misleading and deceptive representations on invoices, shipping memoranda and labels for use on garments manufactured from respondents' wool products. After being duly served with said complaint, the respondents, in lieu of submitting answer to said complaint, entered into an agreement on March 19, 1956, for a consent order with counsel supporting the complaint, disposing of all the issues in this proceeding in accordance with Section 3.25 of the Rules of Practice and Procedure of the Commission, which agreement has been approved by the Director and the Assistant Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement also provides that the agreement disposes of all of the proceeding as to all parties. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Luxurious Woollens, Ltd., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Max Wasserman is president

Order

52 F. T. C.

and secretary, and respondent Paul A. Raich is general manager of the corporate respondent and they formulate, direct and control the acts, policies and practices of the corporate respondent. Respondents have their principal place of business at 234 West 37th Street, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

ORDER

It is ordered, That the respondent, Luxurious Woollens, Ltd., a corporation; its officers; the respondent, Max Wasserman, individually and as an officer of the corporation; the respondent, Paul A. Raich, individually and as General Manager of the corporation; and respondents' representatives, agents and employees, directly or through any corporate device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce (as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act) of piece goods or other "wool products" (as "wool products" are defined in the Wool Products Labeling Act), do forthwith cease and desist from:

A. Misbranding such products by:

1. Attaching or using stamps, tags, labels or other means of identification which represent that such products contain a certain percentage of beaver hair or fiber which is contrary to fact;

2. Otherwise falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of their constituent fibers;

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

(a) The percentage of the total fiber weight of such wool product (exclusive of ornamentation not exceeding five percentum of the total fiber weight) of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where the percentage of 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 manu-

1328

Decision

facturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment of such wool product in commerce (as "commerce" is defined in the Wool Products Labeling Act of 1939).

B. Furnishing false guaranties that piece goods, or other wool products (as "wool products" are defined in the Wool Products Labeling Act) are not misbranded under the provisions of the Wool Products Labeling Act, when there is reason to believe that 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; and

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

It is further ordered, That the respondent, Luxurious Woollens, Ltd., a corporation; its officers; the respondent, Max Wasserman, individually and as an officer of the corporation; the respondent, Paul A. Raich, individually and as general manager of the corporation; and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce (as "commerce" is defined in the Federal Trade Commission Act) of piece goods, or other wool products, do forthwith cease and desist from:

A. Misrepresenting in invoices, by labels separately furnished or in any other manner the character or amount of the constituent fibers contained in such products.

B. Furnishing to or placing in the hands of others stamps, tags, or labels by means of which the respondents' products, or garments made from them, may be falsely or deceptively stamped, tagged, labeled or otherwise identified, either as to the character or amount of their constituent fibers or in any other respect.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner, as corrected by his order filed April 13, 1956, shall on the 11th day of May 1956, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF
CORDAGE INSTITUTE ET AL.

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

Docket 5848. Complaint, Feb. 15, 1951—Decision, May 12, 1956

Consent order requiring 18 corporate manufacturers of hard fiber rope, cordage, and wrapping twine and their trade association, to cease concertedly maintaining geographical price zones or zone price differentials in the sale of their products; and

Dismissing for failure of proof charges of fixing uniform delivered prices and terms and conditions of sale; of concertedly classifying customers for pricing purposes and fixing discounts and terms and conditions of sales for each class; of disseminating among themselves through respondent Institute their current and future quotations of prices, terms and conditions of sales; and holding meetings at which prices and trade practices and policies designed to eliminate competition among themselves were discussed and acted upon.

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

Mr. Floyd O. Collins and *Mr. J. Wallace Adair* for the Commission.
Jackson, Nash, Brophy, Barringer & Brooks, of New York City,
for Cordage Institute, *R. C. Utess* and *H. M. Wall*.

Mr. Karl F. Steinmann, of Baltimore, Md., for *J. S. McDaniel*.

Gaston, Snow, Rice & Boyd, of Boston, Mass., for *Plymouth Cordage Co.*

Mr. Daniel G. Connolly, of Brooklyn, N. Y., for *American Manufacturing Co.* and *Cupples Co., Inc.*

Hiscock, Cowie, Bruce, Lee and Mawhinney, of Syracuse, N. Y.,
for *Columbian Rope Co.*, *The Edwin H. Fitler Co.* and *R. A. Kelly Co.*

Kibler, Hervey & Kibler, of Newark, Ohio, for *The E. T. Rugg Co.*

Younge, Frederick & Rutherford, of Peoria, Ill., for *Peoria Cordage Co.*

Prescott, Bullard & McLeod, of New Bedford, Mass., for *New Bedford Cordage Co.*

Pillsbury, Madison & Sutro, of San Francisco, Calif., and *Mr. Hugh Fullerton*, of Washington, D. C., for *Tubbs Cordage Co. (Calif.)* and *Tubbs Cordage Co. (Wash.)*

Clark, Brown, McCown, Fortenbaugh & Young, of Philadelphia, Pa., for *Wall Rope Works, Inc.*

Parsons, Closson & McIlwaine, of New York City, for *Whitlock Cordage Co.*

1334

Complaint

Mr. Bernard J. Ferguson, of Woodside, N. Y., for Cating Rope Works, Inc.

Stevens, DeLong & Dry, of Reading, Pa., for The Thomas Jackson & Son Co.

Shook, Law & Olson, of Washington, D. C., for Waterbury Rope Sales Corp.

Smith, McCallister & Gibney, of Xenia, Ohio, for The Hooven & Allison Co.

Mr. Gladstone P. Lillicrapp, of Easton, Pa., for Rinek Cordage 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 Cordage Institute, a non-profit membership association, its officers and members and employees, J. S. McDaniel, R. C. Utess, S. W. Metcalf, W. S. Miles, Jr., E. G. Roos, H. M. Wall, Plymouth Cordage Co., a corporation, American Manufacturing Company, a corporation, Columbian Rope Company, a corporation. The Edwin H. Fitler Company, a corporation, R. A. Kelly Company, a corporation, The E. T. Rugg Company, a corporation, Peoria Cordage Company, a corporation, New Bedford Cordage Company, a corporation, Tubbs Cordage Company, a corporation (Calif.), Tubbs Cordage Company, a corporation (Wash.), Wall Rope Works, Inc., a corporation, Whitlock Cordage Company, a corporation, Cating Rope Works, Inc., a corporation, Cupples Company, Inc., a corporation, The Thomas Jackson & Son Company, a corporation, Waterbury Rope Sales Corporation, a corporation, The Hooven & Allison Company, a corporation, and Rinek Cordage Company, a corporation, 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. The products involved in this proceeding are rope, cordage and twine made of fiber from abaca, agave and other plants from which hard fiber is obtained. Such products are commonly known and referred to as hard fiber rope, cordage and twine. Said products are used extensively by the Navy and all branches of the Armed Services; by steamship companies and those in the fishing industry; by railroads and other common carriers; by steel companies, coal companies, oil companies, farmers and ranchers. It is used by substantially everyone engaged in a productive enterprise or economic activity.

Complaint

52 F. T. C.

PAR. 2. Respondent, Cordage Institute, hereinafter referred to as Respondent Institute, is an unincorporated non-profit membership association, whose membership is composed of corporations, partnership firms and individuals who are engaged in the Continental United States in the manufacture, sale and distribution of rope, cordage and twine wholly or in chief value of abaca, agave, or other hard fiber, and commodities commonly known as tarred hemp. The home office and principal place of business of said respondent is located at 350 Madison Avenue, New York, New York. Its Articles of Association state its purposes and objects to be:

- (a) To promote the interest of the industry and improve its services to the public.
- (b) To compile, distribute and exchange information;
- (c) To establish trade standards; and
- (d) To cooperate in handling all problems of common interest to the industry.

The officers of Respondent Institute are President, Secretary, Treasurer, Executive Committeemen and members of such other committees as are designated from time to time.

The President of Respondent Institute is also Chairman of the Executive Committee and its Articles of Association declare his authority and duties to be coextensive with and limited to those of Chairman of the Executive Committee.

It is the duty of the Executive Committee to determine the policies, supervise the carrying out of the purposes and objects, and direct the business and financial matters of Respondent Institute.

The duties of the Secretary are to keep the records of the Institute and of all the committees; keep informed as to conditions prevailing in the industry, the happenings of importance and of interest to the members, and to transmit to the members such information as is deemed helpful and instructive to them.

The Executive Committee and Respondent Institute have from time to time authorized and directed the Secretary to collect and disseminate among the members, at regular intervals, statistics and information such as:

- (1) Monthly sales statistics in cordage business by products.
- (2) Monthly charts indicating (a) trend of business for the industry, and (b) trend of percentage of total business by each company.
- (3) Monthly statistics of Manila fibers showing stocks on hand, consumption, etc.
- (4) Monthly reports of sales of distress or obsolete merchandise.
- (5) Copies of printed price lists of the respective members.
- (6) Surveys of wages, hours and labor conditions.

- (7) Statistics on Manila fiber production.
- (8) List of brand names of various products.
- (9) Special studies and activities, such as cost accounting systems.

Respondent, J. S. McDaniel, whose address is 350 Madison Avenue, New York, New York, is now and has been since its organization the Secretary of Respondent Institute, and has performed and is now performing all the duties of said office.

Respondent, R. C. Utess, whose address is Noble and West Streets, Brooklyn 22, New York, is President of Respondent Institute and Chairman of its Executive Committee.

Respondent, S. W. Metcalf, whose address is 309 Genesee Street, Auburn, New York, is a member of the Executive Committee of Respondent Institute.

Respondent, W. S. Miles, Jr., whose address is 1502 South Washington Street, Peoria 2, Illinois, is a member of the Executive Committee of the Respondent Institute.

Respondent, E. G. Roos, whose address is North Plymouth, Massachusetts, is a member of the Executive Committee of Respondent Institute.

Respondent, H. M. Wall, whose address is 48 South Street, New York, New York, is a member of the Executive Committee of Respondent Institute.

PAR. 3. Respondent, Plymouth Cordage Co., hereinafter referred to as Respondent Plymouth, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its home office and principal place of business located at Plymouth, Massachusetts. Respondent is engaged in manufacturing and selling hard fiber cordage, wrapping twine, baler twine and binder twine and is a member of Respondent Institute. In addition to two wholly owned subsidiary corporations in Canada, respondent owns and operates as a division of respondent, The Federal Fiber Mills, located at 1101 South Peters Street, New Orleans, Louisiana.

Respondent, American Manufacturing Company, hereinafter referred to as Respondent American, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its home office and principal place of business located at Nobel and West Streets, Brooklyn 22, New York. Respondent is engaged in manufacturing and selling hard fiber cordage, wrapping twine, baler twine and binder twine. It is a member of Respondent Institute. It owns and operates a branch factory located at 11th and LaFayette Streets, St. Louis, Missouri. Said branch factory is operated under the name, St. Louis Cordage Mills, and is also a member of Respondent Institute.

Complaint

52 F. T. C.

Respondent, Columbian Rope Company, hereinafter referred to as Respondent Columbian, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 309 Genesee Street, Auburn, New York. Said respondent is now and has been engaged in manufacturing hard fiber cordage, wrapping twine, baler twine and binder twine and is a member of Respondent Institute.

Respondent, The Edwin H. Fitler Company, hereinafter referred to as Respondent Fitler, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at 5625 Tacony Street, Philadelphia 24, Pennsylvania. Respondent is now and has been engaged in manufacturing hard fiber cordage, wrapping twine and baler twine. Respondent is wholly owned by Respondent Columbian but functions as a separate corporation and is a member of Respondent Institute.

Respondent, R. A. Kelly Company, hereinafter referred to as Respondent Kelly, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business located at Xenia, Ohio. Respondent is wholly owned by Respondent Columbian and is operated as a branch of Columbian. It is a member of Respondent Institute.

Respondent, The E. T. Rugg Company, hereinafter referred to as Respondent Rugg, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business located at Newark, Ohio. Respondent is now and has been engaged in manufacturing hard fiber cordage, wrapping twine and baler twine. Respondent is a member of Respondent Institute.

Respondent, Peoria Cordage Company, hereinafter referred to as Respondent Peoria, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its home office and principal place of business located at 1502 South Washington Street, Peoria 2, Illinois. Respondent is now and has been engaged in manufacturing hard fiber, cordage, wrapping twine, baler twine and binder twine. Respondent is a member of Respondent Institute.

Respondent, New Bedford Cordage Company, hereinafter referred to as Respondent New Bedford, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its home office and principal place of business located at Court and Ash Streets, New Bedford, Massachusetts. Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

1334

Complaint

Respondent, Tubbs Cordage Company, is a corporation organized and existing under and by virtue of the laws of the State of California, with its home office and principal place of business located at 225 Bush Street, San Francisco 4, California. Said Respondent owns and operates as a division of Respondent, a manufacturing plant located at Orange, California. Said division is operated under the trade name of Great Western Cordage. Respondent and its division, Great Western Cordage, are both members of Respondent Institute.

Respondent, Tubbs Cordage Company (of Washington) is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 2021 15th Avenue, West, Seattle, Washington. Said Respondent is a subsidiary of the Respondent Tubbs Cordage Company of San Francisco, California, but is operated separate and apart from the parent corporation. Said Respondent is engaged in manufacturing, selling and distributing hard fiber cordage and twine and is a member of Respondent Institute.

Respondent, Wall Rope Works, Inc., hereinafter referred to as Respondent Wall, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 48 South Street, New York 5, New York. Said Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

Respondent, Whitlock Cordage Company, hereinafter referred to as Respondent Whitlock, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 46 South Street, New York 5, New York. Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

Respondent, Cating Rope Works, Inc., hereinafter referred to as Respondent Cating, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 58-29 - 64th Street, Maspeth, New York. Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

Respondent, Cupples Company, Inc., hereinafter referred to as Respondent Cupples, is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its home office and principal place of business located at 386 - 3rd Avenue, Brooklyn, New York. Respondent is now and has been engaged in

Complaint

52 F. T. C.

manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

Respondent, The Thomas Jackson & Son Company, hereinafter referred to as Respondent Jackson, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at Reading, Pennsylvania. Respondent is now and has been engaged in manufacturing hard fiber wrapping twine. Respondent is a member of Respondent Institute.

Respondent, Waterbury Rope Sales Corporation, hereinafter referred to as Respondent Waterbury, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 88 Wallabout Street, Brooklyn 11, New York. Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

PAR. 4. Respondent, The Hooven & Allison Company, hereinafter referred to as Respondent Hooven, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business located at Xenia, Ohio. Respondent is now and has been engaged in manufacturing hard fiber cordage, wrapping twine, baler twine and binder twine.

Respondent, Rinek Cordage Company, hereinafter referred to as Respondent Rinek, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at Easton, Pennsylvania. Respondent is now and has been engaged in the manufacture of hard fiber cordage.

Respondent Hooven and Respondent Rinek are not members of Respondent Institute, but they have aided and abetted and participated in the carrying out and maintaining the wrongful and unlawful acts and practices herein alleged.

PAR. 5. The Respondent Institute and Respondent McDaniel and the members of the Executive Committee of said Institute, are not engaged in the manufacture or sale and distribution of any commodity in commerce, but said respondents have aided, abetted, furthered and participated in some or all of the concerted actions, understandings and agreements herein described and actively cooperated and participated in the planning, maintaining and carrying out of some or all of the acts and practices done pursuant thereto and in furtherance thereof.

PAR. 6. In the course and conduct of their respective businesses the respondent manufacturers manufacture hard fiber rope, cordage and

1334

Complaint

twine and sell and distribute said products to purchasers thereof in various States of the United States, pursuant to which sales said products are shipped and transported, to the purchasers thereof across State lines into States other than the State of origin of said shipments. Each of said respondent manufacturers, in the manner afore-said, maintains a constant current of trade in commerce among and between the various States of the United States.

PAR. 7. Respondent manufacturers in the course and conduct of their respective businesses have at all times been in competition with other firms and individuals in the manufacture, sale and distribution of rope, cordage and twines in commerce among and between the various States of the United States, and have been and are now in competition with one another except to the extent to which such competition has been restrained, lessened, injured and suppressed by the understandings, agreements and concerted actions herein set forth.

PAR. 8. Respondent manufacturers manufacture and sell approximately 65 percent of all the hard fiber twine and approximately 80 percent of all the hard fiber rope and cordage manufactured and sold in the Continental United States. Because of their dominant position in the industry, respondents are able to and do, to a substantial degree, control the prices at which said products are sold and limit and eliminate the effects of other competitive elements.

PAR. 9. For more than three years last past the respondent manufacturers and Respondent Institute (including its officers and various committees and committee members) have been engaged in and carrying out an unlawful combination, understandings and agreements, and a planned common course of action to fix and establish uniform identical delivered prices for hard fiber rope, cordage and twine and to lessen, limit, restrict and restrain competition in price and otherwise, among and between respondents in the sale and distribution of hard fiber rope, cordage and twine in interstate commerce, and pursuant to and in furtherance of said planned common course of action, agreements and understandings respondents have done and performed, and are now doing and performing among others, the following acts and practices:

(a) Agreed upon uniform identical delivered prices to be quoted and charged, and upon terms and conditions of sale to be imposed, and have systematically quoted and charged such prices to and imposed such terms and conditions upon their customers and prospective customers;

(b) Classified customers for pricing purposes and fixed and agreed upon discounts and terms and conditions of sales applicable to sales to customers in each classification;

Complaint

52 F. T. C.

(c) Established and maintained identical geographical zones for pricing purposes and systematically applied agreed upon uniform identical zone price differentials in the sale of their products;

(d) Computed or averaged delivery or transportation costs within each price zone from some agreed upon shipping point or points to all delivery points therein and used the amount thus obtained in calculating selling prices in order to prevent differences in delivery costs from the various plants of respondents to their customers creating differences in prices of the products laid down at the customer's place of business;

(e) Agreed to disseminate and have disseminated among themselves and by and through Respondent Institute at frequent intervals current and future quotations of prices, terms and conditions of sales offered to the trade by various respondent manufacturers; and

(f) Have held meetings at which prices, terms and conditions of sales and trade practices and policies designed to eliminate competition in price and otherwise between respondents were discussed and acted upon.

PAR. 10. Each respondent manufacturer, in calculating, making and announcing delivered price quotations, terms and conditions of sale at which it offers to sell and does sell hard fiber rope, cordage and twine, does so by dividing the continental United States into six Geographic Zones. Thereafter, subject to the customer classification herein alleged, each respondent manufacturer quotes to each customer in a given zone identical delivered prices to those it quotes to each of its other customers in said zone, irrespective of the places of delivery in the zone or differences in delivery costs. Each respondent manufacturer has adopted and uses an arbitrary zone price differential for each of the six zones. The zone price differentials, zone numbers and zone boundaries used by each respondent manufacturer are identical to the zone price differentials, zone numbers and zone boundaries used by each of the other respondent manufacturers, regardless of the geographic location of the factory of such respondent.

Each of the respondents, through the use of said pricing system, charges and collects a false amount as freight or delivery costs on substantially every sale made by it. On some sales the amount charged is more and on the others it is less than the actual freight or delivery cost, and only in very few instances is the amount charged and collected as delivery cost identical with the actual delivery cost. The actual differences in delivery costs between two zones are not identical to the zone differentials used by the respondents; neither do the differentials used bear any reasonable relationship to the actual differences in outbound freight or transportation costs between said zones.

1334

Order

Said pricing system enables respondents to match, and has resulted in the matching of delivered prices by all of said respondents at every destination in the United States, thereby nullifying the effectiveness of differences in delivery costs as an element of competition between the respondents, and has precluded purchasers and prospective purchasers from finding or obtaining any price advantage in dealing with one respondent manufacturer as against another.

Each of said respondents, has adopted and is using the acts, practices and methods described in this Paragraph 10 for the purpose and with the effect of contributing to the hindrance, lessening and injury to competition in price and otherwise between and among said respondents in the sale and distribution of their products, and thereby furthers and helps the carrying out of the purposes and objects of the agreements and understandings between the respondents, as herein alleged.

PAR. 11. The capacity, tendency and effect of said understandings, agreements, combination and planned common course of action and the acts and practices of the respondents, and each of them, done and performed pursuant thereto and in furtherance thereof, are now and have been to substantially lessen, restrict, restrain and injure competition among and between respondents in the sale and distribution of hard fiber rope, cordage and twine in commerce within the intent and meaning of the Federal Trade Commission Act; have a dangerous tendency to and have actually hindered, restricted, and prevented price competition between and among said respondents in the sale and distribution of said products in said commerce; have empowered and enabled respondents to a substantial degree, to control the market and enhance the prices of said products above the prices which would prevail under a condition of natural, normal and free competition among said respondents and deprived the purchasing public of a free and open competitive market in which to purchase said products.

PAR. 12. The acts and practices of the respondents and each of them, as herein alleged, are all to the injury and prejudice of the public and competition and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER REMANDING CASE TO HEARING EXAMINER

Counsel in support of the complaint and the respondents both having filed appeals from the hearing examiner's initial decision dismissing the complaint in this proceeding at the close of the case in chief, and the matter having been heard on briefs of counsel (oral

Appeal

52 F. T. C.

argument not having been requested), and the Commission having rendered its decision vacating and setting aside the initial decision:

It is ordered, That the case be, and it hereby is, remanded to the hearing examiner for further proceedings in conformity with the Commission's decision.

ON APPEAL FROM INITIAL DECISION

Chairman Howrey delivered the opinion:

This case is before the Commission upon an appeal, filed by counsel in support of the complaint, from the hearing examiner's initial decision, issued at the close of the case in chief, dismissing the complaint. The basis of the decision was that a prima facie case had not been established. The respondents also appealed, contending that the examiner was in error in finding that the respondents, during the N.R.A. period, agreed upon and put into operation a zone plan for pricing their products, and that they have continued its use down to the present time.

We believe that counsel in support of the complaint have established a prima facie case with respect to that portion of the complaint which charged that the respondents collusively and unlawfully established geographical zones and freight differentials for pricing purposes.

As hereinabove indicated, the hearing examiner found that respondents had agreed upon a zone plan which fixed freight differentials and that they had continued to use such plan down to the present time. He conceded that if this were part of a price fixing combination there would be no doubt of its illegality, but held that "* * * in the circumstances here existing the plan is not a price fixing device but is simply a convenient method of charging freight."

The hearing examiner erred, we think, when he held that the zone plan was not a price fixing device.

Under the plan the United States was divided into six zones. Zone 1 comprised roughly New England and the North Atlantic States. Moving westward, provision was made for the other five zones, with Zone 6 comprising the Pacific Coast States. Under the plan, as presently operated, varying freight differentials were established to be added to or deducted from list prices. The plan had the effect of equalizing delivered list prices on rope and twine so that each respondent, regardless of its location, had the same delivered list price in each zone. By delivered list price we mean the quoted cost to the consumer, namely, the list price plus or minus the established freight differential.

A comparison of the price lists and zone differentials shows how the plan worked. For example, most 1952 price lists of companies

1334

Appeal

located in Zones 1 and 6, listed a price of \$.50 per pound for $\frac{3}{4}$ " diameter, best grade, Manila rope and showed freight zone differentials for less-than-carload shipments as follows:

Zones:

1	List Prices
2	$\frac{1}{2}$ ¢ lb. over List Prices
3	1¢ lb. over List Prices
4	$1\frac{1}{2}$ ¢ lb. over List Prices
5	$1\frac{1}{4}$ ¢ lb. over List Prices
6	List Prices

At the same time an Ohio company, located in Zone 2, had a list price on comparable rope of \$.50 $\frac{1}{2}$. Its freight differentials were as follows:

Zones:

2	Printed List prices
3	$\frac{1}{2}$ ¢ over printed prices
4	1¢ over printed prices
5	$\frac{3}{4}$ ¢ over printed prices
1 and 6.....	$\frac{1}{2}$ ¢ under printed prices

Thus, the seller on the Pacific Coast charged more for shipments to nearby Colorado than to more distant Kansas, and more for shipments to Kansas than to Ohio, and more for shipments to Ohio than to Massachusetts. In other words, with one exception (Zone 5), the further the shipping distance the less the freight charge.

Likewise, some of the differentials of the Northeast seller bore little relationship to differing freight costs. He sold in California, for example, at his Massachusetts list price, that is, he charged no freight at all for his longest shipment. On the other hand, he charged $1\frac{1}{4}$ ¢ for deliveries to less distant Nevada and $1\frac{1}{2}$ ¢ for deliveries to still less distant Colorado.

The seller in Ohio (Zone 2) had different freight differentials. He started with a list price of $\frac{1}{2}$ ¢ more than the sellers on the two coasts, that is, the delivered cost for the customer across the street in Xenia, Ohio, was more than for customers located in either California or New York. On shipments to the two coasts, that is, the two farthest points from his plant, he not only charged no freight but in fact made a deduction for freight. Some of his in-between shipments were also unrelated to freight costs. He charged less, for example, for shipments to Nevada than for shipments to points nearer his Ohio mill.

As we have indicated, the net result of the varying differentials and varying list prices, generally speaking, was that most respondents quoted the same delivered price to all customers in each zone.

Respondents concede that post-World War II price lists show that most of the respondents used an identical zone plan for charging

Decision

52 F. T. C.

freight, but deny there is any evidence of a post-war agreement to use such plan. They contend, assuming *arguendo* that there may be evidence of use of the plan by agreement up to World War II, that war time controls are a complete insulation from any presumption that an agreement continued post war.

While the hearing examiner did not deal specifically with this argument, he met the issue by holding that the zone plan was established many years ago pursuant to an agreement and respondents had continued its use down to the present time. It should be added, it seems to us, that it is unlikely the present plan could have been worked out except in pursuance of some sort of an agreement or understanding. The artificiality and arbitrariness of the zone differentials are such that the plan cannot, *prima facie*, at least, withstand the inference of agreement. See *Fort Howard Paper Co., et al v. Federal Trade Commission*, 156 F. 2d 899, 907.

We think the case should be remanded for further proceedings consistent with this opinion, that is, to permit the respondents to show, if they can, that the zone plan was not established pursuant to agreement or was not a price fixing device. The hearing examiner's initial decision dismissing the complaint is accordingly vacated and set aside.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charged the respondents with entering into a combination in restraint of trade, in violation of the Federal Trade Commission Act. At the conclusion of the reception of evidence in support of the complaint, the hearing examiner granted a motion made by respondents seeking dismissal of the complaint for failure of proof, and issued his initial decision dismissing the complaint. Upon appeal to the Commission by counsel supporting the complaint the Commission in effect affirmed the decision of the hearing examiner except as to one issue raised by the complaint, that involving the use by respondents of geographical zones. As to this issue, the Commission held that a *prima facie* case had been established and the matter was remanded to the hearing examiner for further proceedings in regular course.

An agreement with respect to this remaining issue has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional allegations in the complaint; that respondents' answers to the complaint shall be considered as having been withdrawn; 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; 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 entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Cordage Institute is an unincorporated non-profit membership association, with its office and principal place of business located at 350 Madison Avenue, New York, New York.

Respondent J. S. McDaniel, an individual, was secretary of respondent Institute for a period of more than twenty-five years immediately preceding March 1950.

Respondent R. C. Utess, an individual, was president of the respondent Institute and chairman of its Executive Committee from March 1949 to January 1950.

Respondent S. W. Metcalf, an individual, was a member of the Executive Committee of the respondent Institute from January 1949 to January 1950.

Respondent W. S. Miles, Jr., an individual, was a member of the Executive Committee of the respondent Institute from January 1949 to January 1950.

Respondent E. G. Roos, an individual, was a member of the Executive Committee of the respondent Institute from January 1949 to January 1950.

Respondent H. M. Wall, an individual, was a member of the Executive Committee of the respondent Institute from January 1949 to January 1951.

Respondent Plymouth Cordage Co. is a corporation, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Plymouth, Massachusetts.

Respondent American Manufacturing Company is a corporation, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Noble and West Streets, Brooklyn, New York.

Decision

52 F. T. C.

Respondent Columbian Rope Company is a corporation, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 309 Genesee Street, Auburn, New York.

Respondent The Edwin H. Fidler Company is a corporation, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Devereaux and Milnor Streets, Philadelphia, Pennsylvania.

Respondent R. A. Kelly Company is a corporation, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Xenia, Ohio.

Respondent The E. T. Rugg Company is a corporation, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Newark, Ohio.

Respondent Peoria Cordage Company is a corporation, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1502 South Washington Street, Peoria, Illinois.

Respondent New Bedford Cordage Company is a corporation, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Court and Ash Streets, New Bedford, Massachusetts.

Respondent Tubbs Cordage Company is a corporation, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 200 Bush Street, San Francisco, California.

Respondent Tubbs Cordage Company (Washington) is a corporation, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2021 - 15th Avenue, West, Seattle, Washington.

Respondent Wall Rope Works, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 48 South Street, New York, New York.

Respondent Whitlock Cordage Company is a corporation, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 46 South Street, New York, New York.

Respondent Cating Rope Works, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 58-29 64th Street, Maspeth, New York.

1334

Order

Respondent Cupples Company Manufacturers (named in the complaint as Cupples Company, Inc.) is a corporation, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 440 South Brentwood Boulevard, St. Louis, Missouri.

Respondent The Thomas Jackson & Son Company is a corporation, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Reading, Pennsylvania.

Respondent Waterbury Rope Sales Corporation is a corporation, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 88 Wallabout Street, Brooklyn, New York.

Respondent The Hooven & Allison Company is a corporation, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Xenia, Ohio.

Respondent Rinek Cordage Company is a corporation, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Easton, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents, Cordage Institute, an unincorporated membership association, J. S. McDaniel, individually and as Secretary of Cordage Institute, R. C. Utess, individually and as President and Chairman of the Executive Committee of Cordage Institute, S. W. Metcalf, individually and as a member of the Executive Committee of Cordage Institute, W. S. Miles, Jr., individually and as a member of the Executive Committee of Cordage Institute, E. G. Roos, individually and as a member of the Executive Committee of Cordage Institute, H. M. Wall, individually and as a member of the Executive Committee of Cordage Institute, and Plymouth Cordage Co., American Manufacturing Company, Columbian Rope Company, The Edwin H. Fitler Company, R. A. Kelly Company, The E. T. Rugg Company, Peoria Cordage Company, New Bedford Cordage Company, Tubbs Cordage Company, Tubbs Cordage Company (Washington), Wall Rope Works, Inc., Whitlock Cordage Company, Cating Rope Works, Inc., Cupples Company Manufacturers, The Thomas Jackson & Son Company, Waterbury Rope Sales Corporation, The Hooven & Allison Company, and Rinek Cordage Com-

Decision

52 F. T. C.

pany, corporations, and their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of hard fiber rope or hard fiber wrapping twine 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 course of action, agreement, understanding, combination, 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 to this proceeding, to establish or maintain geographical price zones or zone price differentials in the sale of hard fiber rope or hard fiber wrapping twine.

It is further ordered, That the remaining charges of the complaint be, and they hereby are, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 12th day of May, 1956, become the decision of the Commission; and, accordingly:

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.

Commissioner Kern not participating.

Decision

IN THE MATTER OF
PIONEERS, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6190. Complaint, Mar. 11, 1954—Decision, May 16, 1956*

Order dismissing, on the ground that the allegations were unsustained by the greater weight of the evidence, complaint charging a manufacturer in Oakland, Calif., with making false representations in advertising concerning the properties of its "Battery AD-X2" battery additive designed to be used in lead-acid storage batteries.

Mr. R. P. Bellinger and Mr. William M. King for the Commission.
Ellis, Houghton & Ellis and Mr. Wilbur N. Baughman, of Washington, D. C., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. This proceeding involves a product known as "Battery AD-X2," an additive designed for use in lead-acid storage batteries. The Commission's complaint, issued March 11, 1954, charges respondents with the making of numerous misrepresentations in the advertising of their product, including statements that a condition known as "sulfation" is the direct or indirect cause of most battery failures, that the product beneficially affects this condition and reduces the harmful effects thereof, and that as a result batteries function better and last longer, operating with less heat, less water loss, cleaner plates, less shedding of active material from the plates, less danger of buckled plates, etc., and that through the use of the product batteries which have failed because of sulfation can be restored to useful service. After the filing of respondents' answer, challenging all of the material allegations of the complaint and denying any misrepresentation of the product, numerous hearings were held and much testimony and other evidence received, both in support of and in opposition to the complaint. The case was then argued orally before the hearing examiner, and is now before him for final consideration and decision.

2. While respondents challenge the interpretation placed upon their advertising by the complaint, insisting that the quoted excerpts from the advertisements are taken out of context and misconstrued, the examiner is of the view that the construction placed upon the advertising by the complaint is substantially correct provided two things are constantly kept in mind. The first of these is that all of respondents' claims for their product are conditioned upon the