

Complaint

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IN THE MATTER OF
HUNT-MARQUARDT, INC., ET AL.

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

Docket 6765. Complaint, Apr. 5, 1957—Decision, Dec. 23, 1958

Consent order requiring 14 New York and New England jobbers of automotive replacement parts and their buying organization, which served merely as a bookkeeping device to exert their combined bargaining power, to cease violating Sec. 2(f) of the Clayton Act by soliciting and accepting illegal price advantages from suppliers which were not available to their competitors.

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, since June 19, 1936 have violated and are now violating the provisions of Subsection (f), Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13) hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. (1) Respondent Hunt-Marquardt, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 244 Brighton Avenue, Boston, Mass.

The following respondent individuals are the officers of said respondent corporation:

Alfred S. Hunt, president.

Arthur C. Marquardt, treasurer.

H. Nelson Hartstone, secretary.

(2) Respondents George G. Mellor and Raymond W. Mellor are individuals and copartners trading as Mellor's Auto Parts with their principal office and place of business located at 134 Broad Street, Providence, R.I.

(3) Respondent Standard Auto Gear Co. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 531 Columbia Road, Dorchester, Mass.

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The following respondent individuals are the officers of said respondent corporation:

Morris Roazen, president and treasurer.

David Roazen, vice president.

Louis J. Roazen, secretary and assistant treasurer.

(4) Respondent, The Tarbell-Watters Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 144 Chestnut Street, Springfield, Mass.

The following respondent individuals are the officers of said respondent corporation:

Lucius H. Tarbell, president.

John S. Leven, vice president.

Clarence E. Trevor, treasurer and secretary.

(5) Respondent Auto Electric Service Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire with its principal office and place of business located at 21 Dow Street, Manchester, N.H.

The following respondent individuals are the officers of said respondent corporation:

James Pettigrew, president.

Everett P. McAfee, treasurer and general manager.

Omar H. Amyot, secretary.

(6) Respondent Farrar-Brown Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine with its principal office and place of business located at 49 Darthmouth Street, Portland, Maine.

The following respondent individuals are the officers of said respondent corporation:

Frank G. Congdon, president.

Christian Olesen, Jr., treasurer.

Franz U. Burkett, secretary.

(7) Respondent Christie & Thomson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 3 Quinsigamond Avenue, Worcester, Mass.

The following respondent individuals are the officers of the said respondent corporation:

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Robert Thompson, president.

William Christie, treasurer.

Abraham Hodes, secretary.

(8) Respondent Grinold Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its principal office and place of business located at 354 Hudson Street, Hartford, Conn.

The following respondent individuals are the officers of the said respondent corporation:

Raymond W. Grinold, president and treasurer.

Cleo T. (Mrs. R. W.) Grinold, vice president.

Richard E. Ryder, secretary.

(9) Respondent Horton-Gallo-Creamer Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 96-104 State Street, New Haven, Conn.

The following respondent individuals are the officers of the said respondent corporation:

Raymond W. Grinold, president and treasurer.

Cleo T. (Mrs. R. W.) Grinold, vice president.

James T. Fleming, secretary.

(10) Respondent Hagar Hardware & Paint Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Vermont, with its principal office and place of business located at 164 St. Paul Street, Burlington, Vt.

The following respondent individuals are the officers of said respondent corporation:

Frank J. Whalen, president and treasurer.

George I. Hagar, vice president.

(11) Respondent Plattsburgh Motor Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 95 Bridge Street, Plattsburgh, New York.

The following respondent individuals are the officers of said respondent corporation:

Walter H. Church, Sr., president and treasurer.

Walter H. Church, Jr., vice president.

Joseph S. Church, secretary.

(12) Respondent Detroit Supply Company, Inc., is a corpora-

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tion organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 78-82 Central Avenue, Albany, N.Y.

The following respondent individuals are the officers of said respondent corporation:

Samuel Weiss, president and treasurer.

Sidney R. Nathan, vice president.

Jacob Weiss, second vice president.

Eugene J. Nathan, assistant treasurer.

Sylvan Raab, secretary.

(13) Respondent William T. Manning Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 133 Pocasset Street, Fall River, Mass.

The following respondent individuals are the officers of said respondent corporation:

William T. Manning, Sr., president.

William T. Manning, Jr., treasurer.

Margaret C. (Mrs. Daniel) Egan, secretary.

(14) Respondent Thorpe Automotive Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 61 Montgomery Street, Pawtucket, R.I.

The following respondent individuals are the officers of said respondent corporation:

Luke E. Thorpe, president.

William H. Thorpe, vice president and treasurer.

John J. Thorpe, assistant treasurer.

Vincent Thorpe, secretary.

(15) Respondent Six-State Associates with principal office and place of business located at 285 Newtonville Avenue, Newton, Mass., is an association organized, existing and doing business under the laws of the Commonwealth of Massachusetts, by virtue of a Declaration of Trust effective December 31, 1948. Said respondent association upon its organization purchased all of the assets of Six-State Sales, Inc., a corporation organized under the laws of the Commonwealth of Massachusetts in October 1947.

The following respondent individuals are the trustees and officers of said respondent association:

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Alfred S. Hunt, president and trustee.

Louis J. Roazen, vice president and trustee.

Christian Olesen, Jr., vice president.

Arthur C. Marquardt, treasurer and trustee.

PAR. 2. The respondent corporations and the co-partnership set forth in paragraph I, *supra*, are independent business entities principally engaged in the jobbing of automotive replacement parts and supplies. Since June 19, 1936, said jobbers have purchased and now purchase in commerce from sellers, and from sellers engaged in commerce, numerous such parts and supplies for use, consumption or resale within the United States and in the District of Columbia, and in connection with such transactions said jobbers have been and are now in active and substantial competition with other corporations, partnerships, firms and individuals also engaged in the purchase for use, consumption or resale of automotive replacement parts and supplies of like grade and quality from the same or competitive sellers. The aforesaid sellers are located in the several States of the United States, and the aforesaid buyers and said sellers cause the parts and supplies so purchased, in manner and method and for purposes as aforesaid, to be shipped and transported among and between the several States of the United States from the respective State or States of location of said sellers to the respective State or States of location of the said buyers.

PAR. 3. Respondent Six-State Associates, at all times mentioned herein has been and is now maintained, managed, controlled and operated by and for the particular jobbers associated together at any given time for the effectuation of the purchasing policies and practices hereinafter described. Certain of the respondent jobbers have been so associated together since the inception of this course of action by the organization of Six-State Sales, Inc., in 1947. All of the respondent jobbers are currently so associated together in the continuation of said course of action by respondent Six-State Associates, and each said respondent jobber following such association, adopted, ratified, approved and began taking part in the purchasing policies and practices hereinafter described.

In practice and effect, respondent Six-State Associates has been and is now serving as the medium or instrumentality by, through or in conjunction with which said jobbers exert the influence of their combined bargaining power on the competitive commodity sellers hereinbefore described. As a part of their planned com-

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mon course of action, said jobbers direct the attention of said commodity sellers to the potential purchasing power possessed by them acting in concert and, by reason of such, have demanded on their individual purchases discriminatory prices, discounts, allowances, rebates and terms and conditions of sale not otherwise offered or granted by said commodity sellers in such transactions. Sellers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such sellers as can be and are induced to afford the discriminatory prices, discounts, allowances, rebates and terms and conditions of sale so demanded.

Said planned common course of action usually includes the demand by said jobbers, among other things, that acceding sellers shall consider their several purchases in the aggregate for the purpose of granting thereon quantity discounts, allowances or rebates in accordance with said sellers' established schedule. When and if this demand is acceded to by a particular seller, the subsequent purchase transactions between said seller and the individual jobbers have been and are billed to and paid for through the aforesaid organizational device of Six-State Associates. Said organization thus purports to be the commodity purchaser when in truth and in fact it has been and is now serving only as agent for the several individual purchasers aforesaid or as a mere bookkeeping device for facilitating the inducement and receipt by the said purchasers from the said sellers of discriminatory and off-scale merchandise pricing. Said Six-State Associates has not functioned and does not now function as a purchaser for its own account for consumption, use or resale of the commodities concerned.

PAR. 4. Each and all of the respondents aforesaid since June 19, 1936, have adopted, followed, and pursued purchasing policies and practices which were knowingly designed and intended to and did induce from such of the aforesaid commodity sellers as acceded, discriminatory and illegal prices, discounts, allowances, rebates, and terms and conditions of sale favorable to said respondent jobbers as aforesaid in the commodity purchase transactions hereinbefore described.

Each and all of the aforesaid respondents in furtherance of the said policies and practices and in connection with the said commodity purchase transactions are and have been utilizing and employing the device of respondent Six-State Associates, to

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induce and receive by, through or in conjunction therewith, from the aforesaid acceding sellers in said transactions, the aforesaid favorable prices, discounts, allowances, rebates, terms and conditions of sale, which were known or should have been known by said respondents to be discriminatory, illegal and prohibited to said acceding sellers under subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Each and all of the aforesaid respondent jobbers during the times aforestated made individual purchases of the said commodities upon which and upon the total aggregate of which and otherwise said jobbers knowingly induced and received through use of the aforesaid device substantial monetary amounts in discriminatory and favorable prices, discounts, allowances, rebates, terms and conditions of sale from the acceding sellers in the aforesaid purchase transactions. In 1954 said respondent jobbers made purchases through Six-State Associates in the amount of \$932,426.80 and received rebates in the amount of \$107,641.41 from 72 such acceding sellers. In 1955 such purchases amounted to \$1,618,078.12 and rebates totalled \$182,753.97 from 78 said suppliers. Except under color of such or a similar organizational device, the said favorable discriminatory prices, discounts, rebates, terms and conditions of sale were to the knowledge of said respondents not available to, offered, or granted by said sellers, or their aforesaid competitors to respondents or respondents' aforesaid competitors, nor received by respondents or respondents' said competitors in connection with the aforesaid or like or similar such purchase transactions of the same or similar such commodities of like grade and quality so purchased for consumption, use or resale.

Each and all of the aforesaid discriminatory purchase transactions, so negotiated and made, tend to and do establish the acceding sellers therein as preferred sources of supply over competitive sellers not so acceding, for the purchase for consumption, use or resale by said respondent jobbers of the commodities concerned, and to give said jobbers a price advantage over competitive nonfavored buyers as aforesaid in the purchase for consumption, use or resale of the same or similar such commodities of like grade and quality.

PAR. 5. The effect of each and all of the aforesaid discriminations in prices induced by each and all of the respondents aforesaid in each and all of the purchase transactions aforescribed

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made in the manner and method and for the purpose aforestated, and received in each and all of said transactions by each and all of the respondents as aforesaid, has been and may be to substantially lessen competition in the lines of commerce in which the aforesaid acceding sellers, said sellers' competitors, said respondent jobbers, and said jobbers' competitors, as aforesaid, are engaged and to injure, destroy or prevent competition with the said acceding sellers, the said respondent jobbers or with customers of either of them.

PAR. 6. The foregoing alleged acts and practices of said respondents, in knowingly inducing and in knowingly receiving, since June 19, 1936, the aforesaid discriminations in price prohibited by subsection (a), Section 2, of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), are in violation of subsection (f), Section 2, of said Act.

Mr. Eldon P. Schrup and Mr. Robert E. Vaughan for the Commission.

Gorman, Voss, Brodbine & Gorman, by *Mr. John J. Brodbine*, and *Withington, Cross, Park & McCann*, by *Mr. Claude B. Cross*, all of Boston, Mass., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), the Federal Trade Commission on April 5, 1957, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On October 28, 1958, after five hearings in October 1957, there was submitted to the undersigned hearing examiner an executed agreement between respondents and counsel supporting the complaint, accompanied by a subsequently executed motion to amend said agreement, which motion is signed by all counsel of record and which motion represents that all signatories to the consent agreement (except James T. Fleming as to whom this complaint is being dismissed) have consulted with them and that counsel for respondents are specifically authorized by such respondents to join with counsel in support of the complaint in this action,

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providing for the entry of a consent order. Said motion being deemed appropriate, it is herewith granted.

By the terms of said agreement, as amended, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, as amended, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement, as amended. The agreement, as amended, further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement, as amended; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement, as amended, is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered, it 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 provided for other orders; and that the complaint may be used in construing the terms of the order.

Said agreement, as amended, further provides that the following individual respondents are deceased:

Arthur C. Marquardt	Morris Roazen
Lucius H. Tarbell	John S. Leven
Omar H. Amyot	Frank G. Congdon
Frank J. Whalen	

and that the following listed respondents are no longer connected with any respondent corporation, and counsel supporting the complaint do not have available any evidence or reason to believe that they will participate in like practices in the future:

David Roazen, formerly vice president,
Standard Auto Gear Co.
Franz U. Burkett, formerly secretary,
Farrar-Brown Co.

Robert Thompson, formerly president,
Christie & Thomson, Inc.
William Christie, formerly secretary,
Christie & Thomson, Inc.
James T. Fleming, formerly secretary,
Horton-Gallo-Creamer Company.

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

1. Respondent Hunt-Marquardt, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 244 Brighton Avenue, Boston, Mass.

The following respondent individuals are officers of said respondent corporation:

Alfred S. Hunt
H. Nelson Hartstone

Respondents George G. Mellor and Raymond W. Mellor are individuals and copartners trading as Mellor's Auto Parts with their principal office and place of business located at 134 Broad Street, Providence, R.I.

Respondent Standard Auto Gear Co. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 531 Columbia Road, Dorchester, Mass.

Respondent Louis J. Roazen, is an officer of said respondent corporation.

Respondent The Tarbell-Watters Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 144 Chestnut Street, Springfield, Mass.

Respondent Clarence E. Trevor is an officer of said respondent corporation.

Respondent Auto Electric Service Co. is a corporation organized, existing and doing business under and by virtue of the laws of

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the State of New Hampshire with its principal office and place of business located at 21 Dow Street, Manchester, N.H.

The following respondent individuals are officers of said respondent corporation:

James Pettigrew

Everett P. McAfee

Respondent Farrar-Brown Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine with its principal office and place of business located at 49 Dartmouth Street, Portland, Maine.

Respondent Christian Olesen, Jr., is an officer of said respondent corporation.

Respondent Christie & Thomson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 3 Quinsigamond Avenue, Worcester, Mass.

Respondent Abraham Hodes is an officer of said respondent corporation.

Respondent Grinold Auto Parts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its principal office and place of business located at 354 Hudson Street, Hartford, Conn.

The following respondent individuals are officers of the said respondent corporation:

Raymond W. Grinold

Cleo T. (Mrs. R. W.) Grinold

Richard E. Ryder

Respondent Horton-Gallo-Creamer Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 96-104 State Street, New Haven, Conn.

The following respondent individuals are officers of the said respondent corporation:

Raymond W. Grinold

Cleo T. (Mrs. R. W.) Grinold

Respondent Hagar Hardware & Paint Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Vermont, with its principal office and place of business located at 164 St. Paul Street, Burlington, Vt.

Respondent George I. Hagar is an officer of said respondent corporation.

Respondent Plattsburgh Motor Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 95 Bridge Street, Plattsburgh, N.Y.

The following respondent individuals are officers of said respondent corporation:

Walter H. Church, Sr.

Walter H. Church, Jr.

Joseph S. Church

Respondent Detroit Supply Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 78-82 Central Avenue, Albany, N.Y.

The following respondent individuals are officers of said respondent corporation.

Samuel Weiss

Sidney R. Nathan

Jacob Weiss

Eugene J. Nathan

Sylvan Raab

Respondent William T. Manning Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 133 Pocasset Street, Fall River, Mass.

The following respondent individuals are officers of said respondent corporation:

William T. Manning, Sr.

William T. Manning, Jr.

Margaret C. (Mrs. Daniel) Egan

Respondent Thorpe Automotive Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 61 Montgomery Street, Pawtucket, R.I.

The following respondent individuals are officers of said respondent corporation:

Luke E. Thorpe

William H. Thorpe

John J. Thorpe

Vincent Thorpe

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Respondent Six-State Associates with its principal office and place of business located at 285 Newtonville Avenue, Newton, Mass., is an association organized, existing and doing business under the laws of the Commonwealth of Massachusetts, by virtue of a Declaration of Trust effective December 31, 1948. Said respondent association upon its organization purchased all of the assets of Six-State Sales, Inc., a corporation organized under the laws of the Commonwealth of Massachusetts in October 1947.

The following respondent individuals are the trustees and officers of said respondent association:

Raymond W. Mellor, trustee

Alfred S. Hunt, trustee

Louis J. Roazen, trustee

Christian Olesen, Jr., president

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Hunt-Marquardt, Inc., a corporation; George G. Mellor and Raymond W. Mellor, copartners doing business as Mellor's Auto Parts; Standard Auto Gear Co., a corporation; The Tarbell-Watters Co., Inc., a corporation; Auto Electric Service Co., a corporation; Farrar-Brown Co., a corporation; Christie & Thomson, Inc., a corporation; Grinold Auto Parts, Inc., a corporation; Horton-Gallo-Creamer Company, a corporation; Hagar Hardware & Paint Co., Inc., a corporation; Plattsburgh Motor Service, Inc., a corporation; Detroit Supply Company, Inc., a corporation; William T. Manning Co., Inc., a corporation; Thorpe Automotive Co., a corporation; Six-State Associates, a Massachusetts trust; and following individuals: Alfred S. Hunt, Louis J. Roazen, Christian Olesen, Jr., H. Nelson Hartstone, Clarence E. Trevor, James Pettigrew, Everett P. McAfee, Abraham Hodes, Raymond W. Grinold, Cleo T. Grinold, Richard E. Ryder, George I. Hagar, Walter H. Church, Sr., Walter H. Church, Jr., Joseph S. Church, Samuel Weiss, Sidney R. Nathan, Jacob Weiss, Eugene J. Nathan, Sylvan Raab, William T. Manning, Sr., William T. Manning, Jr., Margaret C. Egan, Luke E. Thorpe, William H. Thorpe, John J. Thorpe, and Vincent Thorpe, their officers, agents, representatives and employees in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

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Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products and supplies, by directly or indirectly inducing, receiving, or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondents' business, or where respondents are competing with other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

It is further ordered, That the complaint be and it hereby is dismissed as to respondents Arthur C. Marquardt, Morris Roazen, Lucius H. Tarbell, John S. Leven, Omar H. Amyot, Frank G. Congdon, Frank J. Whalen, David Roazen, Franz U. Burkett, Robert Thompson, William Christie, and James T. Fleming.

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 23d day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That all of the respondents herein, except those as to whom the complaint has been dismissed, 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.

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IN THE MATTER OF
B. GREEN & COMPANY, INC.

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

Docket 7266. Complaint, Oct. 1, 1958—Decision, Dec. 23, 1958

Consent order requiring a distributor in Baltimore, Md., to cease violating the Oleomargarine Amendment to the Federal Trade Commission Act by listing "Del Farm" margarine in newspaper advertisements along with cheese, milk, eggs, and butter under such headings as "Dairy Products" and "Tablerite Dairy Values" or otherwise suggesting in advertising that the oleomargarine was a dairy product.

Mr. Morton Nesmith for the Commission.
Respondent, for itself.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on October 1, 1958, charging respondent with representing or suggesting that its Del Farm Margarine is a dairy product, by placing advertisements thereof under the heading of "dairy products" in newspapers and otherwise, and by intermixing such advertisements between the advertisements of dairy foods. Respondent's advertisements, so disseminated, are alleged to be misleading in material respects and to constitute false advertisements as defined in §15(a)(2) of the Federal Trade Commission Act, and unfair and deceptive acts and practices in commerce, in violation of said Act.

Thereafter, on October 24, 1958, respondent and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent B. Green & Company, Inc. as a Maryland corporation, with its principal office and place of business located at 2200 Winchester Street, Baltimore, Md.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent waives any further procedure before the hearing

examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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 provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That the respondent, B. Green & Company, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Del Farm Margarine, or any other margarine or oleomargarine, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, by means of the United States mail or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any statement, word, grade designation, design, device, symbol, sound, or any combination thereof, which represents or suggests that said product is a dairy product;

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product,

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any advertisement which contains any of the representations prohibited in paragraph 1 of this order.

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 23d day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent B. Green & Company, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

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IN THE MATTER OF
RENBERG'S, INC., ET AL.

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

Docket 6997. Complaint, Dec. 18, 1957—Decision, Dec. 24, 1958

Consent order requiring furriers in Tulsa, Okla., to cease violating the Fur Products Labeling Act by newspaper advertising which falsely represented prices of fur products as reduced from regular prices which were in fact fictitious, and represented percentage reductions from usual prices without maintaining adequate records for such savings claims.

Mr. S. F. House supporting the complaint.

Mr. G. Duane Vieth and *Mr. Werner Kronstein* of *Arnold, Fortas & Porter*, of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges Renberg's Inc., a corporation, and George Renberg, individually and as an officer of said corporation, hereinafter called respondents, with false advertising of fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After issuance and service of the complaint the respondents, through their attorneys, filed a motion to dismiss the complaint, supported by the affidavit of the respondent George Renberg, on the grounds that (1) the respondents did not knowingly participate directly or indirectly in any of the violations charged in the complaint, (2) there is no likelihood that respondents will commit such violations in the future and, therefore, the public interest does not require that further proceedings under the complaint be continued.

Counsel supporting the complaint answered said motion and, among other things, denied the allegations of fact set forth in the supporting affidavit. The hearing examiner denied the motion to dismiss.

Thereafter, respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about. The agreement has been approved by the director and assistant director of the Bureau of Litigation. The agreement recites that the allegation set forth in paragraph 4 of the complaint, to the effect that