

Decision

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IN THE MATTER OF
CANNON MILLS, INC.

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

Docket 7115. Complaint, Apr. 10, 1958—Decision, Mar. 12, 1959

Order requiring a seller of textile products, with main office in New York City, to cease advertising falsely that its "X-ron" blankets, containing 65% rayon and 25% cotton, were composed predominantly of orlon and nylon, and to disclose clearly when the silk-appearing bindings were acetate.

Mr. Alvin D. Edelson for the Commission.

Mr. James L. Rankin, of *Geary & Rankin*, of Chester, Pa., and *Mr. William H. Beckerdite*, of Concord, N.C., for respondent.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 10, 1958, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging it with unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held, at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner, duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. In addition, a hearing was held on September 5, 1958, for oral argument before the hearing examiner. Thereafter, the proceeding regularly came on for consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel and the said oral argument. Said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public, and makes the following findings as to the facts, conclusions drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Cannon Mills, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business at 70 Worth Street, New York, N.Y.

PAR. 2. Respondent is engaged in the distribution and sale of numerous textile products among which are blankets, sheets and towels, and other similar products.

PAR. 3. In the course and conduct of its business respondent causes, and has caused, the products it sells, when sold, to be transported from the place of manufacture of said products in the State of North Carolina to purchasers thereof located in various other states of the United States, and maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Its volume of trade in said commerce has been and is substantial—the volume of its total business in blankets being between five and six million dollars per year.

PAR. 4. At all times mentioned herein respondent has been, and is now, in direct and substantial competition in commerce with corporations, firms, and individuals engaged in the sale and distribution of textile products, including blankets.

PAR. 5. In the course and conduct of its said business respondent has engaged in the practice of representing the fiber content of certain of its blankets in advertising leaflets or mailing pieces which it placed in the hands of retailers of its said blankets for display and distribution to the purchasing public. During the year 1957, respondent sent to about 60 or 65 customers, principally engaged in the sale of furniture on credit, approximately two million four-color mailing pieces, sometimes referred to as "mailers," containing the following description of respondent's blankets in large type prominently displayed:

X - r o n
A New Blend* of
Miracle Fibers . . .
Orlon, Nylon, Rayon
and Cotton . . . By
Nationally Famous
C A N N O N .

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PAR. 6. In the lower right-hand corner of the said mailing piece or "mailer," indicated by the asterisk after the word "blend," the following statement appears in small, obscure type:

*

65% Rayon
25% Cotton
5% Nylon
5% Orlon.

PAR. 7. By means of the aforesaid arrangement of the descriptive matter, with the emphasis placed upon the so-called "miracle fibers" orlon and nylon at the top of the statement on the mailing piece, respondent represented that said blankets were composed predominantly or in at least equal parts of orlon and nylon.

PAR. 8. Said statements and representations were false, misleading and deceptive. In truth and in fact said blankets were composed in only a very small part (5%) each of orlon and nylon, the predominant fiber being rayon.

PAR. 9. Respondent has, for several years last past, advertised and sold in commerce blankets which have bindings composed of acetate, which is a chemically manufactured fiber having the appearance and feel of silk. By reason of these qualities, acetate, when not clearly designated as such, is practically indistinguishable from silk. Respondent advertises such blankets in leaflets distributed to the purchasing public without disclosure of such acetate content. Although respondent identifies such content on said blankets themselves, the binding-content information is placed on labels in such a manner that said information cannot be readily discerned by the customer, the information being placed on the side of the label which is tucked under the edge of the blanket, and thus away from sight.

PAR. 10. Respondent's practice of failing to disclose the acetate content of its blanket binding in its advertising, and in an adequate and clear manner on the blankets themselves, has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the bindings of such blankets are composed of silk, when such is not the fact.

PAR. 11. The use by the respondent of the aforesaid false, deceptive and misleading statements, representations and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into

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the erroneous belief that such statements and representations were and are true, and into the purchase of substantial quantities of respondent's blankets because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondent from its competitors and substantial injury has been done to competition in commerce.

PAR. 12. Sometime in November 1957, an investigator of the Federal Trade Commission called at the office of the respondent in New York City, and during the course of his investigation indicated to officials of the respondent that the "mailers" and blanket tickets were being criticized; and on November 14, 1957, the vice president of the respondent notified the Commission respondent was discontinuing the use of the mailing piece and the use of the name X-ron on blankets.

Thereafter, prior to January 1958, the respondent discontinued the use of the criticized blanket ticket and said mailing piece containing the said deceptive descriptive matter and had the printer dispose of the stock of said mailing pieces on hand (about 100,000 pieces) and attached new blanket tickets containing a descriptive statement that the binding was acetate satin. However, no notice was sent to the said customers of the discontinuance of said mailing pieces or the reason therefor nor were the customers instructed to discontinue their use.

Officials of the respondent admitted they were aware of the Trade Practice Conference Rules issued by the Commission on December 11, 1951, for the Rayon and Acetate Textile Industry, Rule 5 of which calls for the identification of fiber content of mixed goods as follows:

It is an unfair trade practice to sell or offer for sale or distribute in commerce any industry product composed of rayon and acetate with or without other textile fiber or fibers, or either rayon or acetate with other textile fiber or fibers, without making identification of the fiber content of such industry product on all invoices, labels, advertisements, and other representations concerning such product by accurately designating and naming each constituent fiber in the order of predominance by weight, with or without accompanying statement of the fraction or percentage by weight of the entire mixture which each represents, such identification being subject to the following provisions:

* * * * *

(b) Statements of the fiber content contained in any such mixed product of two or more fibers shall not set forth the name of any fiber in a type or manner so disproportionately enlarged, emphasized, or conspicuously placed, as

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thereby to have the capacity and tendency or effect of deceiving purchasers or prospective purchasers into the belief that a greater proportion of such fiber is present than is in fact true.

However, it appears from the testimony of these officials that they do not now believe that the practices hereinabove found were deceptive or misleading to the public, or that they violated the Commission's Trade Practice Rules.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, were all to the prejudice and injury of the public and of respondent's competitors, and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

In a recent decision, *Mary Muffet v. Federal Trade Commission*, 193 F. 2d 504 (1952), the Commissioner's order requiring affirmative disclosure of fiber content in textiles composed in whole or in part of rayon has been upheld by the Court. The Commission has, in subsequent cases, consistently adhered to the principle of requiring affirmative disclosure. It is believed that respondent's manner of arranging the names of the fibers contained in its blankets is deceptive in the light of the foregoing decisions. Fibers composing but 10% of the entire blanket, orlon and nylon, are featured as a "new blend of miracle fibers" in large type ($\frac{1}{2}$ " high) at the top of respondent's mailing piece or "mailer," in a conspicuously contrasted color scheme, whereas the actual percentages of fibers contained in the product, which consists predominantly of rayon and cotton (orlon and nylon being 5% each), is set forth in the extreme lower right-hand corner of the page, in such small type and blending, inconspicuous colors as to be almost invisible and difficult to find by anyone, even though he knows it is there. Such disclosure does not satisfy the requirements of the law.

Although it is not intended, in this decision, to enforce the Trade Practice Rules for the Rayon and Acetate Textile Industry, they are referred to in connection with the contention by respondent that it had discontinued the practices criticized before the complaint was issued, and that therefore the complaint should be dismissed. In view of the fact that officials of the respondent were aware of the existence of such Rules and the agreement among their competitors to subscribe to such Rules, it is believed

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that respondent cannot claim to have acted in such good faith with respect to the abandonment of the unlawful practices hereinabove found as to be entitled to a dismissal of the complaint, particularly in view of the fact that respondent's officials still deny that said practices are deceptive or in violation of the Rules.

With respect to the contention of counsel for the respondent made in his oral argument that the binder of a blanket is not a part of the blanket, that it is a trimming or an ornament and, consequently, should be exempt from any action by the Commission, no support by way of decisions of the Commission or the Courts was submitted by counsel and it is believed that such an interpretation is not tenable under the circumstances. A silk binder adds to the attractiveness of a blanket and the silky appearance of an acetate or rayon binder could be deceptive and misleading unless the public is notified in plain, unmistakable language on the label the nature of the fabric used as a binder.

ORDER

It is ordered, That respondent Cannon Mills, Inc., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of blankets, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, in advertising of any kind, by setting forth fiber content other than in the order of predominance, or by any means, that respondent's blankets, or other merchandise, contain a greater proportion of particular fibers, or of a particular fiber, than is actually the fact;

2. Failing to disclose in a clear and conspicuous manner, on labeling attached to blankets or other merchandise, or by other means, and in advertising of any kind, that said merchandise contains acetate, when such is the fact.

Provided, however, That nothing herein shall relieve the respondent from its obligation to comply with the requirements of the Textile Fiber Products Identification Act after the effective date thereof or forbid the respondent thereafter from labeling and otherwise offering products subject to that Act in the manner prescribed thereby and rules and regulations promulgated thereunder by the Commission.

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OPINION OF THE COMMISSION

By SECREST, Commissioner:

In his initial decision the hearing examiner found that the respondent had engaged in unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act in connection with the advertising and labeling of its blankets composed of mixed fibers. The order contained in the initial decision requires the respondent to cease the practices found to be unlawful and respondent has appealed from that decision.

The respondent in 1956 and 1957 was selling its X-ron blankets, the merchandise here involved, to approximately 65 distributors, principally concerns engaged in credit sales of furniture. In each of those years, it sold or otherwise furnished to such customers approximately two million mailers or four color prints for use in circularizing their trade. In 1957, respondent's blankets were composed of 65% rayon, 25% cotton, 5% nylon and 5% orlon. The X-ron blankets marketed in 1956 were substantially the same except that they contained 10% nylon and no orlon fiber. Their binding or edging was acetate fiber with a satin weave. The color circular or mailer used by the respondent in 1957 offered the blankets as "A New Blend Of Miracle Fibers * * * Orlon, Nylon, Rayon and Cotton." Above the word "Blend" appeared an asterisk; and in the lower right corner in small type blending indistinctly into the colored background, the percentages of the constituent fibers were listed in the order in which present. Considering the advertisement in its entirety, the hearing examiner found that the manner and order in which the fiber constituents were listed in the circular, including the emphasis placed in the advertisement upon the so-called miracle fibers, reasonably served to engender impressions and beliefs that the blankets were composed predominantly or at least in equal part of orlon and nylon. Inasmuch as they were composed instead predominantly of rayon, he held the advertising statements accordingly deceptive and concluded that the first category of the complaint's charges were supported by the record. The examiner likewise sustained the additional or second category of charges alleging law violation through respondent's failure to adequately disclose in its advertising and on the blankets that their binding or edging was composed of acetate fiber.

The respondent's brief lists the points to be argued and controlling to decision, as (1) whether the complaint should be dis-

missed by reason of respondent's discontinuance of the challenged practices prior to issuance of the complaint; (2) whether the hearing examiner erred in finding that the respondent had violated the Act by failing to disclose in advertising and labeling that the binding of the blankets was acetate; and (3) whether the hearing examiner's order is inequitable and exceeds proper legal bounds because its fiber disclosure requirements are not limited to blankets but include other merchandise.

The second contention of error respecting the initial decision's holding of deceptive failure to disclose material facts concerning the fiber content of the binding material challenges substantive evidentiary findings made by the hearing examiner and legal principles applied by him in reaching decision here. This contention accordingly will be considered first. The acetate composition of the binding was not revealed in the advertising circular. The labels used were the so-called double faced type. As received in their flat or unfolded form from the printer, the first part of the label set out information as to the dimensions of the blanket and its rayon, cotton, nylon and orlon constituents, and identified the article as respondent's; and the remaining statements identified the binder as acetate satin and contained laundering instructions. When affixed to the blanket, the part containing the first mentioned statements was faced up and the succeeding part was folded under and attached to the reverse surface of the blanket. Only the first or upper part of the label was visible when the blankets were folded and packed in their transparent plicofilm folders for point-of-sale display to the public.

It is clear, therefore, that the information respecting the content of the acetate binder appeared in a position highly difficult for discernment by prospective purchasers. Furthermore, the visible part of the label contained no suggestion that further information appeared on the underside of the blanket fold. This 3-inch binding is affixed to both ends of the blanket and represents a substantial and prominent component of the merchandise. The appearance and feel of the acetate binding simulates silk and it is clear from the record that a substantial segment of the public would not be able to, or would find it extremely difficult to, distinguish the binding from a silk binding.

Under the organic Act, the Commission has authority to require that rayon products simulating those composed of other fibers be properly identified to prevent deception in their resale. *Mary Muffet v. Federal Trade Commission*, 194 F. 2d 504 (C.A.

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2, 1952). Furthermore, it is settled law that the Commission may require affirmative disclosures where necessary to prevent deception, and that failure to disclose by mark or label material facts concerning merchandise, which if known to prospective purchasers would influence their decisions on whether or not to purchase, is an unfair trade practice. *L. Heller & Son, Inc. v. Federal Trade Commission*, 191 F. 2d 954 (C.A. 7, 1951). The hearing examiner's conclusions of law violation by respondent resulting from its failure to adequately reveal the acetate composition of the bindings for the blankets thus have sound support in the record and in law. Respondent's contentions of error respecting that holding are rejected.

The hearing examiner further found that the manner and order in which the fiber constituents were listed in respondent's circular, including the emphasis placed in the advertisements upon the so-called miracle fibers, reasonably served to insure impressions and beliefs that the blankets were composed predominately or at least of an equal part of orlon and nylon. Actually the blankets marketed in 1957 contained but 5% orlon and 5% nylon. Although respondent's brief in its analysis of the issue does not specifically assert error by the hearing examiner in finding the complaint's charge in this regard to be supported by the evidence, certain statements appear in the brief which we interpret as challenging the correctness of the hearing examiner's ruling. For instance, at page 9, the brief states that respondent accurately and in proper order disclosed the fiber contents of the blankets at the bottom of the mailer or circular. As previously noted, however, the statement in reference to constituent fibers and their percentages was set out at the bottom in small type blending inconspicuously into the colored background used on the mailer. We deem it plainly insufficient to dispel the erroneous impressions and beliefs reasonably engendered by the statements elsewhere emphasized in the circular. The hearing examiner's findings, we believe, have sound legal basis.

The respondent's contentions that the scope of the order is improper because its requirements are not confined to sales of blankets are also rejected. The order's inclusion of the words "other merchandise" looks only to preventing respondent from continuing or resuming past unlawful practices in reference to other textile articles. That its distribution of the category of blankets here considered has represented less than 3% of the

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company's total sales volume does not render the order unfair or legally unjustified. The Commission may properly close the door to future sales of other products by the same deceptive sales method; and to be of value a Commission order must proscribe the unfair method as well as the specific acts by which it was manifested. *Hershey Chocolate Corporation v. Federal Trade Commission*, 121 F. 2d 968 (C.A. 3, 1941); *Consumer Sales Corporation v. Federal Trade Commission*, 198 F. 2d 404 (C.A. 2, 1952).

Respondent states that it has discontinued the practices complained of permanently and in good faith and that dismissal of this proceeding is warranted. There is little dispute as to certain salient facts surrounding respondent's abandonment of the practices found unlawful in the initial decision. In early November, 1957, an investigational representative of the Commission visited respondent's place of business and informed two of its representatives that the mailer and X-ron label were being questioned. In a letter to the Commission dated November 14, 1957, Mr. J. W. Barnett, vice president of the respondent, stated that use of the name X-ron on blankets had been discontinued and that the mailer would not be furnished customers or used by respondent in the future. In the course of the respondent's 1956 promotion for X-ron blankets, approximately 2,000,000 of the mailers were distributed for use by customers. Around 2,200,000 were printed for distribution in 1957 and approximately 100,000 of these remained and were destroyed shortly following respondent's elected abandonment.

On March 21, 1958, Cannon distributed new mailers for certain blankets, including its Aspen blanket promotion, the particular item intended by respondent to replace the X-ron promotion. Its letter in that connection to customers made no reference to discontinuance of the 1957 circular pertaining to X-ron blankets, nor were its salesmen then informed as to the circumstances leading to discontinuance of that line. The complaint in this proceeding issued on April 10, 1958.

During the course of Commission field and other preliminary investigations undertaken in response to complaints by consumers or industry members of law violations or otherwise instituted by the Commission to ascertain whether statutes which it administers are being violated, it is not uncommon for businessmen so contacted to discontinue the practices under inquiry on their

own accord. These post-investigational abandonments may be inspired by a variety of motives ranging from recognition of the practices' legal impropriety and good faith resolve to abide by the law, on the one hand, to desires, on the other hand, to forestall or abate adversary proceedings. Other considerations, including the desire to obviate an order which may lend future practices to Commission surveillance, may also serve as controlling motives. The discontinuance of a practice found by the Commission to constitute a violation of law, however, does not render a controversy moot. *Federal Trade Commission v. Good year Tire & Rubber Co.*, 304 U.S. 257 (1938). And the Act would confer no power or authority at all if the Commission lost jurisdiction every time a practice is halted just as it is about to act or has acted. *Hershey Chocolate Corporation v. Federal Trade Commission*, *supra*. In cases of asserted abandonment, the Commission is vested with a broad discretion in its determinations of whether the practice has been surely stopped and whether an order to cease and desist is proper. *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F. 2d 321 (C.A. 7, 1944); *Automobile Owners Safety Insurance Co. v. Federal Trade Commission*, 255 F. 2d 295 (C.A. 8, 1958).

Not until August 15, 1958, did the respondent notify its customers that the X-ron circular was being questioned and any supplies of the mailers remaining with distributors could be returned for credit. That date was 9 months after the respondent elected to discontinue its sale of the blankets, 4 months after the complaint's issuance and approximately 2 months after the first and only hearing for the reception of evidence convened in this proceeding. During that interval, which included two months when retail sales of blankets are normally at their peak, the respondent did not lift its hand to stay continued use by dealers of the deceptive mailers theretofore supplied. In our view, the circumstances surrounding the respondent's abandonment of certain of the practices included among those challenged in this proceeding do not warrant dismissal of the complaint, and we believe that the public interest requires issuance in this proceeding of appropriate order to cease and desist.

After this proceeding began, the Textile Fiber Products Identification Act was approved to become effective March 3, 1960. Among other things, this enactment prescribes the manner in which the there defined category of textile products shall be

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labeled and advertised; and it bans the naming on labels or otherwise of fibers present in the amount of 5% or less and contains exemptive language in reference to trimmings. The order proposed by the hearing examiner looks to preventing continued false representations by respondent that fibers are present in merchandise in proportions greater than those it actually contains and, among other things, would forbid the respondent from failing to disclose the presence of acetate fibers in blanket binders. On the assumption that the binding or edging of a blanket represents trimming and based on other considerations, possibilities of future conflict between the requirements of the recommended order to cease and desist and those imposed under the new legislation are apparent.

On the other hand, the enactment does not supersede all existing laws pertaining to the marketing of textiles and it expressly excludes from its purview the categories of textile products subject to the Wool Products Labeling Act. Thus, the requirements of existing law will be governing until the new legislation becomes effective and will continue applicable with respect to products not covered thereby. Our action here nowise relieves respondent of responsibility for complying with the new act. In the circumstances, we think the order should be modified to make it clear that conduct engaged in after the effective date of the Textile Fiber Products Identification Act in distributing products subject thereto and lawful under its provisions, shall not be violative of the order to cease and desist. We are so modifying the order.

To the extent noted in the preceding paragraph, the appeal of the respondent is granted but in all other respects denied. With the order to cease and desist modified in the manner noted above, the initial decision is being adopted as the decision of the Commission.

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This matter having been heard by the Commission upon the respondent's appeal from the initial decision of the hearing examiner; and the Commission having rendered its decision denying the appeal in part and granting the appeal to the extent noted and having determined, for reasons stated in the accompanying opinion, that the order to cease and desist should be modified:

It is ordered, That the order to cease and desist contained in the initial decision be modified by adding thereto the following:

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Provided, however, That nothing herein shall relieve the respondent from its obligation to comply with the requirements of the Textile Fiber Products Identification Act after the effective date thereof or forbid the respondent thereafter from labeling and otherwise offering products subject to that Act in the manner prescribed thereby and rules and regulations promulgated thereunder by the Commission.

It is further ordered, That the initial decision, as modified herein, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent 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
STERLING INSURANCE COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6277. Complaint, Dec. 28, 1954—Order, Mar. 16, 1959*

Order vacating, following the ruling of the Supreme Court in its *per curiam* opinion in the combined cases of *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560 (1958), initial decision filed Jan. 18, 1957, and dismissing complaint charging a Chicago insurance company with false advertising of health and accident policies.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. William A. Somers and *Mr. Raymond L. Hays* for the Commission.

Brundage & Short, of Chicago, Ill., for respondent.

FINAL ORDER

This matter having come before the Commission upon the cross-appeals of respondent and counsel supporting the complaint from the hearing examiner's initial decision, and upon briefs filed by counsel, oral argument not having been requested; and

The Commission having considered the record and the ruling of the Supreme Court of the United States in its *per curiam* opinion in the combined cases of *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560 (1958), entered subsequent to the filing of the instant appeals, and having concluded that the complaint herein should be dismissed:

It is ordered, That the initial decision herein, filed January 18, 1957, be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint herein be, and it hereby is, dismissed.