

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1958, TO JUNE 30, 1959

IN THE MATTER OF

JOSEPH A. BROWN TRADING AS
JOSEPH BROWN WOOL COMPANY, ETC.

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

Docket 7082. Complaint, Mar. 4, 1958—Decision, July 2, 1958

Consent order requiring sellers in Woonsocket, R. I., to cease violating the Wool Products Labeling Act by labeling as "cashmere 70% wool 30%," and invoicing as "70% cashmere waste 30% wool," bales of stock which contained only reprocessed cashmere and reprocessed cashmere waste, respectively, and by failing in other respects to comply with the labeling requirements of the Act.

Mr. Alvin D. Edelson supporting the complaint.
Respondents, unrepresented.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 4, 1958, 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 and falsely identifying the constituent fibers thereof in invoices. After being served with said complaint, respondents appeared and entered into an agreement containing consent order to cease and desist, dated May 3, 1958, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his

Decision

55 F.T.C.

consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive 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 said agreement. It has been agreed 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 and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order.

1. Respondent Joseph A. Brown is an individual doing business as the Joseph Brown Wool Company and the Joseph A. Brown Company, and maintains his business address at 496 Rathbun Street, Woonsocket, R.I.

Respondents Samuel Pearlman and Yale Goldberg are individuals and partners in the firm of the Yale Wool Waste Company and maintain their business address at 176 Federal Street, Boston, Mass.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939 and

1

Order

the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondent, Joseph A. Brown, individually, and doing business as the Joseph Brown Wool Company, and the Joseph A. Brown Company, or under any other name, and Samuel Pearlman and Yale Goldberg, individually, and as partners doing business as the Yale Wool Waste Company, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other 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 1939, of wool products, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

It is further ordered, That respondent, Joseph A. Brown, individually, and doing business as the Joseph Brown Wool Company, and the Joseph A. Brown Company, or under any other name, and Samuel Pearlman and Yale Goldberg, individually, and as partners doing business as the Yale Wool Waste Company,

Decision

55 F.T.C.

or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of wool products, or any other textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting on invoices, or through other means, the character of the constituent fibers of said wool products, or other textile products.

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 2d day of July 1958, 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.

Decision

IN THE MATTER OF
RETAIL PAINT AND WALLPAPER DISTRIBUTORS
OF AMERICA, INC., ET AL.

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

Docket 6367. Complaint, June 24, 1955—Order, July 3, 1958

Order dismissing, as not sustained by the record, complaint charging associations of paint dealers with conspiring to force manufacturers to sell paint and allied products only to recognized independent dealers.

INITIAL DECISION DISMISSING COMPLAINT

By *Earl J. Kolb*, hearing examiner.

Mr. Floyd O. Collins for the Commission.

Mr. Don O. Russell, of St. Louis, Mo., for Retail Paint and Wallpaper Distributors of America, Inc.;

Mr. Ephraim J. Faber, of New York, N.Y., for Paint Dealers Institute and Paint Dealers Association, Inc.;

Mr. Morton Sokol, of White Plains, N.Y., for Westchester Paint & Wallpaper Dealers Association, Inc.;

Mr. Theodore Schwartz, of Hoboken, N.J., for Paint Distributors Association of Long Island, Inc., and Hudson-Bergen County Paint Dealers Association; and

Mr. Harold Hochman, of Newark, N.J., for North Jersey Paint & Wallpaper Dealers Association, Inc.

This proceeding is before the undersigned hearing examiner for final consideration upon the complaint, answers thereto, testimony and other evidence, and proposed findings as to the facts and conclusions and briefs presented by counsel. The hearing examiner has given consideration to the proposed findings of fact and conclusions, and briefs in support thereof, submitted by all parties, and all findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner having considered the record herein, and being now duly advised in the premises, makes the following findings of fact and conclusions drawn therefrom and order:

1. Respondent Retail Paint and Wallpaper Distributors of America, Inc., a corporation, (sometimes hereinafter referred to as R.P.W.D.A.) is a trade association of members located at

Decision

55 F.T.C.

34 North Brentwood Boulevard, St. Louis, Mo. It is composed of approximately 2,500 individuals, partnerships and corporations located throughout the United States, who are primarily engaged in the distribution of paint, wallpaper and kindred lines of merchandise at wholesale and at retail. Some of these paint and wallpaper dealers hold direct memberships in respondent R.P.W.D.A., while others are affiliated through other local dealer associations. There are approximately 27 such local dealer associations affiliated with said respondent. Its purposes being, among others: (a) Elimination of evils and bad or unethical practices existing in the trade, and encouraging uniformity of trade practices; (b) Promoting, encouraging, fostering and safeguarding the welfare and friendly relations of all segments of the industry, and the bringing about of closer cooperation between the dealer and distributor with the manufacturer, salesman, jobber, painting contractor and painter; (c) Diffusing and exchanging information regarding all matters pertaining to the industry, and encouraging, fostering and promoting modern methods of advertising; and (d) Encouraging the formation of local dealer associations in order that modern and intelligent merchandising methods may be advanced and equitable and fair practices followed.

2. Respondent Paint Dealers Institute (sometimes hereinafter referred to as PDI) is an unincorporated trade association located at 103 East 125th Street, New York, N.Y. Its purpose and objectives are similar to those of R.P.W.D.A. Its membership is composed of the six trade associations organized for the purpose of exchanging information regarding all matters pertaining to the industry; promoting equitable and fair trade practices; encouraging and promoting modern and intelligent merchandising methods; promoting, encouraging, fostering and safeguarding the welfare and friendly relations of all segments of the industry in order that there might be closer cooperation between the manufacturer, distributor, wholesaler, dealer and customer. The membership of each of these trade associations is composed of individuals, partnerships and corporations, which are principally engaged in the distribution of paint, wallpaper and allied products at retail and at wholesale. The associations which are members of respondent Paint Dealers Institute are as follows:

(a) Respondent, Paint Dealers Association, Inc., a corporation, (sometimes hereinafter referred to as PDA) located at 103 East 125th Street, New York, N.Y. The membership of this association

is located in the Boroughs of Bronx and Manhattan in New York City.

(b) Respondent Paint Distributors Association of Long Island, Inc., (sometimes hereinafter referred to as the Long Island Association) located at 166 Montague Street, Brooklyn, N.Y. The membership of this association is located on Long Island, N.Y.

(c) Respondent Westchester Paint & Wallpaper Dealers Association, Inc., (sometimes hereinafter referred to as the Westchester Association) located at 175 Main Street, White Plains, N.Y. The membership of this association is located in Westchester County, N.Y.

(d) Respondent Hudson-Bergen County Paint Dealers Association (sometimes hereinafter referred to as the Hudson-Bergen Association) located at 95 River Street, Hoboken, N.J. The membership of this association is located in Hudson and Bergen Counties in the State of New Jersey.

(e) Respondent North Jersey Paint & Wallpaper Dealers Association, Inc., (sometimes hereinafter referred to as North Jersey Association) is located at 786 Broad Street, Newark, N.J. The membership of this association is located in New Jersey.

(f) The Brooklyn Paint and Wallpaper Dealers Association, Inc., is located at 166 Montague Street, Brooklyn, N.Y. The membership of this association is located in Brooklyn, N.Y. This association and its members were not made parties respondent in this proceeding due to the fact that prior to the issuance of the complaint herein the Federal Trade Commission issued its order to cease and desist in Docket No. 6224, prohibiting the Brooklyn Paint and Wallpaper Dealers Association, Inc., and its members from engaging in acts and practices substantially similar to those charged in the present complaint.

3. The issue to be determined in this proceeding is whether or not the activities of the respondents were such as to constitute a combination and conspiracy or planned common course of action to induce or attempt to induce manufacturers and suppliers of paint, wallpaper and allied products to discontinue selling to certain retailers located in the New York Metropolitan Area who were not recognized by respondents as independent paint and wallpaper dealers.

4. One of the standing committees of respondent Retail Paint and Wallpaper Distributors of America, Inc., was the Trade Sales Committee which was organized to deal with unfair trade practices within the industry, and to eliminate practices detrimental

Decision

55 F.T.C.

to the industry and the public. This committee from time to time disseminated information and suggestions to members and to manufacturers and suppliers, setting out the functions of distribution performed by the independent paint and wallpaper dealer and the relationship between the manufacturer and the dealer, suggesting that manufacturers should give their major selling emphasis to supporting the dealer sales organization and select sales outlets in the manner not to jeopardize his functioning outlets or reputation of his products. Based upon the entire record, it appears that the Retail Paint and Wallpaper Distributors of America, Inc., has been consistent in pointing out to manufacturers and suppliers the value of the independent paint dealer as a primary outlet for the distribution of their products, but has at no time attempted to dictate to such manufacturers and suppliers, to whom they shall or shall not sell.

5. Sidney Beyer, Executive Secretary of the Brooklyn Paint and Wallpaper Dealers Association, Inc., was very active in attempting to prevent manufacturers and suppliers from selling outlets other than the independent paint dealer, and in this connection instigated, or attempted to instigate, a form of boycott against certain manufacturers. In carrying out this design, he attempted to obtain the assistance of the Paint Dealers Institute and the Retail Paint and Wallpaper Distributors of America, Inc., and when the R.P.W.D.A. did not acquiesce in such demands his organization withdrew from membership therein. There is no evidence that any of the other respondents in this proceeding cooperated with, assisted or participated in any boycott or threat against manufacturers or suppliers for the purpose of forcing them to deal exclusively with the independent paint dealer. While the said Sidney Beyer was also executive secretary of respondent Paint Distributors Association of Long Island, Inc., the testimony and other evidence in this proceeding is not sufficient to support a finding that this respondent and its members entered into a combination and conspiracy to do and perform any of the acts and practices charged in the complaint.

6. In support of the charges of the complaint, evidence was introduced with reference to certain activities initiated by Sidney Beyer as executive secretary of the Brooklyn Paint and Wallpaper Dealers Association, Inc., involving three manufacturers: The Glidden Company, E. I. DuPont de Nemours Company and Pratt & Lambert, Inc.

7. On or about April 23, 1952, there was brought before a

meeting of the Brooklyn Paint and Wallpaper Dealers Association, Inc., the action of The Glidden Company in selling its full line to the Times Square Stores. It was determined at this meeting that in addition to independent action by the association and its members that the matter be referred to the Paint Dealers Institute and the Retail Paint and Wallpaper Distributors of America, Inc. The officers of the Retail Paint and Wallpaper Distributors of America, Inc., referred the matter to its Trade Sales Committee. Members of this committee, together with representatives of the various associations in the New York metropolitan area met with The Glidden Company and discussed the matter of the sales to the Times Square Stores, and subsequent thereto the members of the Trade Sales Committee reported back to the R.P.W.D.A. that the Times Square Stores was a substantial paint outlet and that its volume of paint ran into six figures, while the total volume purchased by all members of the association in the New York metropolitan area from Glidden was under \$30,000. Nothing further was done relative to this matter by the R.P.W.D.A.

8. At the instigation of Sidney Beyer, the Paint Dealers Institute issued a notice for a mass meeting which was held on May 19, 1952, and to which all member associations and their respective members were invited. At this meeting the action of The Glidden Company in selling the Times Square Stores was discussed. The record does not disclose any positive action being taken by or through the Paint Dealers Institute other than a subsequent mailing of approximately 400 letters to manufacturers, jobbers, and salesmen's organizations, extolling the virtues and values of doing business with and preserving the independent dealer.

9. On April 21, 1953, a meeting of the Paint Dealers Institute was held at the request of Sidney Beyer for the purpose of discussing the action of E. I. DuPont in placing its full line of paints in the Carroll Linoleum Store in Brooklyn, and the action of Pratt & Lambert, Inc., in placing its paints in a supermarket on Long Island known as the Massapequa Market. Pursuant to the action taken at this meeting the Dealers Institute sent out a memorandum to all manufacturers and suppliers in which it was stated:

The Institute recognizes that it is the right of a paint supplier to select whatever outlets he may choose for his products. However, in the interest of better business for all concerned, dealers as well as suppliers, the enclosed is

Decision

55 F.T.C.

being called to your attention to make known the feeling of members of the Institute about such methods of distributing paint and paint accessories.

The enclosure with this letter was a copy of the resolution adopted by the Paint Dealers Institute. This resolution explains in detail the services rendered by the independent dealer, the failure of the supermarket to perform such services, and appeals to the dealers to select the independent dealer as a prime outlet.

10. In April 1953, Sidney Beyer also wrote the Retail Paint and Wallpaper Distributors of America, Inc., for the purpose of enlisting the assistance of the national association in the E. I. DuPont and Pratt & Lambert matters. The executive vice-president of R.P.W.D.A. immediately referred this matter to the Trade Sales Committee and in his letter of transmittal stated in part as follows:

It seems to me we should take the position that it requires trained sales people—people with technical knowledge of the proper use and application of the product to properly sell paints and to give the right service to the customer and to the manufacturer. We cannot have a part in selecting types of distribution outlets, but we certainly are on "solid ground" when we appeal to the manufacturers to give careful consideration to the distribution of their products through sources thoroughly familiar with the merchandise and its uses.

11. Subsequent thereto, the executive secretary of the Retail Paint and Wallpaper Distributors of America, Inc., together with the Eastern members of the Trade Sales Committee and representatives of the member associations of the Paint Dealers Institute called upon the Carroll Linoleum Store and the Massapequa Supermarket. It was the opinion of all except Sidney Beyer that the Carroll Linoleum Store was a satisfactory outlet for paint and wallpaper, as the proprietor proposed to put in a complete line of paint and wallpaper along with the floor covering business. As to the supermarket, it was found that the paint department was in the basement with no one to serve customers and very poorly displayed. As far as can be ascertained, nothing further was done with reference to these matters by any of the respondents to this proceeding.

12. Based upon the entire record in this proceeding, it appears that the respondents in this proceeding limited their activities to explaining the services of the independent dealer and the advantages of selecting him as a prime outlet for the products of manufacturers and suppliers of paint and allied products. This does not constitute a per se violation of law, and illegality cannot be inferred from this conduct alone. The activities of Sidney

Beyer individually and as Executive Secretary of the Brooklyn Paint and Wallpaper Dealers Association, Inc., cannot be charged to the respondents in this proceeding as there is no evidence in the record that the respondents participated in, agreed to, or ratified any of the activities of Sidney Beyer involving threats, coercion or boycott. In fact, Sidney Beyer in testifying in this proceeding stated he acted independently and without prior authorization and that the respondents did not acquiesce, approve or ratify any of his acts or conduct, but as a matter of fact he was called down for his actions.

13. In view of the above, it is the opinion of the hearing examiner that the charges of the complaint have not been sustained by the record in this proceeding.

It is therefore ordered, That the complaint in this proceeding be, and the same is hereby, dismissed.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner:

The complaint in this proceeding, charging respondents with violating Section 5 of the Federal Trade Commission Act, was dismissed by the examiner in his initial decision on the ground that the allegations have not been sustained by the record. Respondents are charged in substance with entering into and carrying out some form of an agreement or a planned common course of action to induce manufacturers of paint and allied products to discontinue selling to certain retailers not recognized by respondents as independent paint and wallpaper dealers. The examiner found that respondents had limited their activities to explaining the services of the independent dealer and the advantages of selecting him as a prime outlet and that illegality cannot be inferred from such conduct alone. Counsel supporting the complaint has appealed from the order dismissing the complaint.

The issue here, quite clearly, is whether the examiner correctly found that respondents' activities of an overt nature were within lawful bounds, since there is no substantial evidence otherwise to sustain the allegations.

The two principal associations involved herein are the Retail Paint and Wallpaper Distributors of America, Inc., a national association of paint dealers and others, and the Paint Dealers Institute, an organization of paint dealer associations in metropolitan New York. It appears that the said national association

Order

55 F.T.C.

and the Paint Dealers Institute were drawn into the controversial activities which form the basis for the complaint, by the Brooklyn Paint and Wallpaper Dealers Association, Inc., acting through its executive secretary, Sidney Beyer.¹ These associations were requested on several occasions in 1952 and 1953 by the said Sidney Beyer to do something about the actions of several manufacturers in selling paints in the New York area to outlets other than independent paint and wallpaper dealers.

During the period in question, respondents held some meetings and conferences for the discussion of such matters and made various preliminary inquiries or investigations. The only clearly established result of all this activity, however, was the circulation of letters (sent out by the Paint Dealers Institute to a number of manufacturers and suppliers) expounding on the merits of selling through the independent dealer. This record contains no evidence of threats or coercive acts toward suppliers which could be charged to the respondents named herein. There is no evidence of any effort by respondents to interfere in any way with the freedom of a supplier to select his own outlets, nor is there any basis for an inference that such was the purpose or effect of respondents' activities. There is in fact a considerable showing to the contrary. Contemporary documents make plain that respondents had no wish to dictate to suppliers as to their choice of outlets.

The examiner, having heard the testimony and having weighed all the evidence, was convinced that respondents had limited their activities to explaining the advantages of selecting the independent dealer and had not done more than this. From a finding to this effect he could properly conclude under the circumstances that the allegations of the complaint were not sustained. We believe that the examiner could reasonably find as he did, and, there being no clear showing of error, we will not reverse his judgment.

Accordingly, the appeal of counsel in support of the complaint is denied.

ORDER DISMISSING COMPLAINT

This matter having come before the Commission upon the appeal of counsel supporting the complaint from the initial de-

¹ The Brooklyn Association, not a party herein, was ordered, prior to the issuance of this complaint, to cease and desist from practices substantially similar to those alleged in this proceeding. *In the Matter of Brooklyn Paint and Wallpaper Dealers Association, Inc.*, Docket No. 6224 (Dec. 2, 1954).

cision of the hearing examiner dismissing the complaint herein, and the Commission having heard the appeal on briefs of counsel; and

The appeal having been denied for the reasons set forth in the accompanying opinion:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

IN THE MATTER OF
EDWARD J. KEENAN ET AL. TRADING AS
FRANKLIN INSTITUTE

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

Docket 6546. Complaint, Apr. 30, 1956¹—Decision, July 3, 1958

Consent order requiring sellers in Rochester, N.Y., of correspondence courses designed to prepare purchasers for U.S. Civil Service positions, to cease representing falsely by advertisements in newspapers, magazines, booklets, circulars, etc., that they were connected with the U.S. Government, that specific vacancies existed in the Federal Civil Service in specified areas based on official Government estimates for which examinations would be held, and that their advertisements of "U.S. GOVT. JOBS" were official Government announcements; to cease making such false representations, along with a variety of others, through salesmen calling on prospects who answered aforesaid advertisements; and to cease using a fictitious trade name for the purpose of collecting delinquent accounts.

Mr. William R. Tincher, and Mr. Thomas A. Deveny, III supporting the complaint.

Mr. James T. Welch of the firm of *Davies, Richberg, Tydings, Landa & Duff* of Washington, D.C., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 30, 1956 charging them with violation of the Federal Trade Commission Act as alleged in said complaint. After service of the complaint and answer thereto, the said complaint was, on motion of counsel supporting the complaint, after expiration of time for answering said motion, amended by the hearing examiner to show that the respondents herein were Edward J. Keenan, John L. Keenan, Jr., Richard M. Keenan and Thomas A. Keenan, who were co-partners trading as Franklin Institute. The hearing examiner, also on motion of respondents after hearings, dismissed subparagraph 12 of paragraph nine of the complaint on the record at the hearing.

Hearings were held in a number of cities during which over 1,800 pages of testimony were taken and a large number of exhibits were admitted into evidence.

Subsequent thereto, respondents Edward J. Keenan and John

¹ Amended Dec. 2, 1957.

L. Keenan, Jr., entered into an agreement with counsel supporting the complaint, containing an order to cease and desist from certain practices complained of, which agreement purports to dispose of all the issues in this proceeding as to all parties. It is agreed that the amended complaint, insofar as it relates to the respondents Richard M. Keenan and Thomas A. Keenan be dismissed without prejudice. It is agreed further that subparagraphs 5, 8, and 10 of paragraph nine of the amended complaint and the allegations concerning the use of the word "age" in subparagraph 9 of paragraph nine of the amended complaint be dismissed. Agreement for dismissal of these two respondents from the proceeding is based on two affidavits attached and made a part of the agreement. The hearing examiner finds these two affidavits are sufficient grounds in this particular proceeding for dismissing without prejudice as to respondents Richard M. Keenan and Thomas A. Keenan. The agreement states that counsel supporting the complaint believe that there is insufficient evidence available to sustain the allegations contained in subparagraphs 5, 8, and 10 and the above mentioned portion of subparagraph 9, all in paragraph nine of the amended complaint, and hence agree to their dismissal.

Respondents Edward J. Keenan, and John L. Keenan, Jr., formerly copartners trading as Franklin Institute, in the aforesaid agreement have admitted all of the jurisdictional allegations of the amended complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that said respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the amended complaint and said agreement, 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 respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner

Order

55 F.T.C.

provided for other orders, and that the complaint may be used in constructing the terms of the order.

This proceeding having now come on for final consideration on the amended complaint and aforesaid agreement, the hearing examiner finds that the agreement and the order contained therein cover all the allegations of the complaint and provide a complete, fair and appropriate disposition of this proceeding. The order and the agreement are therefore accepted and ordered filed upon becoming a part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice. The hearing examiner accordingly makes the following findings for jurisdictional purposes and order.

1. Respondents Edward J. Keenan, and John L. Keenan, Jr., were formerly copartners, trading as Franklin Institute with their office and principal place of business located at 550 East Main Street in the city of Rochester, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the above-named respondents. The complaint states a cause of action against said respondents under the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That respondents, Edward J. Keenan and John L. Keenan, Jr., formerly copartners trading as Franklin Institute, or trading under any other name; their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of courses of instruction, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That specific vacancies in the Federal Civil Service exist, or will exist in the immediate future, or that said vacancies exist or will exist in designated areas, or that Federal Civil Service examinations will be held for said vacancies, unless such are the facts.

2. That a specified number or type of Federal Civil Service vacancies which exist or will exist in a specified metropolitan or any other geographical area are based upon official United States Government estimates.

3. That advertisements utilized to solicit business or inquiries

14

Order

are an official announcement of, are sponsored by, or are inserted by the Federal Government.

4. That respondents have an official relationship with, or are connected with, or are endorsed by the United States Civil Service Commission.

5. That persons purchasing courses of instruction will receive a position in the Federal Civil Service.

6. That persons purchasing courses of instruction may cancel their contracts at any time or that said purchasers will receive a refund of the money they have paid, unless such is the fact.

7. That purchasers of respondents' courses of instruction will not have to pay for said courses unless or until they obtain positions in the Federal Civil Service.

8. That the persons being solicited will have no other opportunity to purchase respondents' courses of instruction.

9. That persons being solicited satisfy the physical requirements of the Federal Civil Service position they are seeking, unless such is the fact.

10. That a position in the Federal Civil Service cannot be obtained unless one of respondents' courses of instruction is purchased.

11. That any corporation, firm, or agency owned or controlled by respondents, or either of them, and used by them, or either of them, to collect past due accounts, is a separate or independent collection agency or an independent organization engaged in the business of collecting past due accounts.

It is further ordered, That the aforesaid respondents, in connection with the offering for sale, sale, or distribution of courses of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from distributing, mailing, or otherwise disseminating reproductions of official forms, notices, or any other official documents of the United States Civil Service Commission.

It is further ordered, That the amended complaint, in so far as it relates to respondents Richard M. Keenan and Thomas A. Keenan be, and the same hereby is, dismissed without prejudice and that the allegations set out in subparagraphs 5, 8, and 10 of paragraph nine of the amended complaint and the allegations concerning the use of the word "age" in subparagraph 9 of paragraph nine of the amended complaint be, and the same hereby are, dismissed without prejudice.

Decision

55 F.T.C.

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 3d day of July 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Edward J. Keenan and John L. Keenan, Jr., formerly copartners trading as Franklin Institute, 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.

Complaint

IN THE MATTER OF
DEHN & CO., INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(C) OF THE CLAYTON ACT*Docket 6977. Complaint, Dec. 12, 1957—Decision, July 3, 1958*

Consent order requiring Seattle brokers of canned salmon and other food products, to cease discriminating in price in violation of Section 2(c) of the Clayton Act by such practices as (1) selling at net prices lower than those accounted for to the packers, and (2) granting price reductions by way of allowances or rebates which were not charged back to the packer-principals.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Dehn & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington. Respondent Karl Dehn and Alan Dehn are president and secretary-treasurer, respectively, of said corporation. Said individual respondents in conjunction and cooperation with each other, formulate, direct and control the acts, practices and policies of the said corporate respondent. The principal office and place of business of said corporate and individual respondents is located at 559 Colman Building, Seattle, Wash.

PAR. 2. Respondents are now, and for many years prior hereto have been engaged in the business of distributing food products including canned salmon. Respondents distribute as primary brokers, negotiating sales for the account of a number of packers located in various areas within and beyond the continental United States, including the Puget Sound and Columbia River areas, and the Territory of Alaska.

PAR. 3. Respondents are a substantial factor in the sale and distribution of canned salmon in the United States, and sell and distribute such food products generally through secondary

Complaint

55 F.T.C.

or field brokers in various marketing areas, to buyers for resale located throughout the United States. Respondents have directly or indirectly caused such food products, when sold, to be transported from the canning plants of the respective packers thereof, or from their warehouses, to buyers thereof located in various States of the United States other than the State or Territory of origin of such food products. Thus respondents are, and have been for many years prior hereto, engaged in a continuous course of trade and commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 4. Respondents are usually compensated for their services in arranging for the sale and distribution of such food products by deducting a brokerage commission from the proceeds in their account of sale to their packer-principals. Said account of sale also itemizes various discounts and allowances granted to the purchaser, such as for dents and swells, cash, or for labeling, all of which are shown as deductions from the purchase price and are charged back to the packer-principals in the usual course of business. The brokerage commission deducted by respondents is customarily 5% of the net selling price. The field brokers are customarily compensated for their services by receiving from respondents as primary brokers, a brokerage commission in the amount of 2½% of the net selling price.

PAR. 5. Respondents, in the course and conduct of their business in commerce as primary brokers for various packer-principals, have made grants or allowances in substantial amount in lieu of brokerage to certain buyers of said canned salmon by affording differentials or concessions in price and various rebates and allowances to certain buyers, a part or all of which were not charged back to the various packer-principals but were, on the contrary, taken from all or a portion of the brokerage earnings of respondents and of their field brokers.

Among and including, but not necessarily limited to, the methods or means employed by respondents in so doing were the following:

(a) Selling to certain buyers at net prices which were less than those accounted for to the packer-principals.

(b) Granting to certain buyers deductions from price by way of allowances or rebates, a part or all of which were not charged back to the packer-principals.

PAR. 6. The acts and practices of respondents, as herein alleged, constitute violations of the provisions of subsection (c)

19

Decision

of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Cecil G. Miles and *Mr. John J. McNally* supporting the complaint.

Mr. Richard S. Sprague of the firm of *Bogle, Bogle & Gates*, of Seattle, Wash., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

Commission's complaint, issued December 12, 1957, charged respondents with violation of Section 2(c) of the Clayton Act as amended by the Robinson-Patman Act in connection with the sale of seafood products. In the complaint, respondent K. Alan Dehn, was incorrectly named as Alan Dehn. That K. Alan Dehn is the actual name of said respondent and that he was served with the said complaint is recognized by all parties in the agreement hereinafter referred to.

After being served with the complaint, respondents entered into an agreement dated April 11, 1958, containing a consent order to cease and desist disposing of all the issues in this proceeding, which agreement has been duly approved by the assistant director and the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement have admitted all of the jurisdictional allegations of 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 further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, 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 respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full

Order

55 F.T.C.

hearing and 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 on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Dehn & Co., Inc., 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 559 Colman Building, Seattle, Wash. Respondents Karl Dehn and K. Alan Dehn are individuals and officers of respondent corporation with their office and principal place of business also located at 559 Colman Building, Seattle, Wash.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Clayton Act, as amended by the Robinson-Patman Act. This proceeding is in the interest of the public.

ORDER

It is ordered, That Dehn & Co., Inc., a corporation, and its officers and directors, and Karl Dehn and K. Alan Dehn, individually and as officers of said respondent corporation, and respondents' agents, representatives, or employees, directly or indirectly, or through any corporate or other device, in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying, granting, or passing on, either directly or indirectly, to any buyer or to anyone acting for or in behalf of or subject to the direct or indirect control of such buyer, brokerage earned or received by respondents on sales made for their packer-principals, by allowing to buyers lower prices which reflect all or any part of such brokerage, or by granting them allowances or rebates which are in lieu of such brokerage, or by any other method or means.

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 3d day of July 1958, 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.

Complaint

55 F.T.C.

IN THE MATTER OF
GAVIN BROS., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(C) OF THE CLAYTON ACT

Docket 6978. Complaint, Dec. 12, 1957—Decision, July 3, 1958

Consent order requiring a Seattle broker of canned salmon and other sea food to cease making allowances in lieu of brokerage to certain buyers in violation of Section 2(c) of the Clayton Act by such practices as (1) selling at net prices lower than those accounted for to its packer-principals; (2) granting price reductions, a part or all of which were not charged back to the packers; and (3) taking reduced brokerage on sales which involved price concessions.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and herein-after more particularly designated and described, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Gavin Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington. Respondent T. Jay Gavin is president of said corporation and formulates, directs and controls the acts, practices and policies of the said corporate respondent. The principal office and place of business of said corporate and individual respondents is located at 1500 Westlake Avenue North, Seattle, Wash.

PAR. 2. Respondents are now, and for many years prior hereto have been, engaged in the business of distributing food products including canned salmon. Respondents distribute as primary brokers, negotiating sales for the account of a number of packers located in various areas within and beyond the continental United States, including the Puget Sound and Columbia River areas, and the Territory of Alaska.

PAR. 3. Respondents are a substantial factor in the sale and distribution of canned salmon in the United States, and sell and distribute such food products generally through secondary or field brokers in various marketing areas, to buyers for resale located