

IN THE MATTER OF
MA-RO HOSIERY COMPANY, INC., ET AL.

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

Docket 6436. Complaint, Nov. 7, 1955—Decision, Apr. 18, 1957

Order requiring two associated corporations in New York City, to cease falsely representing the usual retail prices of men's hosiery they sold to retail stores by pre-ticketing them with prices substantially in excess of the customary selling prices.

Complaint was dismissed as to the third corporate respondent.

Mr. Edward F. Downs for the Commission.

Mr. Samuel Weisman, of New York City, for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On November 7, 1955, the Federal Trade Commission issued its complaint against Ma-Ro Hosiery Company, Inc., Rex Sox Company, Inc., Roxy Hosiery Company, Inc., Max Rounick, Jack Rounick, and Herbert Rounick (hereinafter collectively referred to as respondents and Rex Sox Company, Inc. being hereinafter referred to as "Rex"), charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served upon respondents.

The complaint alleges in substance that respondents, by attaching price labels to their hosiery products, falsely represented that such prices were the regular and usual retail prices for said hosiery when in fact they were not, thereby placing in the hands of retailers a means and instrumentality for deceiving and misleading the purchasing public. Respondents appeared by counsel and filed a joint answer admitting the corporate, commerce and competition allegations of the complaint and the attaching of price labels to their hosiery products, but denying all alleged violations of the Act.

Pursuant to notice, hearings were thereafter held before the undersigned hearing examiner, duly designated by the Commission to hear this proceeding, on January 10 and March 13, 1956, in New York City. All parties were represented by counsel, participated in the

hearings, and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. At the conclusion of the case-in-chief, counsel for respondents moved to dismiss the complaint as to all respondents for want of proof, which motion was denied. Counsel for respondents also moved to dismiss the complaint as to Rex and Roxy Hosiery Company, Inc. Ruling was reserved on these motions, which are disposed of herein.

During the initial hearing, counsel supporting the complaint objected to the introduction of any evidence concerning the "value" of respondents' products, upon the grounds that value was not relevant to the issues in the case. After reserving ruling on this objection and consideration thereof, prior to the second hearing I issued an order sustaining the objection on the ground that, since the only issue was whether or not respondents' prices attached to their products were the usual and regular *prices* of such products, the value of such products was irrelevant. At the close of the case-in-chief, respondents made an offer of proof concerning the value of their products, which offer was rejected, and thereafter rested without offering any further evidence in refutation of the case-in-chief. All parties waived oral argument and, pursuant to leave granted, thereafter filed proposed findings of fact, conclusions of law, and reasons in support thereof, together with proposed orders. All such findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith specifically rejected.¹

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. The Business of Respondents

The complaint alleged, respondents admitted, and I find that Ma-Ro Hosiery Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania; Rex is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York; and Roxy Hosiery Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania; all with their principal offices and places of business

¹ 5 U.S.C. §1007(b).

Findings

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at 112 W. 34th Street, New York, New York. Respondent Max Rounick is president of each of the aforesaid corporations, respondent Jack Rounick is vice-president of Ma-Ro Hosiery Company, Inc. and Roxy Hosiery Company, Inc. and secretary of Rex, and respondent Herbert Rounick is vice-president of Ma-Ro Hosiery Company, Inc., secretary-treasurer of Roxy Hosiery Company, Inc., and treasurer of Rex. The address of each individual respondent is the same as that of the corporations. The aforesaid individual respondents formulate, direct and control the policies, acts and practices of the aforesaid corporations.

II. Interstate Commerce and Competition

The complaint alleged, respondents admitted, and I find that they are now and have been for several years last past engaged in the sale and distribution of men's hosiery to retail stores for resale to the public. In the course and conduct of their business, respondents now cause and for the past several years have caused said product, when sold, to be transported from their place of business in the State of New York, or from the usual place of manufacture thereof, namely, the State of North Carolina, to the purchasers thereof located in various other states of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said hosiery, in commerce, among and between the various states of the United States and the District of Columbia. In the course and conduct of their business, respondents are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale and distribution of hosiery.

III. The Unlawful Practices

A. *The Issues Framed*

The basic and principal issue is whether respondents falsely represented the usual and regular retail prices of their products by attaching to them price tickets in specific amounts. Subsidiary issues flowing therefrom are whether, by such actions, respondents placed in the hands of retailers a means and instrumentality for deceiving purchasers, whether such representations tended to mislead retailers and whether such representations tended to mislead the public into the purchase of such products, thereby causing injury to the public, diverting trade to respondents from competitors, and injuring competition.

B. The False Representations

The undisputed facts established that respondents' representations concerning the usual and regular retail prices of their hosiery were false. Respondents called no witnesses and, other than an offer of proof as to the value of such hosiery, offered no evidence in refutation of the case-in-chief. As a result, all of the testimony of the witnesses called by counsel in support of the complaint stands undisputed. With the exception of Rex which will be considered hereinafter, the record establishes that the prices attached to respondents' hosiery were not the usual and regular retail prices but were substantially in excess thereof. Without reviewing in detail the evidence concerning the various wholesale prices at which respondents' sold their hosiery, I find that Mr. Rounick, president of all of the corporate respondents, admitted that Ma-Ro and Roxy hosiery was usually and regularly bought by retailers for "promotions" and sold by them at prices substantially less than labelled. He further testified that the usual retail markup in the trade was approximately 33⅓%, and that the average wholesale price for such hosiery ticketed \$1.00 was about 31¢ a pair. This price would require a markup of over 200% to reach the labelled price. Mr. Rounick also testified that the wholesale price of the hosiery ticketed 55¢ and 75¢ was less than 31¢ a pair. In addition, the three retail dealers called by counsel supporting the complaint testified that they usually and regularly sold Roxy and Ma-Ro hosiery at prices substantially below the labelled price.

It must now be considered well settled that such "fictitious pricing" constitutes an unfair and deceptive practice and an unfair method of competition. As the Commission recently said: "fictitious pricing is a practice which the Commission and the courts have repeatedly held to be unfair and in violation of the Federal Trade Commission Act."²

As previously indicated, ruling was reserved on respondents' motion to dismiss the complaint as to Rex. There is no proof in the record that the hosiery distributed and sold by Rex was not usually and regularly sold at retail at the preticketed prices. In fact, the affirmative proof is to the contrary. Mr. Rounick testified that Rex hosiery was usually and regularly sold at the labelled prices and that respondents tried to have their retailers maintain such prices on Rex hosiery. The retail representatives called in support of the complaint all testified that they did not handle Rex hosiery. Conse-

²*The Orloff Company, Inc.*, Docket No. 6184 (1956), and cases cited therein.

quently, the only evidence in the record is that Rex hosiery regularly and usually sold at retail at the labelled prices. Accordingly, the motion to dismiss the complaint as to Rex will be granted.

C. Respondents' Contentions and Defense

In addition to respondents' formal denials that their price labelling was a false representation, misled purchasers to their injury and that of respondents' competitors, and furnished retailers an instrumentality for deceiving purchasers, respondents also argue: (1) their hosiery has a value comparable to other hosiery labelled and sold at the same prices as respondents' labels and hence the purchasers are not misled or injured nor is competition injured; (2) they have no control over the prices at which their retailers sell the hosiery; (3) their representations concerning the usual and regular retail price of the hosiery do not tend to mislead dealers and retailers; and (4) there is no proof in the record that trade was diverted from their competitors or of substantial injury to competition.

(1) Respondents' contention concerning the "value" of their hosiery, namely, that such hosiery is of a value comparable to other hosiery actually selling at the same prices, as above noted has previously been decided adversely to respondents in my order ruling on the objection of counsel supporting the complaint to such evidence. As I pointed out therein, assuming *arguendo* that respondents' products have a value equal or comparable to similar products regularly sold at the labelled prices, such a fact would not justify respondents in representing that the labelled prices were the usual and regular *prices* of their products when in truth and in fact they were not. If in fact their hosiery is of such value, there is no reason why respondents may not so advise the public by truthful representations to that effect. However, such a fact could not and does not justify a false representation as to the usual and regular prices. The public is entitled to know the truth, and not be misled into buying what it believes is being sold at a "bargain" price substantially less than the regular price. The experienced retail representatives called by counsel supporting the complaint all testified that, in their opinion, the fact that respondents' hosiery carried a price label in excess of the price at which it was being offered for sale frequently aided in the sale of such hosiery to the public. The fact that the purchasing public prefers products, labelled with prices in excess of that at which they are sold, over products of equal value selling at the same price but not so labelled, in itself evidences that the public is misled.

into believing that the labelled price is the usual and regular price of the product and consequently the purchase is a bargain.

(2) The fact that respondents have no control over prices charged by their retailers, although correct, is completely irrelevant. The gravamen of the violation is not the prices charged by the retailers but the fact that respondents falsely represented such prices. Knowing, as the record establishes, that their retailers usually and regularly sold at prices substantially less than the labels, nevertheless respondents continued to label such hosiery with such prices to the deception and injury of the public, and continued to place in the hands of retailers a means of deceiving the public. That the retailers fixed their own prices can not justify such deception. The original false representation is made by respondents, and they must assume the responsibility for its use to deceive the public. One who places in the hands of others such a means of deception is responsible therefor and himself guilty of deception.³ Even assuming, contrary to the record, that respondents had no knowledge concerning the usual retail prices charged, they should not make representations concerning such prices. The self-evident and correct course of conduct is to refrain from making any representations concerning usual and regular prices not known to be true in fact. Therein lies the key. By continuing to represent a fact falsely, or a fact not known to be true, the motivation for fictitious pricing is demonstrated, namely: increased sales of the product by misleading the public.

(3) Respondents' contention that such representations concerning the usual and regular retail prices do not have the capacity and tendency to mislead dealers and retailers has merit. There is no proof in the record that any dealers were so misled by respondents' representations, nor does the evidence adduced in this proceeding warrant a finding that such representations have the tendency or capacity to mislead such dealers and retailers.

(4) Respondents also argued that there is no proof in the record concerning any diversion of trade from their competitors or substantial injury to competition in commerce. It is well settled that where persons engage in unfair and deceptive representations of their products in commerce, the Commission properly may infer that such representations mislead the public into the purchase of such products, thereby unfairly diverting trade from competitors and causing substantial injury to competition.⁴ In addition, the proof in this

³*F.T.C. v. Winsted Hosiery Company*, 258 U.S. 483 (1922).

⁴*F.T.C. v. Raladam Co.*, 316 U.S. 149 (1942).

record establishes that the false representations engaged in tended to divert trade from respondents' competitors. All of the experienced retailers testified that in their opinion the purchasing public preferred a product labelled with a price higher than that asked for other products of the same quality but without such a price label.

D. Concluding Findings

As previously indicated, there is no evidence in the record that the hosiery sold by Rex was ticketed with prices which were not the regular and usual retail prices. On the contrary, the record establishes that the Rex hosiery was regularly and usually sold at the labelled prices. Accordingly, I find that there is no substantial evidence to support the allegations of the complaint concerning false representations by Rex. I further find that there is no evidence in the record to support the allegations of the complaint that the acts and practices of respondents had or have the capacity and tendency to mislead dealers and retailers.

The undisputed evidence in the entire record convinces me, and I find, that the hosiery distributed and sold by all of respondents, other than Rex, was not regularly and usually sold at the prices attached by respondents, but on the contrary was usually and regularly sold at prices substantially less than the labelled prices. By attaching such price labels respondents, other than Rex, thereby represented that such prices were the usual and regular retail prices, when in truth and in fact such representations were false, misleading and deceptive. I further conclude and find that respondents, other than Rex, by the practices above found, have placed in the hands of retailers and dealers a means and instrumentality whereby they may deceive and mislead the purchasing public as to the usual and customary retail prices of respondents' products.

E. The Effect of the Unlawful Practices

The acts and practices of respondents, as hereinabove found, have had and now have the tendency and capacity to mislead and deceive members of the purchasing public with respect to the usual and regular retail prices of their hosiery and thereby induce the purchase of substantial quantities thereof. As a result, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce as defined in the Act.
2. Respondents are in substantial competition in commerce with other corporations, firms and individuals engaged in the sale and distribution of hosiery.
3. The acts and practices of respondents as hereinabove found are all to the prejudice and injury of the public and of their competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Act.
4. As a result of the above-found acts and practices of respondents, substantial injury has been done to competition in commerce.
5. Rex has not, as alleged in the complaint, engaged in unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Act.
6. The acts and practices of respondents do not, as alleged in the complaint, have the capacity or tendency to mislead dealers and retailers.
7. This proceeding is in the public interest, and an order to cease and desist the above-found unlawful practices should issue against respondents other than Rex.

ORDER

It is ordered, That respondents Ma-Ro Hosiery Company, Inc., a corporation, Roxy Hosiery Company, Inc., a corporation, and Max Rounick, Jack Rounick and Herbert Rounick, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery in commerce, as "commerce" is defined in the Act, do forthwith cease and desist from:

1. Representing in any manner that certain amounts are the regular and usual retail prices of hosiery when such amounts are in excess of the prices at which such hosiery is usually and regularly sold at retail.

2. Putting into operation any plan whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

It is further ordered, That the allegation of the complaint, that the acts and practices of respondents have the capacity or tendency to mislead dealers and retailers, be and hereby is dismissed.

It is further ordered, That the complaint be and hereby is dismissed as to respondent Rex Sox Company, Inc.

OPINION OF THE COMMISSION

By TART, Commissioner:

Respondents are charged with misrepresenting the customary and usual retail selling prices of Ma-Ro, Rex and Roxy brands of hosiery sold by them to the retail trade, with the result that the purchasing public is misled into believing they are getting bargains. The hearing examiner's initial decision found, in the circumstances disclosed on this record, that this was accomplished through respondents' practice of "preticketing" with false and exaggerated prices. The initial decision would in effect prohibit respondents from misrepresenting, in any manner, the regular and usual retail prices of their hosiery or from putting into operation any plan, including that of "preticketing," whereby retailers may misrepresent the regular and usual retail prices of merchandise.

The complaint was dismissed as to respondent, Rex Sox Company, because hosiery bearing the Rex brand was usually and regularly sold at the labeled prices.

As to Ma-Ro and Roxy hosiery, the record discloses that such products when sold by respondents have attached thereto tickets or labels carrying the Ma-Ro and Roxy brand names and conspicuously displaying printed prices of 55¢, 75¢ or \$1.00.

Respondents contend that, inasmuch as the tickets bearing these prices are attached to the socks by the mills from whom they purchase, the respondents are in no way responsible for any deception that may result from the manner of their use by retailers. In view of the facts presented by this record, there is no merit to this argument. Physical exhibits in evidence show the tickets attached to the hosiery with respondents' brand names thereon and carrying the preticketed prices. Obviously, the mill would not attach such tickets except at the respondents' direction or specific order.

Respondents also contend that the prices represented on the tickets are not in fact fictitious. There can be no question but that the preticketed prices are represented as the prices at which the hosiery is customarily and regularly sold at retail. The record discloses that respondents customarily sold the hosiery to retailers at wholesale prices that permitted resale at prices considerably below the labeled prices. It discloses further that hosiery bearing the \$1.00 ticketed price was sold by respondents to retailers for 31¢ a pair and that socks labeled with prices of 55¢ and 75¢ were wholesaled to retailers at less than 31¢ a pair. Thus, for the retailers to obtain the preticketed prices would require a markup of over 200%. Max Rounick,

president of the three corporate respondents, testified, however, that the customary trade markup was about $33\frac{1}{3}\%$. Furthermore, retail dealers called by counsel supporting the complaint testified that they observed this customary markup and that they sold Ma-Ro and Roxy hosiery at retail at considerably less than the ticketed prices. For example, one of respondents' customers, a men's furnishing department manager for L. Bamberger Co., Newark, New Jersey, testified that he usually sells the 55¢ hose for 39¢, the 75¢ hose for 39¢ and 59¢, and the \$1.00 hose for 39¢, 59¢ and 69¢. Another customer of respondents, in response to a direct question as to whether he sold respondents' hosiery "in the regular course of business at the preticketed price," answered unequivocally, "No, we do not," and stated that as a rule he sold below the preticketed prices. Other customers testified similarly. A third customer, a buyer for United Shirt Shops in Jersey City, did testify that during Easter season, on Father's Day and in the Christmas season, respondents' hosiery was sold at the preticketed prices, but that his customary practice is to sell "Below, below the ticketed prices, generally."

Respondents also contend that under the circumstances commerce was not diverted from competitors. In this connection, we have on the record testimony of hosiery retailers to the effect that if preticketed hose were displayed at prices less than labeled beside comparable socks not so preticketed, it definitely would be an inducement to customers to purchase the preticketed product. For example, Mr. Leonard Hoffman, an employee of Bamberger's Department Store, testified that:

If two socks were 100% identical, with absolutely no variation, then the price ticket would be an inducement to buy it. * * *

Mr. Benjamin Jackson, previously mentioned as an employee of United Shirt Shops, when questioned as to "whether or not the preticketing price appearing on such hosiery aids you in the sale of it?" responded, "I would say yes." It follows, therefore, that trade may be diverted from competitors of respondents' retail store customers who do not engage in the preticketing practices for which the respondents are responsible. Respondents' contention that the hearing examiner erred in his conclusions with respect to the effect of the questioned practices is thus rejected.

Respondents on appeal, particularly in their oral argument, strongly objected to a ruling by the hearing examiner excluding evidence as to the "value" of respondents' products. That ruling

was based on the ground that value was not relevant to the issues in the case, the primary issue being whether the ticketed figures were the usual and customary retail prices, without reference to the comparable value of the hosiery to similar competitive products. The matter of value has no bearing whatever on the issue of whether the hosiery actually and customarily was sold at the prices shown on the tickets. Respondents' alternative prayer for remand on this point should be, and it hereby is, denied.

While the matter has not been raised by either side on appeal, in Section III, Paragraph C(3) of his initial decision, the hearing examiner considered and weighed the evidence as to the capacity and tendency of respondents' "preticketing" practices to mislead dealers and retailers. He found as a conclusion of law that no such capacity and tendency resulted and in his order to cease and desist dismissed the allegations of the complaint in this respect. We do not disagree in substance with this result. However, we do feel that he was in error in stating that the allegation of the complaint to the effect that respondents' "preticketing" practice has the capacity and tendency to mislead dealers and retailers is unsound and inconsistent with the basic theory of the complaint. Such conclusion implies that under no circumstances could dealers in respondents' hosiery be deceived by respondents' preticketing practice. In our view, such dealers conceivably could be misled into the belief that preticketed prices were the prices at which other dealers customarily and usually sold respondents' products. That, of course, is a matter of proof and the hearing examiner has found, and he is supported in this by the record herein, that there is no proof that any dealers were so misled. As he succinctly concludes—"All of the proof is to the contrary and establishes that they were not." That was as far as the hearing examiner needed to go in view of the quantum of proof in the record in this proceeding. We conclude, therefore, that the initial decision should be modified to eliminate therefrom the implication that under no circumstances could dealers and retailers be deceived by the practice of "preticketing."

On the basis of the whole record, including oral argument and briefs in support of and in opposition to respondents' appeal, the Commission is of the opinion that the hearing examiner's evidentiary rulings and his initial decision, as modified, are fully and completely supported and that the order to cease and desist is entirely appropriate.

Accordingly, respondents' appeal is denied. An appropriate order will be entered.

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Order

FINAL ORDER¹

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon oral argument and briefs in support of and in opposition thereto; and

The Commission having rendered its decision denying respondents' appeal and adopting as its own decision the initial decision, as modified by the Commission's opinion;

It is ordered, That Section III, Paragraph C(3) of the initial decision be, and it hereby is, modified to read as follows:

"(3) Respondents' contention that such representations concerning the usual and regular retail prices do not have the capacity and tendency to mislead dealers and retailers has merit. There is no proof in the record that any dealers were so misled by respondents' representations, nor does the evidence adduced in this proceeding warrant a finding that such representations have the tendency or capacity to mislead such dealers and retailers."

It is further ordered, That the initial decision of the hearing examiner, as modified herein, is hereby adopted as the decision of the Commission.

It is further ordered, That respondents, Ma-Ro Hosiery Company, Inc., a corporation, Roxy Hosiery Company, Inc., a corporation, and Max Rounick, Jack Rounick, and Herbert Rounick, individually and as officers of said corporations 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 contained in the initial decision as modified.

¹Order vacating the Commission's decision of November 1, 1956, and granting respondents' request for oral argument reads as follows:

The Commission, on November 1, 1956, having rendered its decision denying the respondents' appeal from the hearing examiner's initial decision herein and adopting as its own the initial decision, as modified; and

Said decision having been rendered under the impression that oral argument on the appeal had not been requested; and

The Commission having now satisfied itself that the privilege of oral argument was timely requested by the respondents and being of the opinion that its former decision should be reconsidered and the request for oral argument granted:

IT IS ORDERED that the Commission's decision of November 1, 1956, denying the respondents' appeal and adopting the initial decision, as modified, be, and it hereby is, vacated and set aside.

IT IS FURTHER ORDERED that the respondents be, and they hereby are, granted permission to present oral argument before the Commission in support of their appeal.

IT IS FURTHER ORDERED that the Secretary inform counsel for the respondents and counsel in support of the complaint of the time and place of said argument.

IN THE MATTER OF
SALADMASTER SALES, INC., ET AL.

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

Docket 6561. Complaint, June 4, 1956—Decision, Apr. 18, 1957

Consent order requiring a corporate seller in Dallas, Tex., to cease representing falsely, through personal solicitation by its distributors and their agents and extensive advertising and suggested sales talks, that use of its aluminum and stainless steel cooking utensils and the "waterless" method of cooking would assure good health, and that other utensils and cooking methods would destroy vitamins and minerals and cause a variety of serious ailments; and that use of its food-shredding device was necessary to preserve the minerals and vitamins in fruits and vegetables.

Mr. R. P. Bellinger for the Commission.

Mr. J. L. Shook, of *Locke, Locke & Purnell*, of Dallas, Tex., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint alleges that the respondents have been and are engaged in the sale and distribution in commerce of aluminum and stainless steel cooking utensils, a device for use in preparing food, and a fruit juicer, and charges that respondents have, in their advertising of such products, made false, misleading and deceptive representations and have furnished their distributors with means and instrumentalities by which they may mislead the public, in violation of the Federal Trade Commission Act.

Subsequent to the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and the Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement identifies respondent Saladmaster Sales, Inc., now Saladmaster Corporation, as a Texas corporation, with its office and principal place of business located at 131 Howell Street, Dallas, Texas; and individual respondent Harry Lemmons, with the same address, as the president of said corporation.

The agreement sets forth the fact that for more than three years respondents have not engaged in the manufacture, sale or advertisement of the fruit juicer referred to in the complaint, and that