

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  
STEWART & STEVENSON SERVICES, INC., ET AL.

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

*Docket 7002. Complaint, Dec. 19, 1957—Decision, Nov. 20, 1959*<sup>1</sup>

Order requiring three franchised wholesale distributors of General Motors diesel engines and replacement parts to cease conspiring to fix or maintain prices and selling conditions for the parts.

*Mr. F. C. Mayer, Mr. W. W. Rogal, and Mr. F. A. Snyder* for the Commission.

*Smitherman, Smitherman, Purcell & Lunn*, of Shreveport, La., for United Engines, Inc.

*Wells, Thomas & Wells*, of Jackson, Miss., for Taylor Machinery Corporation.

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<sup>1</sup> Five of the respondents, namely, Stewart & Stevenson Services, Inc.; Lewis Diesel Engine Company (Inc.), of Memphis, Tenn.; Lewis Diesel Engine Company (Inc.), of Little Rock, Ark.; Diesel Power Company; and George Engine Company, Inc., executed agreements containing consent orders effective May 23, 1959, 55 F.T.C. 1872.

*Beard, Blue & Schmitt*, of New Orleans, La., for William Patrick Kennedy, Jr., trading as Kennedy Marine Engine Company and Kennedy Marine Engine Co.

INITIAL DECISION AS TO CERTAIN RESPONDENTS BY FRANK HIER,  
HEARING EXAMINER

PRELIMINARY STATEMENT

Complaint herein issued December 19, 1957, charging the respondents with a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) in that they cooperated, combined, agreed and entered into an understanding and planned common course of action to fix prices, discounts, terms and conditions of sale of GM diesel engine parts. Three of the respondents, Lewis Diesel Engine Company (Inc.), of Memphis, Tennessee, Lewis Diesel Engine Company (Inc.), of Little Rock, Arkansas, and George Engine Company, Inc., filed no answer to the complaint, did not appear at any hearings, nor contest in any manner. The remaining respondents filed answers which generally admitted corporate descriptions, interstate commerce and line of commerce engaged in, and denied all else, except that respondent Kennedy Marine Engine Co., Inc., denied everything except its corporate existence and address. Four hearings were thereafter held at Memphis, Tennessee, New Orleans, Louisiana, and Houston, Texas, at which respondents, United Engines, Inc., Taylor Machinery Corporation, William Patrick Kennedy, Jr., and Kennedy Marine Engine Co., Inc., by counsel, appeared and contested the evidence offered by counsel supporting the complaint. The other respondents did not appear or have counsel present, and offered no contest.

Counsel in support of the complaint having rested, all contesting respondents moved to dismiss, supported by briefs, all of which, on consideration, were denied, except that of Kennedy Marine Engine Co., Inc., which was granted. Thereafter, at two hearings in New Orleans, Louisiana, the remaining contesting respondents offered evidence in their defense and the proceeding was closed for reception of evidence on January 8, 1959. The record consists of 600 pages of transcript and 114 Commission exhibits and 17 respondents' exhibits. Thereafter, on March 9, 1959, all contestants filed their respective proposed findings and conclusions. All proposed findings not specifically hereinafter adopted are refused. On consideration of these proposed findings and conclusions, and of the entire record, the hearing examiner makes the following:

## FINDINGS OF FACT

1. Respondent Stewart & Stevenson Services, Inc., is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 1718 Congress Street, Houston, Texas.

2. Respondent Lewis Diesel Engine Company (Inc.), of Memphis, Tennessee, is a corporation organized and existing under the laws of the State of Tennessee, with its principal place of business located at 92 West Carolina Street, Memphis, Tennessee.

3. Respondent Lewis Diesel Engine Company (Inc.), of Little Rock, Arkansas, is a subsidiary of respondent Lewis Diesel Engine Company (Inc.), of Memphis, Tennessee, and is a corporation organized and existing under the laws of the State of Arkansas, with its principal place of business located at 3021 East Broadway, in North Little Rock, Arkansas.

4. Respondent Diesel Power Company is a corporation organized and existing under the laws of the State of Oklahoma, with its principal place of business located at 1801 N.E. 9th Street, in Oklahoma City, Oklahoma.

5. Respondent United Engines, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 555 N. Market Street, in Shreveport, Louisiana. Incorporated in late 1955, it succeeded in interest its predecessor United Tool Company, in all matters involved in this proceeding.

6. Respondent Taylor Machinery Corporation is a corporation organized and existing under the laws of the State of Mississippi, with its principal place of business located at S. Gallatin Street at Highway 80, in Jackson, Mississippi.

7. Respondent William Patrick Kennedy, Jr., hereinafter sometimes referred to as Kennedy-Biloxi, is an individual trading under the firm name of Kennedy Marine Engine Company, with his principal office and place of business located at 308 Reynoir Street, in Biloxi, Mississippi.

8. Respondent Kennedy Marine Engine Co., Inc., hereinafter sometimes referred to as Kennedy-Mobile, is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business located at 25 S. Water Street, in Mobile, Alabama.

9. Respondent George Engine Company, Inc., is a corporation organized and existing under the laws of the State of Louisiana, with its principal place of business located at 639 Destrehan Avenue, in Harvey, Louisiana.

## Findings

56 F.T.C.

10. All of the aforementioned respondents, except Kennedy-Mobile, are exclusively franchised wholesale distributors of General Motors diesel engines and parts therefor, which are manufactured by and sold to them by Detroit Diesel Engine Division, General Motors Corporation, Detroit, Michigan.

11. These parts are replacements on diesel engines, such as, but not limited to, liner kits, liners, pistons, ring sets, main bearing shell sets and injectors.

12. These respondents, as enumerated above, except Kennedy-Mobile, are the only franchised wholesale distributors of these replacement diesel engine parts in the 10-state area surrounding their principal places of business in east Texas, Louisiana, Arkansas, Oklahoma, Tennessee, and Mississippi, and as such have the power to fix resale prices, terms and conditions of resale by concerted action.

13. All of these respondents in their distribution activities are engaged in commerce as that term is defined in the Federal Trade Commission Act.

14. All of these respondents compete with each other to some extent, particularly where their assigned but nonexclusive sales territories border or overlap. Resale prices of each are therefore of prime importance to some, if not all, of the others.

15. All operators of diesel engines such as oil drillers, sawmills, cotton gins, rock crushers, timbermen, boat operators, state, county, and municipal governments—are potential customers of respondents. In addition, respondents resell to dealers. Many of these customers have multi-state operations.

16. Prior to January 29, 1954, respondents generally priced their resales at the suggested resale prices of their supplier—Detroit Diesel Engine Division of General Motors Corporation. On this date the latter changed its sales program in that its new price schedule published and distributed to all these respondents omitted any suggested “wholesale” resale prices. This omission created uncertainty and confusion among respondents price-wise as the schedule failed to define clearly who was considered a “qualified wholesale customer,” and what was a wholesale sale. Rebates granted by Detroit Diesel Engine Division varied as between distributive levels, and respondents were accordingly left in the dark as to how much rebate a particular sale would earn, absent clear definition. Resale pricing was therefore thrown into confusion.

17. Accordingly, respondent Stewart & Stevenson Services, Inc., through responsible officials, invited responsible officials of the other respondents, except Kennedy-Mobile, to their offices in Houston, Texas, at which the pricing problem was discussed, and the Stewart &

Stevenson Services, Inc.'s new prices were distributed to those in attendance, and discussed. The record shows some of these sheets with pencilled notations and changes made or suggested. It is wholly immaterial that some or even all of the participants did not in advance of the meeting, know its purpose, or that the hosts attempted to sell the others, products of their own manufacture, or that all of the participants did not receive or retain the suggested minimum resale prices, distributed. The documentary evidence in this record alone, raises an inescapable inference that the result was agreement on the schedule of minimum prices, as modified, which was passed around and discussed, and an agreement not to depart therefrom without prior notification to all the others.

18. Thus, one of the active, or even enthusiastic, participants, writing on May 13, 1954, to Detroit Diesel Engine Division states: "I want to go on record as saying all parties at that meeting were in agreement on policy. If any outside agency should created [sic] the necessity to change, we were to consult with each other and take joint action." The same individual writing on March 18, 1954, to his Little Rock manager, "The attached plan was approved by all eight distributors." "The meeting was very successful and the spirit of cooperation was fine."

19. That respondents agreed to notify each other of deviations or undercutting from the agreed minimum list is shown by letters to them all by Lewis Diesel Engine Company (Inc.) stating: "Upon returning to Little Rock, I find that cost plus 35 percent will not meet the 'wildcat price.' We are therefore selling these parts to all consumers at cost plus 30 percent" and by telegram plus confirmatory letter from George Engine Company to Stewart & Stevenson Services, Inc., March 9, 1954, stating in effect that since a New Orleans GMC truck distributor was reselling at cost plus 12.5 percent, George Engine Company would do likewise. The telegram also contained the significant phrase "Reference our discussion, we must retract all assurances given." Two days later, March 11, 1954, George Engine Company again wrote Stewart & Stevenson Services, Inc., "A new attempt is being made to get the local GMC outlet to change the present policy. Therefore, please ignore for the moment our letter of March 9 relative to our proposed change in parts pricing."

20. When George Engine Company's price cut intentions became known, those other respondents whose territories abutted, immediately took action to pressure George Engine Company back to the agreed minimums so recently adopted. Thus, Taylor Machinery Corporation wrote Stewart & Stevenson Services, Inc., on April 3,

1954: "Inasmuch as we are all doing business with the major oil companies, we feel it is advisable for our invoices to continue to read the same as in the past, regardless of the GM diesel engine parts price war in Louisiana. This situation was brought about by the failure of George Frierson, president of George Engine Company, New Orleans, Louisiana, to keep his word" and "It is our intention to work with you in every way possible to facilitate a successful operation and we would appreciate your keeping us advised as to further developments." Likewise, Stewart & Stevenson Services, Inc., writing United Engines, Inc. on March 11, 1954, "In reference to your telephone conversation and wire from George Engine, I contacted the owner of the truck distributor in New Orleans and he is advising those people to quit giving parts away." Also on April 13, 1954, Lewis Diesel Engine Company (Inc.), of Little Rock, Arkansas, writing the Detroit Diesel Engine Division of GMC, states in a footnote, "Joe Manning [Stewart & Stevenson Services, Inc.] Bill Kennedy [Wm. Patrick Kennedy] and Harold Jeannes [Taylor Machinery Corporation] are all going to put pressure on George from all sides. However, they are all sticking to their proper price in their own territories and have requested that you and I stick to our present prices adopted April 1." Apparently any price cutting, any downward deviation from the schedule agreed upon was of dramatic importance with mercurial reaction, not only to these respondents, but to the Detroit Diesel Engine Division as well.

21. This price cutting from the agreed minimum of cost plus 35 percent to cost plus 12½ percent by George Engine Company, Inc., continued with the result that Stewart & Stevenson Services, Inc., through a sub-distributor, Nash & Cotton in Galveston, Texas, worked out a complicated subsidy arrangement with a dealer in Morgan City, Louisiana, in George Engine Company, Inc.'s territory, undercutting price-wise the latter's low prices. This was continued until December of 1954 when George Engine Company, Inc. raised its resale prices above the agreed minimums.

22. Since then, respondents have maintained resale prices higher than the agreed minimums, aided by Detroit Diesel Engine Division of GMC, issuing in June 1954, a suggested resale level of about cost plus 41 percent.

23. The facts found above are supported by documents made contemporaneously with the events described. Additional support is found in the oral testimony and admissions of responsible officers of two of the non-contesting respondents, both of whom were participants in the March 6, 1954 meeting at Houston, one of them

the host and both of whom were active in subsequent events. Thus, T. W. Lewis, president of the two Lewis Diesel Engine Companies, admitted the March 6, 1954 meeting resulted in the agreement charged and hereinabove found. Joe Manning, of Stewart & Stevenson, referring to George Engine Company, Inc. breaking the agreement, testified "We simply retaliated by undercutting his price" and "That local situation stopped so we stopped the pressure." Subsequent to the termination of this price war, the same man wrote the Detroit Diesel Engine Division, on May 24, 1955, stating that he was pleased at this time to advise "that this entire matter has been cleared up entirely between ourselves to the complete satisfaction of both George Engine Company and Stewart & Stevenson \* \* \*."

24. The record therefore presents an almost classical case of horizontal price-fixing agreement. All the well-known elements are present: a strong economic motive, in addition to the usual desire to eliminate price competition, a meeting at which minimum prices were discussed, were formalized in writing, and agreed to, plus an agreement to notify the others of deviations, and giving of such notice, subsequent police or punitive price action to force adherence, subsequent termination of the "unstabilizing" force of price competition, and resumption of the agreed levels as minimum levels.

25. Against this the contesting respondents have offered, in addition to the usual denials of any agreement, various and sundry excuses or explanations, several of them timeworn or moth-eaten from much previous unsuccessful usage, one or two of some novelty. Thus, Taylor Machinery Corporation, through testimony, stresses that it had no knowledge of why the meeting was called, that the president and virtual owner did not go, but sent two employees who had no authority to agree to anything, that most of the time at that meeting was taken up by the host attempting to sell the others merchandise of its own make, that the discussion on parts was "interpretation" of GMC's classification of "wholesaler," that in Taylor's trade area, numerous dealers offer the same parts, that only the president had any authority to set or change price policy and had never done so, that the latter never saw letters sent to the company which are in the record and which substantiate the charges, nor made any reply to them, that the company played no part in the price war above described. Prior knowledge of why the meeting was being called or the fact that the host attempted sales pitches therat of its own products are wholly immaterial. The two employees who attended are shown by the record to be highly trusted and responsible, one of them the general manager, whose documented

actions show extensive and binding authority. If only the non-attending president had pricing authority how was it he never saw the sheet of prices agreed on at the meeting which was, nevertheless, found in the company files? Documentation hereinabove set out shows the general manager pledged cooperation to Stewart & Stevenson Services, Inc. in bringing about its end.

26. Contesting respondent United Engines, Inc., through the testimony of its president J. W. Morton, stresses substantially all the same points, except that here its president was a participant in the meeting. He testified he heard no price discussion, never received at the meeting the minimum price list distributed there, did not understand the letters sent him subsequently by other participants, did not reply to them, nor ever wrote to them; that the corporation is smaller in size and territory than the others; that he became incensed when he found no GMC representative present to explain the term "wholesale." I cannot accept as credible the contention that eight or nine men can sit down in a room for any purpose and have half or more of them discuss price maintenance in which they all had such a vital and obvious interest without the others being aware thereof, nor the assertion that if Mr. Morton did not understand letters from other participants in the meeting on that very subject, he did not undertake somehow to ascertain their meaning, nor why he retained ambiguities in his files. The size of any respondent is immaterial—the waterfront was thoroughly covered. That there were dealers from whom consumer could obtain these replacement parts, is likewise immaterial. Whether a price-fixing agreement is successful or unsuccessful makes no difference.

27. This respondent raises another point—that United Engines, Inc. was not incorporated until November 21, 1955, hence could not have participated in any 1954 price-fixing conspiracy. The record facts are these: J. W. Morton started in the engine business around 1940 as a single partnership under the trade name United Tool Company and as such became a franchise distributor for Detroit Diesel Engine Division of GMC. In November 1955 he split the business into two parts, United Tool continuing in the oil business; the new corporation, United Engines, Inc., respondent here, taking over the franchise and all the engine and replacement part business. J. W. Morton owns or controls both, corporate respondents' customers are the same as those which United Tools previously sold to, the continuity was unbroken—so far as this proceeding goes, United Engines, Inc. is the successor to United Tools, stands in its shoes, and is responsible for what its sibling predecessor did.

28. Contesting respondent William Patrick Kennedy, Jr. raises in his defense substantially the same, but not all, of the above contentions plus the additional one that the meeting was informal, no agenda, no chairman, no minutes, all of which are immaterial. The complete lack of memory as to price discussion, and particularly as to correspondence directed to him by other participants, is in dubious contrast to a recollection of having three martinis before lunch at that meeting and to discussing fishing and reconditioned cylinder heads.

29. Respondent Kennedy Marine Engine Co., Inc., previously dismissed from this proceeding on motion at the close of the evidence received in support of the complaint, is a corporation since 1952. It is not a franchised distributor of the products involved in this proceeding—that distributorship is held by William Patrick Kennedy, Jr., sole proprietor of and doing business as Kennedy Marine Engine Company, of Biloxi, Mississippi. The latter is a stockholder in and a president of the Mobile corporation, but does not own a controlling interest in it. The Kennedy-Mobile cannot secure parts or engines on direct order from Detroit, but must buy from a distributor, in this case Kennedy-Biloxi, as a retail dealership reselling to consumers, at cost plus 5 percent. Economically it is impossible for the Kennedy-Mobile to compete with the sole proprietorship at Biloxi and, as a matter of fact, there is no substantial competition between them. The individual respondent Kennedy was invited to the Houston meeting in his Biloxi dealership capacity and not as president of the Mobile corporation, for the simple reason that neither the host nor most of the other invitees knew of the existence of the Kennedy-Mobile. The agreed upon minimum prices involved here were maintained against this Mobile corporation, not by it. Under these facts, and since this is essentially a horizontal conspiracy between competitors, there is no case made out against the Kennedy Marine Engine Co., Inc., of Mobile, Alabama. It had no discernible reason or power to maintain prices it had to pay.

30. None of the above findings are based in any degree on the testimony of the witness George Frierson, president of the non-contesting respondent, George Engine Company, Inc., in so far as he testified to the March 6, 1954 meeting at Houston, Texas. Such testimony is rejected as not meeting the requirements of substantiality, reliability and probative value. It is in hopeless conflict, incapable of rationalization and largely incredible. The documentary evidence authored, adopted, or received by him, or found in his files, and his testimony in reference thereto are given full weight.

Order

56 F.T.C.

## CONCLUSIONS OF LAW

1. Price-fixing agreements are illegal per se, regardless of motive, intent, results, success, or whether wholly nascent or abortive. *Socony Vacuum Oil Co. v. U.S.* 310 U.S. 160.

2. It matters not, therefore, whether respondents charged post-agreement, the agreed prices or not. *National Lead Company, et al v. F.T.C.* 227 F. 2d 825, 833. Moreover, the agreed prices were minimum prices.

3. Oral testimony, based on recollection and spurred by self-interest, cannot outweigh contemporaneously made documents. *U.S. v. Gypsum Co.* 333 U.S. 364, 396.

4. Even if the individual adherence to list pricing started legally, it became the subject of a conspiracy in 1954, and thereafter was illegal. *Advertising Specialty National Assn. v. F.T.C.* 238 F. 2d 108, 117.

5. The Federal Trade Commission has full, obvious and complete jurisdiction of the acts and practices of the remaining respondents in this proceeding.

## ORDER

*It is ordered,* That the respondents, United Engine, Inc., a corporation, Taylor Machinery Corporation, and William Patrick Kennedy, Jr., trading as Kennedy Marine Engine Company, an individual, and their respective officers, agents, representatives, and employees, in, or in connection with the offering for sale, sale or distribution of replacement parts for diesel engines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, carrying out, continuing, or cooperating in, any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more respondents, or between any one or more of them and others not parties hereto, or specifically named in this order, to establish, fix, or maintain prices, terms, or conditions of sale of replacement parts for diesel engines, or adhere to any prices, terms or conditions of sale so fixed or maintained.

*It is further ordered,* That the complaint be, and the same hereby is, dismissed as to Kennedy Marine Engine Co., Inc.<sup>1</sup>

<sup>1</sup> Charges in this proceeding against Stewart & Stevenson Services, Inc., Lewis Diesel Engine Company (Inc.), of Memphis, Tennessee, Lewis Diesel Engine Company (Inc.), of Little Rock, Arkansas, Diesel Power Company, and George Engine Company, Inc., have been otherwise disposed of.

## OPINION OF THE COMMISSION

By the COMMISSION:

Respondents are charged by the complaint with violating Section 5 of the Federal Trade Commission Act by cooperating, combining, agreeing, and entering into and carrying out an understanding and planned common course of action to fix prices, discounts, terms and conditions of sale of General Motors diesel engine parts.

Five of the respondents, namely, Stewart & Stevenson Services, Inc., Lewis Diesel Engine Company (Inc.), of Memphis, Tennessee, Lewis Diesel Engine Company (Inc.), of Little Rock, Arkansas, Diesel Power Company and George Engine Company, Inc., acting under §3.25 of the Commission's Rules of Practice, executed agreements containing consent orders to cease and desist, and an initial decision as to these respondents was issued by the hearing examiner on April 6, 1959, and became the decision of the Commission on May 25, 1959. The remaining respondents contested the charges and the hearing examiner, in a separate initial decision, held that the allegations of the complaint were sustained by the evidence and ordered the contesting respondents, except Kennedy Marine Engine Co., Inc., to cease and desist the practices found to be unlawful. William Patrick Kennedy, Jr., trading as Kennedy Marine Engine Company, has appealed from this decision. The case as to respondents, United Engines, Inc., Taylor Machinery Corporation, and Kennedy Marine Engine Co., Inc., was placed on the Commission's own docket for review.

Respondent Kennedy contends on appeal that the evidence does not show that he was a party to a price fixing agreement and his argument is directed against the hearing examiner's interpretation and appraisal of the evidence and his evaluation of the credibility of one of the witnesses. He also contends that there is no present need for an order to cease and desist and that the order contained in the initial decision is too broad.

We are convinced from a study of the record that the evidence fully supports the hearing examiner's findings that the respondents named herein, with the exception of Kennedy Marine Engine Co., Inc., agreed on a schedule of minimum prices at which they would sell General Motors diesel engine parts and that they further agreed not to depart from this schedule without prior notification to the others. The record also establishes that, except for a brief period, said respondents have maintained prices at a higher level than the minimum prices agreed upon. The evidence has been subjected to a thorough and careful analysis, reflecting the skill and perception of a most able hearing examiner, and we are in complete accord

## Order

56 F.T.C.

with his appraisal of the facts and the inferences which he has drawn therefrom. In view of this excellent review of the case, we find it unnecessary to supplement the initial decision in any manner or to refer to the specific testimony and documentation upon which the findings and conclusions are predicated.

Respondent has objected to the hearing examiner's rejection of a portion of the testimony of the witness Frierson, president of one of the non-contesting respondents. The record discloses that prior to the termination of the hearings, the examiner noted that this witness had made certain inconsistent statements in his original testimony and, on his own motion, recalled him for the purpose of obtaining a clarification thereof. This witness, however, under questioning by the hearing examiner, failed to give a satisfactory explanation of his earlier testimony and made other conflicting and contradictory statements. We think that the hearing examiner's refusal to place any reliance on this portion of the witness' testimony was correct.

Respondent also contends that the plan to fix prices was never carried out and that an order to cease and desist is therefore unnecessary at this time. This argument completely ignores the evidence of record and must be rejected. Respondent's argument that the order to cease and desist is too broad is rejected upon the authority of *Maryland Baking Co. v. Federal Trade Commission*, 243 F. 2d 716 (4th Cir., 1957); *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470 (1952).

Respondent's appeal is denied and the initial decision will be adopted as the decision of the Commission.

## FINAL ORDER

This case having come on for final consideration upon the record, including the appeal of respondent William Patrick Kennedy, Jr., from the initial decision of the hearing examiner, and the Commission having rendered its decision denying the appeal and directing that the initial decision be adopted:

*It is ordered.* That the hearing examiner's initial decision filed April 7, 1959, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered.* That respondents, United Engines, Inc., and Taylor Machinery Corporation, corporations, and William Patrick Kennedy, Jr., 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 contained in the initial decision.

## Findings

## IN THE MATTER OF

## BROOKLYN FASHION CENTER, INC., ET AL.

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

*Docket 7092. Complaint, Mar. 26, 1958—Decision, Nov. 20, 1959*

Order requiring operators of a retail ladies' clothing store in Brooklyn, N.Y., to cease violating the Fur Products Labeling Act in the offer for sale of 12 fur pieces which were "leftovers" of a stock they had purchased ten years before, by failing to comply with labeling requirements; and by advertising which failed to disclose the true name of the animal producing a fur and named other animals, and failed to disclose the country of origin of imported furs and the fact that some furs were artificially colored, and used comparative prices and represented sale prices as reduced from regular prices without having any records as a basis for such pricing claims.

*Mr. Thomas A. Ziebarth* for the Commission.

*Mr. Jacob S. Spiro*, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

## PRELIMINARY STATEMENT

The complaint in this proceeding charges that Brooklyn Fashion Center, Inc., a corporation, and Sigmund Schwartz, an individual and officer of said corporation, hereinafter referred to as respondents, violated the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act in their operation of a ladies retail clothing store in Brooklyn, New York. Respondents denied the allegations of the complaint, jurisdiction of the Commission, and pleaded that respondents are not engaged in "commerce" as that term is defined in the Act. A hearing has been held during which evidence in support of and in opposition to the complaint was received. At the hearing, counsel for the parties entered into a stipulation as to some of the facts. Proposed findings of fact, conclusions, and order have been submitted by respective counsel. All findings of fact and conclusions of law not hereinafter specifically found or concluded are rejected. Upon the basis of the entire record herein, the hearing examiner makes the following findings of fact, conclusions of law drawn therefrom, and order:

## FINDINGS OF FACT

1. The respondent Brooklyn Fashion Center, Inc., is a corporation organized and doing business under the laws of the State of New