

Decision

IN THE MATTER OF
JACOB HAUPTMAN TRADING AS
AMERICAN BROADLOOM CARPET COMPANY, ETC.

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

Docket 6271. Complaint, Dec. 22, 1954—Decision, Sept. 10, 1956

Order requiring a Philadelphia retailer of rugs and carpets to cease advertising falsely that certain carpetings had been "Woven to sell" at prices greatly in excess of his usual prices for the merchandise and that such advertised prices provided a substantial saving to purchasers; and representing falsely through use of the words "Mills Outlet" in one of his trade names and otherwise that he had been especially selected by manufacturers to dispose of their rugs and carpets at greatly reduced prices.

Mr. Frederick McManus for the Commission.

Dennis, Rotman, Cohen & Dennis, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this matter, which was issued on December 22, 1954, charges the respondent, Jacob Hauptman, an individual trading as American Broadloom Carpet Company, American Floor Covering Company and American Mills Outlet Co., whose principal place of business was stated as No. 211 Chestnut Street, Philadelphia, Pennsylvania (the respondent later moving to, and now occupying premises No. 235 Chestnut Street in said city) with violation of the Federal Trade Commission Act in the sale of floor rugs and carpeting in interstate commerce as "commerce" is defined in the Act.

The specific acts complained of comprised numerous false representations with respect to the prices and alleged value of his merchandise, the savings afforded purchasers thereof and the nature of his business, all appearing in advertisements inserted in newspapers, periodicals and in other advertising media.

Respondent filed answer to the complaint and thereafter testimony and evidence were received in support of the complaint, all of which was duly recorded in the office of the Federal Trade Commission in Washington, D.C.

From time to time during the course of the proceedings delays were granted the respondent upon various grounds, all of which appear of record herein. On May 10, 1955, counsel in support of

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the complaint rested the Commission's case whereupon a hearing was ordered for July 14, 1955, to receive testimony and evidence on behalf of the respondent. Prior to the arrival of said hearing date, and thereafter on three occasions, upon motion of respondent, hearing dates were cancelled and the 21st day of September, 1955, was fixed for such hearing on which date respondent and his counsel appeared and again requested postponement "to some future date," citing as grounds therefor the "nervousness" of respondent. To this motion the Hearing Examiner refused to accede and, after reviewing the record, citing the appropriate Rule of Practice, (Section 3.16(d)), requiring that "the taking of evidence and subsequent proceedings shall proceed with all reasonable expedition," and in recognition of the public interest and the rights of other litigants to be accorded their "day in court," the Examiner thereupon, and after a declaration by respondent's counsel of his inability to proceed with the defense, declared the matter closed for the reception of testimony and evidence and the 24th day of October, 1955, was fixed as the date for filing of proposed findings and conclusions. The parties submitted their respective proposals.

In his answer to the complaint respondent denied the charges of misrepresentations in his advertisements as to price, value and the nature of his business and, in addition thereto, set up an affirmation defense of lack of jurisdiction in that his business is purely intrastate in character and, while admitting that certain sales were made in Pennsylvania and deliveries thereof consummated in other states, contends that such "had no measurable effect or impact upon 'commerce,' as the term is defined in the Act" and "were not of such a nature or of sufficient volume to create a 'constant current of trade in commerce' among the various states." This question, being jurisdictional, will be hereinafter considered at length on the basis of the evidence in hand. Respondent's said answer denied the remaining allegations of the complaint which will likewise be hereinafter considered.

Due consideration having been given to the evidence adduced, the contentions of both counsel, and the proposed findings filed by them in accordance with the Commission's Rules, the Hearing Examiner makes the following:

FINDINGS OF FACT AND CONCLUSIONS

1. Respondent, Jacob Hauptman, is an individual trading as American Broadloom Carpet Company, American Floor Covering Company, and American Mills Outlet Co., having his principal place

of business and office at No. 235 Chestnut Street, Philadelphia, Pennsylvania, and is engaged in the sale of carpets and rugs at retail.

2. In the course and conduct of his business respondent now causes, and has caused, rugs and carpets sold by him to be transported from his retail store in Philadelphia, Pennsylvania, to purchasers located in other states of the United States and there is now, and has been for more than two years last past, a constant current of trade in commerce in such rugs and carpets between and among the various states of the United States.

Supporting this finding there appears of record herein fourteen newspaper advertisements of the respondent, five of which state, *inter alia*:

No matter where you live.

Free estimates.

Free storage.

Free delivery anywhere.

and as to three of such advertisements:

Insured delivery anywhere.

and as to five such advertisements:

No matter where you live you may take
advantage of this opportunity.

American's [meaning the American
Broadloom Carpet Company] reputation
for quality and value in floor coverings
is *nationally known*.

[Emphasis supplied.]

The foregoing advertisements all appeared in The Philadelphia Inquirer, a newspaper of wide circulation, which circulation this Examiner takes official notice extends beyond the state lines of Pennsylvania and has a considerable circulation in the adjoining states of New Jersey and Delaware, both of which are contiguous to the State of Pennsylvania and in close proximity to the City of Philadelphia.

As evidence of interstate shipments the record bears evidence of three sales wherein the purchasers were residents of the State of New Jersey and the articles purchased were shipped by the respondent by means of a carrier of his own selection to the purchasers thereof in New Jersey, and supporting this there is the undisputed and unrefuted testimony of the purchasers, supplemented in each instance by a conditional sales contract executed by the purchasers, the blank form thereof and promissory note attached thereto for the unpaid balance due on the merchandise, being furnished by the

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respondent and being designated thereon "For use in New Jersey," the promissory notes attached to each being respectively dated "Camden, New Jersey," "Westmont, New Jersey" and "Camden, New Jersey," thus bringing the transaction, certainly in so far as the conditional sale contracts and their enforcement are concerned, within purview of the statute laws of the State of New Jersey. The forms for the aforesaid conditional sales contracts were supplied to the respondent by the Girard Trust Corn Exchange Bank of Philadelphia, a banking concern to which the respondent sold such conditional sales contracts after consummation of sales, receiving from said Bank the full face amount thereof and the purchasers making deferred purchase payments direct to said bank. An official of the Girard Bank having charge of the handling of such matters testified that in the year 1954 his Bank discounted for the respondent 79 notes representing conditional sales contracts of the respondent, trading as American Floor Covering Company, executed by his customers residing in the states of New Jersey and Delaware.

There is also the uncontested testimony of a purchaser who executed a so-called "agreement of lease" and who was at the time a resident of the City of Haddonfield, New Jersey. The testimony of this witness as to the delivery of the goods to his place of residence was borne out by the bill of lading of a common carrier showing the name and address of the witness as consignee and the American Broadloom Carpet Company as the shipper, supplemented by the customer's copy of the sales memorandum of such sale, issued by the respondent, showing the New Jersey address of the purchaser to be in the aforesaid Haddonfield, New Jersey. This so-called "agreement of lease" was in truth and in fact nothing more nor less than a conditional sale contract, although on its face it was designated a "lease," but attached thereto was a promissory note signed by the purchaser for the unpaid balance of purchase price and, as testified by the purchaser, the full amount has since been paid and the articles are now the property of the so-called lessee.

Respondent testified that he does in fact sell merchandise to customers located in the states of New Jersey and Delaware, but that his truck does not go out of the State of Pennsylvania; that in some instances the purchasers will pick up the merchandise at respondent's place of business and in other instances he makes use of a common carrier such as an interstate trucking agency; that in some instances the purchasers would suggest to respondent the name of a trucking concern making deliveries in his city but in the absence of such suggestion selection of a carrier would be made by an agent of the respondent.

It is found that the respondent is engaged in interstate commerce within the meaning and intent of the Act.

3. Respondent at all times mentioned herein has been in substantial competition with other persons and with corporations, firms and partnerships engaged in the sale at retail of rugs and carpets in commerce between and among the various states of the United States.

4. In the course and conduct of his business, and to promote the sale and induce the purchase of his merchandise, respondent has made numerous statements with respect, (1) to the prices of his merchandise and, (2) the savings afforded to purchasers thereof and, (3) the nature of his business, all such appearing in advertisements inserted in newspapers of general circulation. Among and typical of said statements contained in said advertisements, but not all-inclusive are the following:

Wilton Mills Close Out
Royal Wilton Broadlooms
Save \$11.18 now on each yard
Woven to sell for \$19.95
\$8.77 square yard.

AMERICA'S FINEST WOVEN
Wilton Broadlooms also
Sculptured-Embossed-Twists & Florals
Newest Fashions 100% Wool First Quality
Famous Quality Manufacturers'
American Mills Outlet.
Save \$6. to \$14. per yard
Orig. \$12.95 NOW \$5.88 square yard
Made to your rug sizes.

Come to Mills Outlet
Save money on rugs
Famous Fashions Wilson
\$9.88 Square Yard
Save \$15 on each yard woven to
sell for \$24.50 per yard.

Save $\frac{3}{4}$ of your dollar
Fashion Styled Broadlooms
Come to American Mills Outlet Co.
All Wool Pile
1st. Quality
Woven to sell for \$16.95
Save \$10.18 per yard
Now \$6.77 Square Yard.

While only four of such advertisements are cited above, the record discloses sixteen separate instances of advertisements of one-half to three-fourths newspaper pages each, all of which repeat in some

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particulars certain of the statements above set forth; that all of said advertisements were run in the newspaper, The Philadelphia Inquirer, appearing at various intervals from November 9, 1952, to August 15, 1954; that respondent expends for advertising, of which the foregoing mentioned forms a part, the sum of approximately \$120,000.00 a year so that it is found respondent's activities in this behalf are widespread and considerable.

5. The complaint specifically charges respondent with false representations in the foregoing advertisements in three categories: (a) use of the expression "Woven to sell for," (b) use of the word "original" and the quoting of a figure in connection therewith, and (c) "Mills Outlet" in the use of the name "American Mills Outlet Co." These will be considered categorically:

(a) It is found that the use of the expression "Woven to sell for" as above cited and the quotation of the amount of \$19.95 in connection therewith was intended to, and did in fact, represent that the sum of \$19.95 per square yard was respondent's customary and usual selling price for such merchandise and that the difference between that figure and the sum of \$8.77 per square yard, the price at which the carpet was advertised, did not represent a saving to the purchaser of \$11.18 per square yard because of the gross exaggeration of the figure of \$19.95 which was greatly in excess of the customary and usual price charged by the respondent for said goods. Upon examination respondent was unable to produce any suggested retail price made by any manufacturer, mill or supplier with whom he dealt for the reason that none such were ever printed or communicated to him, nor did any supplier furnish respondent with any information which would justify the representation of "Woven to sell for," which very language imports that the producer of the merchandise, at the time of production, intended, designed and produced it to "sell for" the figure quoted. Respondent did not, at any time prior to insertion of the advertisement, ever sell this carpeting at \$19.95 per square yard nor did the manufacturer, or anyone connected with the manufacturer, suggest or advise respondent that the carpet was woven or produced to sell for \$19.95. Respondent attempted to justify use of the representation on the basis that manufacturers want retailers to "make a good profit" which fact, according to respondent, supplemented by the regular markup for profit as used by respondent, plus his knowledge of the customary and usual markups employed by his competitors, supplemented by his judgment of values, justified his arrival at the figure the merchandise was "Woven to sell for." This explanation is rejected as specious and illogical and while, perhaps, being satisfactory to the

respondent yet falls far short of a justifiable basis for such a representation to the public.

The foregoing, having to do with a specific price and representation, was repeated in substantially the same manner with substantially the same results through a lengthy list of items appearing in advertisements other than that immediately heretofore analyzed a lengthy and detailed résumé of which would serve no good purpose in this decision, so that it is found, as a fact, that respondent was never, at any time, justified in representing that any carpeting was "produced" or "Woven to sell for" any specific sum, price or amount and that the use of such representation was and is false, deceptive and misleading.

In a particular instance respondent advertised a sale of carpets at \$6.77 per square yard which were "Woven to sell for \$16.95 per square yard, thus effecting a saving of \$10.18 per square yard. The offer was made by advertisement of June 6, 1954, in the newspaper, The Philadelphia Inquirer. On June 9, 1954, pursuant to the advertisement one E. H. Campbell of Haddonfield, New Jersey, made purchase of 15 $\frac{1}{3}$ square yards at \$6.77 per square yard. At the hearing a witness testified at the instance of the Commission that he is the floor covering buyer for Gimbel Brothers, a department store in Philadelphia; that he readily recognized the carpet as being the product of a certain manufacturer and that, on behalf of his employer, had purchased and sold comparable carpets produced by the same manufacturer; that the cost to him of said carpet on a delivered basis was \$7.04 per square yard and, after addition of markup, retailed same at \$11.95 a square yard; that Gimbel's markup would generally be higher than that of a specialty store such as respondent's. The witness testified that a purchase at \$6.77 would be a bargain as compared with his, the witness' price of \$11.95, but we are concerned here not with the question of "bargains" but with the direct representation by respondent of a saving of \$10.18 per square yard.

(b) It is found that the use of the word or expression "original" as applied to price or value of an article and the quoting of a specific figure in connection therewith was intended to, and did in fact, represent that the quoted figure was the price at which respondent had originally sold and disposed of like merchandise, whereas such figure was greatly in excess of the customary and usual price charged by the respondent for the merchandise offered in the advertisement and respondent testified that he had never sold any of the merchandise advertised at the figure he represented as the "original" price. In some instances concerning other merchandise so adver-

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tised he had some vague or hazy recollection of having effected sales at "original prices" but, save in a few instances, could not testify to specific sales nor produce records thereof. Consequently, it is found that the representation of savings amounting to six dollars to fourteen dollars per square yard did not accrue to purchasers paying \$5.88 per square yard for this merchandise.

(c) It is found that the use of the words "Mills Outlet" in the trade name "American Mills Outlet Co." in the manner and form used in said advertisements was false, misleading and deceptive in that such represented that respondent had been especially designated or selected by the manufacturers of rugs and carpets to dispose of such merchandise at greatly reduced prices when such was not the fact. Respondent has no contracts, written or verbal, to act as an "outlet" for any manufacturer or mill; has never been personally solicited by any manufacturer or mill to act in that capacity; has never been encouraged by any mill or manufacturer in the use of the term "Mills Outlet" and respondent lays claim to the right to use the term solely by reason of his activities in purchasing surplus or discontinued merchandise from the mills and that his activity in this connection he assumes, by reason of his extensive advertising, is well known to the mills and manufacturers; that respondent has never contacted mills or manufacturers except through their salesmen, the latter effecting sales to the respondent of said merchandise.

6. The use by the respondent of the foregoing false, misleading, and deceptive statements and representations has the capacity and tendency to lead members of the purchasing public into the erroneous and mistaken belief that said statements and misrepresentations are true and into the purchase of substantial quantities of respondent's carpets and rugs because of such mistaken and erroneous belief. As a result thereof, substantial trade in commerce has been diverted to respondent from its competitors and substantial injury has been done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public 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.

ORDER

It is ordered, That the respondent Jacob Hauptman, an individual, trading as American Broadloom Carpet Company, American Floor

Covering Company, or American Mills Outlet Co., or trading under any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of carpets, rugs, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary and usual prices of said products any price which is in fact in excess of the price at which such products are customarily offered for sale and sold by respondent in the usual course of business.

2. Misrepresenting in any manner the amount of savings available to purchasers of respondent's products.

3. Using the words "mills outlet," or any other word or words of similar import or meaning, as part of a trade name, or in any other manner; or otherwise representing that respondent has been especially designated or selected by any manufacturer of rugs and carpets to dispose, sell or distribute in any manner the products of said manufacturer.

OPINION OF THE COMMISSION

By SECRET, Commissioner:

The complaint in this matter charges respondent with violating the Federal Trade Commission Act through the use of false, misleading and deceptive statements and representations with respect to the prices of merchandise offered for sale, the savings accorded to purchasers thereof, and as to the nature of respondent's business. In his initial decision the hearing examiner has found that the allegations of the complaint have been sustained and has included an order to cease and desist. From this decision respondent has appealed.

Respondent, Jacob Hauptman, is an individual trading as American Broadloom Carpet Company, American Floor Covering Company, and American Mills Outlet Company, having his principal place of business and office at 235 Chestnut Street, Philadelphia, Pennsylvania. During the period covered by the complaint, respondent has been engaged in the retail sale of carpets and rugs, and, in connection therewith, has caused to be placed in the Philadelphia Inquirer, a Philadelphia newspaper, advertisements containing representations, of which the following are illustrative:

Wilton Mills Close Outs
Royal Wilton Broadlooms
Save \$11.18 now on each yd.

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Woven to sell for 19.95

8.77 sq. yd.

America's Finest Woven

Wilton Broadlooms

Also Sculptured-Embossed-Twists & Florals

Newest Fashions

100% Wool

First Quality

Famous Quality Manufacturers'

American Mills Outlet

Save \$6. to \$14. per yard

Orig. \$12.95 Now \$5.88 square yard

Made to your rug sizes.

Taking exception to the examiner's ruling on September 21, 1955, denying respondent a further continuance of the date set for hearing, respondent argues that he was thereby precluded from presenting his defense to the Commission's charges. The fact is that respondent had at least from May 10, 1955, at which time counsel supporting the complaint rested, to September 21, 1955, to prepare a defense. A good part of this time accrued as a result of several continuances of the date set for hearing upon representations of respondent's counsel that Mr. Hauptman's condition of health disabled him from appearing. However, respondent's counsel in moving on September 21, 1955, for an additional continuance to an indefinite date in the future did not contend that respondent was unable to testify at that time; respondent was, in fact, present at the hearing. Moreover, no showing was made that such preparation depended solely on Mr. Hauptman's personal efforts. In view of the generous extensions of time granted, it appears that respondent was provided a fair and reasonable opportunity to present his case. Accordingly, the examiner was correct in denying a further continuance of the date set for hearing and in ordering respondent to proceed with his defense.

Exception is taken to the hearing examiner's finding that respondent has engaged in interstate commerce within the intent and meaning of the Federal Trade Commission Act. Respondent has specifically admitted in his answer that he has caused certain rugs and carpets sold by him to be transported from his retail store in Philadelphia, Pennsylvania, to purchasers located in other states. In this appeal, however, respondent argues that the evidence does not support the finding as to commerce, contending that the advertisements here in question were intended for intrastate dissemination only; that sales to residents of New Jersey were consummated in their entirety at respondent's place of business in Philadelphia; and that, in any event, such sales were negligible in volume.

In the opinion of the Commission, the facts of record support the findings as to interstate commerce. While the hearing examiner has taken official notice of the circulation of the Philadelphia Inquirer in New Jersey and Delaware, the evidence adduced discloses interstate circulation of respondent's advertisements which include representations cited in the complaint. There is express testimony from a customer of respondent that such advertisements were read in the Philadelphia Inquirer which was received at the customer's home in New Jersey. Moreover, considering other evidence in the record, it is reasonable to conclude therefrom that respondent's advertisements in the Philadelphia Inquirer were circulated in New Jersey and Delaware. It is of no importance that respondent may not have intended to solicit sales outside the State of Pennsylvania, where there is, in fact, an interstate circulation of the advertising material.

It is clear from the record, furthermore, that respondent distributed his merchandise in interstate commerce. Although respondent denies that his trucks were authorized to go beyond the Pennsylvania State line, the testimony of his customers residing in New Jersey reveals that their purchases included the delivery of the merchandise into the State of New Jersey. If respondent did not deliver such purchases with his own trucks, he at least employed and paid for the means by which the deliveries were made. One purchaser residing in New Jersey testified that, after making a tentative selection of an advertised rug at respondent's place of business in Philadelphia, he later ordered the rug by mail, enclosing payment for only the purchase price of the rug. This rug was subsequently delivered to the customer's residence in New Jersey by some means selected by respondent without additional charge being made to the customer for the delivery. It is apparent, therefore, that respondent delivered, or caused to be delivered, outside of Pennsylvania, merchandise purchased in response to his advertisements under such circumstances as to constitute the making of sales in interstate commerce.

Although the specific instances of such sales are not great in number, they are taken to be merely illustrative of the commerce engaged in by respondent. The testimony of an official of Girard Trust Corn Exchange Bank of Philadelphia was to the effect that, in 1954, out of approximately 430 conditional sales contracts handled by the bank for respondent, approximately 79 were executed by respondent's customers located in New Jersey and Delaware. The record as a whole sufficiently indicates a substantial course of trade in interstate commerce and fully justifies the examiner's finding.

Respondent, in taking exception to the examiner's finding relating to the use of expressions or terms such as "woven to sell for," "original" and "Mills Outlet," contends that wholly arbitrary definitions have been given to these terms, overlooking their ordinary and customary meaning in the light of normal trade usage.

The complaint charges that respondent, by use of the expression "woven to sell for" and "original" and designated amounts in connection therewith, represented, contrary to fact, that respondent's customary and usual prices were such amounts, and that the differences between such amounts and the prices at which the merchandise was offered for sale were savings to purchasers.

The examiner found illustratively "that the use of the expression 'Woven to sell for' as above cited and the quotation of the amount of \$19.95 in connection therewith was intended to, and did in fact, represent that the sum of \$19.95 per square yard was respondent's customary and usual selling price for such merchandise and that the difference between that figure and the sum of \$8.77 per square yard, the price at which the carpet was advertised, did not represent a saving to the purchaser of \$11.18 per square yard because of the gross exaggeration of the figure of \$19.95 which was greatly in excess of the customary and usual price charged by the respondent for said goods."

The examiner also found "that the use of the word or expression 'original' as applied to price or value of an article and the quoting of a specific figure in connection therewith was intended to, and did in fact, represent that the quoted figure was the price at which respondent had originally sold and disposed of like merchandise, whereas such figure was greatly in excess of the customary and usual price charged by the respondent for the merchandise offered in the advertisement and respondent testified that he had never sold any of the merchandise advertised at the figure he represented as the 'original' price."

Counsel supporting the complaint introduced evidence which we believe clearly shows that respondent by using the expressions "woven to sell for" and "original" in connection with prices was making representations contrary to fact because the indicated merchandise had not been woven to sell for the represented amounts, nor were the represented amounts, except in possibly a few isolated cases, respondent's original prices. We believe the examiner was correct in his conclusion that respondent's use of such terms, as "original" and "woven to sell for" could be reasonably be interpreted as representing that the prices represented in connection therewith

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were customary and usual with respondent. His findings to this effect are accordingly upheld.

The examiner further found as to representations made by respondent "that the use of the words 'Mills Outlet' in the trade name 'American Mills Outlet Co.' in the manner and form used in said advertisements was false, misleading and deceptive in that such represented that respondent had been especially designated or selected by the manufacturers of rugs and carpets to dispose of such merchandise at greatly reduced prices when such was not the fact." The respondent was not under contract with any mill as an "outlet"; nor was he especially designated or selected by manufacturers of rugs and carpets to dispose of such merchandise at greatly reduced prices. The words "Mills Outlet" in the manner used in advertisements showing reduced prices clearly may be construed as meaning that respondent had a special tie-in with the mills such as being especially designated or selected by which he was able to bring reduced prices to purchasers. In that respondent has no such relationship with any mill or manufacturer of rugs and carpets, we believe that the examiner's finding in respect to "Mills Outlet" is correct.

Exception has been taken to the examiner's finding that respondent has been in substantial competition with other persons and organizations in the retail sale of rugs and carpets in interstate commerce. Such a finding was warranted, particularly in view of respondent's answer to the complaint expressly admitting such competition. Respondent has made various other exceptions, each of which has been considered and found to be without merit except to the extent indicated by this opinion.

Since it does not appear that Paragraph 1 of the hearing examiner's order is in conformity with the findings, it will be appropriately modified.

The respondent's appeal is accordingly denied and the findings, conclusion, and order contained in the initial decision as modified herein are adopted as the findings, conclusion and order of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent, and briefs of counsel in support thereof and in opposition thereto, no oral argument having been requested; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that respondent's appeal should be denied, and the initial decision modified and thereafter adopted as the Commission's decision:

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It is ordered, That Paragraph 1 of the order in the initial decision be, and it hereby is, modified to read as follows:

“Representing as the customary and usual prices of said products any price which is in fact in excess of the price at which such products are customarily offered for sale and sold by respondent in the usual course of business.”

It is further ordered, That respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the initial decision as modified.

Decision

IN THE MATTER OF
L. SILBERMAN & SONS, INC., ET AL.

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

Docket 6556. Complaint, May 21, 1956—Decision, Sept. 13, 1956

Consent order requiring Philadelphia wholesalers of shoe findings to cease stamping or labeling with the words "ASMC Horsehair" and "ASMC Pure Horsehair" shoebrushes which contained various quantities of palma, a vegetable fiber, or fibers other than horsehair.

Mr. Charles S. Cox for the Commission.

Mr. Benjamin Silberman, of Philadelphia, Pa., *in propria persona* and for L. Silberman & Sons, Inc.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued May 21, 1956, charges the respondents L. Silberman & Sons, Inc., a corporation, and Benjamin Silberman, as an individual and as President of the corporate respondent, with violation of the Federal Trade Commission Act in connection with the interstate sale, shipment and distribution of shoebrushes, falsely representing such to be composed of "horsehair" and "pure horsehair".

After issuance of said complaint the respondents entered into an agreement, with counsel in support of the complaint, for a consent order disposing of all of the issues in this proceeding, said agreement having been duly approved by the Director of the Bureau of Litigation.

By the terms of said agreement, the respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a 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 procedure before the hearing examiner and the Commission to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondents further agreed that the order to