

IN THE MATTER OF
ERNEST MARK HIGH

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

Docket 6940. Complaint, Nov. 15, 1957—Decision, Dec. 14, 1959

Order requiring a New York City publisher of "The Spotlight," a newspaper sponsored by a single union in the New York City metropolitan area, to cease representing falsely in advertising that said newspaper was affiliated with, endorsed by, or an official publication of the American Federation of Labor or the AFL-CIO; that it was distributed or circulated nationally; and that money paid for advertisements in it was used for and benefited the labor movement and labor union members; and to cease

Findings

56 F.T.C.

placing unauthorized advertisements in "The Spotlight" and then seeking to exact payment from various concerns and employers named therein.

Mr. Edward F. Downs supporting the complaint.

Mr. Alexander Eltman of New York, N.Y., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Ernest Mark High, hereinafter called respondent, publisher of a newspaper called "The Spotlight," violated the provisions of the Federal Trade Commission Act by placing unauthorized advertisements in said publication and seeking payment for same. Respondent denied such allegations.

Hearings have been held and proposed findings of fact, conclusions of law, and order have been filed by counsel supporting the complaint and for respondent. All proposed findings of facts and conclusions of law not hereinafter found and concluded are denied.

FINDINGS OF FACT

1. The respondent Ernest Mark High, is an individual with his office and principal place of business located at 350 Fifth Avenue, New York, New York, and is the publisher of "The Spotlight," formerly "The AFL Spotlight," a newspaper published by respondent on behalf of the American Federation of State, County and Municipal Employees, an international union chartered by and affiliated with the American Federation of Labor, pursuant to a contract entered into between the respondent and the said American Federation of State, County and Municipal Employees.

2. Under the terms of said contract referred to above, respondent agreed to publish, has published, and now publishes said newspaper once or twice each month as the official organ of the American Federation of State, County and Municipal Employees, and pays all expenses incurred in connection therewith. Under the terms of said contract respondent has the exclusive privilege to solicit and obtain advertising placed in said newspaper and respondent retains the forty-five (45) percent of the space in each issue of said newspaper for the insertion of advertising obtained and sold by respondent. Respondent collects all monies received in payment for this advertising, deposits same in a special bank account to the credit of respondent. All withdrawals from said bank account are made solely upon the signature of respondent or his duly appointed representative.

3. Respondent solicits advertising by mail, through the use of letters, advertising proofs and tear sheets, but most of respondent's advertising for said newspaper is solicited by long distance telephone

from respondent's office in New York. Respondent employs five (5) salesmen and two (2) sales managers. The five salesmen do the selling. The Salesmen operate in a room approximately 25 x 13 feet in size, which is a part of respondent's office located at 350 Fifth Avenue, New York, New York. Each salesman has a desk and each salesman's space is enclosed by a metal and glass partition, open at the end. Each salesman has a telephone and, the evidence shows respondent's salesmen make long distance telephone calls to various individuals, business concerns, and companies located in various states of the United States, including New Jersey, Connecticut, Massachusetts, New Hampshire and Virginia, soliciting advertising for said newspaper. This is the typical "boilerroom" type of high pressure selling. The evidence shows that respondent's telephone bill averages between \$1,500.00 and \$2,000.00 per month.

4. At hearings held in New York, New York, Boston, Massachusetts and Norfolk, Virginia, counsel supporting the complaint offered the testimony of approximately 21 persons who had been solicited by telephone for advertising in respondent's newspaper. The testimony of each of these witnesses will not be repeated here. However, the testimony of the various witnesses falls into definite patterns. Some of these witnesses testified, in substance, that they were called by long distance telephone and the caller stated that he represented "The Spotlight," an AFL-CIO publication, requesting that the witness subscribe to an advertisement in said newspaper at prices ranging from \$25 to \$200. In many instances, the person receiving the call refused to agree to place the advertising and stated to respondent's salesman that they would not take the advertising. Invariably, in spite of the refusal of such persons to agree to take such advertising, respondent billed such persons for advertising in respondent's newspaper and, in some instances, turned said unauthorized accounts over to his attorney for collection and said attorney wrote letters to such persons or company demanding payment for said unauthorized advertising. In one instance, upon being called long distance by one of respondent's salesmen soliciting advertising for space costing \$37.50, the person being solicited stated that he would subscribe for advertising space in one issue of the newspaper in the amount of \$12.50. Subsequently, the person solicited was billed for the full amount of the \$37.50 originally solicited by respondent's salesman. When this bill was not paid, the witness stated that respondent's salesman called the witness at his residence by long distance telephone demanding payment. The witness finally wrote respondent a letter requesting a corrected billing for \$12.50. (Comm. Ex. No. 15.)

5. The evidence further shows that, in some instances, respondent

has demanded payment for alleged advertising space which did not even list the name, business, service, or product of such alleged advertiser. In some instances, respondent mailed a so-called "tear sheet" from "The Spotlight" showing merely a blank space and respondent demanded payment therefor.

6. The evidence further shows that respondent represented that "The Spotlight" (a) was an official publication of the American Federation of Labor or the AFL-CIO, and (b) was distributed nationally. In truth and in fact, said newspaper is not affiliated with or endorsed by, and it is not an official publication of, either the American Federation of Labor or the AFL-CIO, and it is not distributed nationally, the subscribers being members of the American Federation of State, County and Municipal Employees who reside and work in the New York City metropolitan area.

7. Respondent's counsel complains of certain letters written by counsel supporting the complaint which accompanied subpoenas directed to prospective witnesses containing the phrase: "There is no other way for the Commission to put a stop to practices such as you have been subjected to." This statement is simply the opinion and conclusion of counsel supporting the complaint. Certainly, such statement carries no evidentiary weight or probative value in the proceeding. However, after hearing the testimony and observing the witnesses at the hearings, the examiner is of the opinion that the evidence fully justifies the characterization attributed to respondent by counsel supporting the complaint. (Respondent did not appear in person nor testify at either of the hearings.) Certainly, the practices which the record demonstrates that respondent and his salesmen indulged in are reprehensible and should be stopped. The statement of counsel supporting the complaint is not violative of the Administrative Procedure Act, as contended by counsel for respondent.

8. Respondent, in the course of his business of soliciting and publishing advertisements in said newspaper, is in substantial competition in commerce with other individuals and with corporations and firms likewise engaged in the solicitation and publication of advertisements.

9. The aforesaid acts and practices of the respondent has had and now has, the tendency and capacity to mislead and deceive prospective purchasers of advertising space into the erroneous and mistaken belief that the said representations were and are true and into the purchase of advertising space because of such erroneous and mistaken belief. As a result, substantial trade in commerce has been unfairly diverted to respondent from his competitors and substantial injury has been and is being done to competition in commerce. The unfair practice engaged in by respondents of publishing unordered

or unauthorized advertisements has subjected firms and individuals to harassment, intimidation and unlawful demands for payment of non-existent debts.

CONCLUSIONS

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

ORDER

It is ordered, That respondent Ernest Mark High, an individual, his agents, representatives and employees, directly or through any corporate or other device, in connection with the soliciting for, offering for sale or sale of advertising space, in the publication designated "The Spotlight," whether published under that name or any other name, or in any other publication, in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That said publication is affiliated with, endorsed by, sponsored by, an official publication of, or otherwise connected with the American Federation of Labor, Congress of Industrial Organizations or the American Federation of Labor-Congress of Industrial Organizations, or any affiliate thereof other than the American Federation of State, County and Municipal Employees, and then only to the extent of its actual connection therewith.

(b) That said publication is distributed or circulated nationally, or in areas or localities where it is not in fact distributed or circulated.

2. Placing, printing or publishing any advertisement on behalf of any person, firm or corporation in said publication without a prior order or agreement to purchase said advertisement.

3. Sending bills, letters or notices to any person or firm with regard to an advertisement which has been or is to be, printed, inserted or published on behalf of said person or firm, or in any other manner seeking to exact payment for any such advertisement, without a bona fide order or agreement to purchase said advertisement.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

The complaint charges respondent, Ernest Mark High, publisher of a newspaper called "The Spotlight," with violating the Federal

Trade Commission Act by using false, misleading and deceptive statements and representations in the course of soliciting and securing advertising for his newspaper. After hearings on the merits, the hearing examiner found that the evidence sustained the charges in part and ordered respondent to cease and desist. This appeal presents a number of legal issues for our decision.

Respondent's counsel in both brief and oral argument shied away from the factual aspects of this prosecutor, stressing instead procedural and technical questions involved in the hearing examiner's rulings, for the practices of respondent as shown by this record present a shabby picture. The record discloses numerous overt efforts on the part of respondent's agents to sell advertising in a labor-sponsored periodical with the idea that the advertiser would thereby purchase labor's good will, the clear implication being that otherwise the whiplash of labor's ill will might be incurred. Since prospects were taken from lists of contractors recently awarded construction contracts who obviously did not want labor difficulties to hobble their ability to perform, the character and purpose of such acts and practices is readily apparent. Indeed respondent's counsel's brief states (p. 63):

It is demonstrable, at the present time, that it is desirable for businessmen to acquire the good will of organized labor. They seek to do this in various ways, among them being the buying of advertisements in labor publications. Such ads are not placed primarily to induce subscribers to these publications to purchase the products of these advertisers. Instead, the primary benefit to the businessman concerned is the gaining of a reputation as a friend of labor, both in the Union concerned and elsewhere.

We cannot but wonder at this argument; it seems to indicate, first, that one can buy friendship, and second, that labor's friendship is for sale. We prefer to believe that both of these conclusions are false and that responsible labor elements will reject such arguments even as we do.

In any event, the record clearly reveals that respondent did not even deliver the doubtful advantage promised. "The Spotlight" was not the nationally-distributed publication of a great federation of trade unions, as prospects were given to believe, but rather was sponsored by and distributed to the membership of a single union in the metropolitan area of New York City. Only this relatively small audience saw the ads of businesses located as far from New York as Boston and Norfolk, Virginia. It is obvious that respondent's deceptions about the character of his publication were responsible for securing such advertising.

There was considerable reluctance on the part of many prospects to deal with respondent, but on many occasions the pressures and representations of respondent's agents broke down such reluctance. We believe the public is entitled to more reputable efforts to sell advertising, whether in periodicals sponsored by labor organizations or not, than were used here.

Respondent's appeal urges reversal of the initial decision on a number of different grounds. Respondent appears to rely most heavily upon the contention that the hearing examiner erred in denying his motions for the production of written statements by some of the witnesses in support of the complaint and reports of interviews with other witnesses in support of the complaint. Other points are also raised, including the sufficiency of the evidence and alleged error of the examiner in denying respondent's motion for a bill of particulars, in ordering the hearing to proceed even though respondent was personally absent, and in other respects. We shall discuss the arguments *seriatim*.

We turn first to the issue of the written statements and interview reports, noting at the outset that the two different categories of documents involve two distinct problems. The record indicates that respondent made several motions or requests for the production of documents. One was a letter to the Commission dated August 21, 1958. It states that respondent intends to request the examiner to direct counsel in support of the complaint to turn over to respondent, for purposes of cross-examination, all statements signed by witnesses called by said counsel or reports of interviews with such witnesses by Commission to staff members. The actual request is that said counsel be authorized and directed to turn such documents over to respondent upon his request. This letter was received by the Commission during the course of the hearings. It was considered by the hearing examiner at the hearing in Norfolk, Virginia, on August 26, 1958. On that occasion, respondent's attorney denied that the letter was a motion and stated that it was a request to lay the groundwork for a request he was going to make during the proceeding. The hearing examiner considered the letter or motion as a general motion and, it seems, denied it as such. In so doing, however, he clearly left the way open for a motion to produce any document at the time of the testimony of each individual witness.

As the hearings proceeded, respondent's attorney queried many of the witnesses supporting the complaint as to the existence of writings or possible interview reports. When the existence of any such docu-

ments was indicated, he moved for their production. Thus, it appears that respondent has covered by its specific, individual motions all the documents which it had proposed to make a request for in its letter of August 21, 1958. Moreover, there is no indication that any other such records exist. Consequently, we will proceed to dispose of this issue by a consideration of the merits of the individual motions.

The specific requests for production were made on eight separate occasions at each time the testimony revealed the existence of signed statements or possible interview reports. Only four of the instances involved a signed statement of some sort. In the other four instances, there was, if anything, no more than reports of interviews with the witnesses.

The respondent is here contending that the production of these documents, both the written statements and the interview reports, is required by the ruling in *Jencks v. United States*, 353 U.S. 657 (1957). The respondent asserts, moreover, that the recent legislation on this subject, 18 U.S.C. §3500, is not applicable in an administrative proceeding.

We note that previously we have denied production of interview reports, as such, stressing that a report by an attorney-examiner of a conversation with a witness could not successfully be used to impeach the testimony of that witness. *Pure Oil Company*, Docket No. 6640 (Order Ruling on Interlocutory Appeal, March 20, 1958); *Basic Books, Inc., et al.*, Docket No. 7016 (1959). This is in accord with the ruling in *Communist Party of the United States v. Subversive Activities Control Board*, 245 F. 2d 314, 325 (D.C. Cir. 1958).

The Supreme Court has held since its ruling in the *Jencks* case that the "Jencks Act" (18 U.S.C. §3500) is now the exclusive means of compelling, for cross-examination purposes, the production of statements of a Government witness to an agent of the Government. *Palermo v. United States*, 360 U.S. 343 (1959); *Rosenberg v. United States*, 360 U.S. 367 (1959). This statute, by its terms, is limited to criminal prosecutions brought by the United States. It seems to us, however, that if the fundamentals of fair play require the production of documents in an administrative proceeding pursuant to the ruling of the *Jencks* case, those same fundamentals also dictate that we should follow the substance of a statute designed to overcome interpretations leading to unfairness in the other extreme.

Considering the statute, we observe that the Supreme Court has interpreted it to encompass more than mere automatic reproductions of oral statements. Nevertheless, the Court has also stated that summaries of oral statements which evidence substantial selection of

material, or which are prepared after the interview without the aid of complete notes, and hence rest on the memory of the agent, or statements which merely contain agents' interpretations or impressions, are not to be produced. *Palermo v. United States, supra*. Commission interview reports ordinarily are in the category of agents' summarizations. We believe that where there is doubt as to the nature of the report, the examiner should inspect it and make a determination. Cf. *Rosenberg v. United States, supra*, p. 369. No request for such inspection was made in this proceeding. In addition, there is strong reason to believe from the testimony in these instances that the reports were not written out immediately and that they involve summaries later prepared from notes or memory. Therefore, we hold that the motions for production of such reports in this matter were correctly denied.

The writings prepared by the witnesses themselves obviously come in a different category. Four witnesses testified as to writing letters or preparing some kind of statement concerning the events about which they testified.¹ These statements should have been produced in the circumstances shown. Our examination of the record, however, convinces us that the merits of this proceeding can be considered entirely without reference to the testimony of these witnesses or the documents received through these witnesses. Accordingly, no weight whatsoever will be given to such evidence.

Upon careful consideration of the remaining portion of the record, we conclude, contrary to respondent's contention, that the examiner's findings are fully supported.

Respondent, in questioning the sufficiency of the evidence, made particular point of the examiner's finding that respondent had represented "The Spotlight" as an official publication of the American Federation of Labor or of the AFL-CIO and his finding that the newspaper was not affiliated with or endorsed by either organization, or an official publication of either group. While it is true that the testimony that we have determined not to consider did relate in part to those matters, we find that a total of nine other witnesses also were positive in their testimony that "The Spotlight" was identified by phrases such as "affiliated with the AFL-CIO," "official newspaper

¹ Herman W. Bieler of Norwalk, Conn., A. M. Miller of Newport News, Va., and Donald M. Manzelli of Belmont, Mass., all building contractors, and Edward W. Dial of Norfolk, Virginia, an electronics dealer. Each of them testified to having been solicited by long distance telephone, to the methods and representations used in that solicitation and to having been billed subsequently. Miller, Manzelli and Dial all testified that "The Spotlight" had been represented as an official publication of either the American Federation of Labor or the AFL-CIO and that they were given to understand that it had national distribution.

of the AFL-CIO," and the like.² On cross-examination the testimony of the witnesses supporting the complaint was consistent with their direct testimony and, upon being questioned, none recalled mention of the American Federation of State, County and Municipal Employees.

Respondent seeks to discredit this testimony on the ground that an untutored listener might, after the lapse of considerable time, remember the reference to American Federation of Labor, a name with which he was familiar, and forget the reference to American Federation of State, County, and Municipal Employees. If this is so, it appears that respondent may be defending itself in part at least on the ground that its choice of representations were such that they might mislead or confuse a listener. This strikes us as having very little merit. In fact respondent's counsel appears to be excusing the fox after it has eaten the grapes. One answer to such an argument is that the witness might have remembered AFL-CIO from the con-

² Typical of such witnesses are Donald F. Kemadek, who operates a steel fabricating business in Worcester, Mass., and David Kestenberg, who runs an industrial window and floor cleaning service in Boston. Kemadek testified:

Q. Now, can you tell us first, as nearly as you can recall the substance of the conversation with Mr. Singer?

A. Well, the first time was this: He understood we had added on a new building, and had increased our capacities, and had extended some of our work into a highway program, manufacturing guard railing now, which is used by a lot of the New England states, through Maine on down about midway; and he pointed out that perhaps a lot of this work which would be put up by construction crews, which would be union help, might possibly be refused on delivery because of not being a union-operated place ourselves.

So he said, in turn, perhaps as a good-will gesture, an ad in the AFL-CIO nationally distributed magazine or publication would be an asset. It would show that at least we had good will with the union-operated concerns.

Q. And did you take an ad?

A. We did.

Kestenberg testified:

Q. How were you contacted?

A. First I believe I was sent a bill telling me that they were going to put an ad into the paper. This is the first thing I heard of them. And then they called me up by telephone and explained to me that they are the official newspaper of the AFL-CIO union, and that they found out somehow that we were going to do a job at the Watertown Arsenal, which is a government arsenal at Watertown, Massachusetts, and they claimed that the place was union, and I knew it could not be because it was a federal outfit.

However, they said they had an association and they knew the head man intimately and they are good friends, and I would have a problem there. And I just started the job in town at the arsenal, and he said he is as far away from me as the telephone in case I have any doubts, if I want anything straightened out, just to call him.

I didn't think nothing of it. Then we got a bill and the paper. I think I gave the paper to one of the men, and there was a picture above and a lot of names, and underlined was my name in red pencil, that I was putting in an ad, and he billed me another bill; and, consequently, sometime later we paid it, in September. The book-keeper found it and figured it was an ordinary bill and made out a check, and I signed it; but I realized when I signed it what it was, but I figured it was signed, and I figured they were the official newspaper of the A.F. of L., and he said if I don't do it I can have consequences thereafter. So I figured I would pay \$25 and that would relieve me of it all.

versation and not any qualification for the reason that this was their understanding of the expressions used when they first heard them.³ Here the witnesses testified that the newspaper was represented to them as having AFL or AFL-CIO affiliations. No question has been raised as to their credibility otherwise. In all the circumstances, the evidence adduced in this connection is probative and it is substantial. We therefore sustain the examiner's finding on the point.

We have also considered the objection to the examiner's finding that "The Spotlight" is not distributed nationally and hold that it, too, is supported by probative and substantial evidence. While the principal support for this finding is the testimony of one witness, Jerome Wurf, we note that Wurf was the official who represented the American Federation of State, County and Municipal Employees in arranging for the publication and distribution of "The Spotlight." As such, he was obviously in a position to know the extent of the newspaper's distribution. The examiner, who observed his testimony, believed it. We find no error in this.

Respondent's motion or demand for a bill of particulars was denied by the examiner in an order filed January 15, 1958, and a renewal of this motion during the course of the hearings was denied by a ruling on the record. Respondent asks us to hold that this was error. We note, however, that respondent does not assert any prejudice as a result of the denials. He places emphasis on the fact that he was not supplied with the names of witnesses to be called by counsel in support of the complaint, which names he had sought for purposes of cross-examination. Nevertheless, respondent does not show or even claim that he was unprepared to cross-examine in any particular instance because of a lack of knowledge of the identity of the witness. Nor did respondent's counsel request the examiner to recall any witness at a later time on the ground of surprise. Since respondent has not shown that he failed to obtain a fair hearing as a result of the denials of his motion for a bill of particulars, we see no reason to rule that examiner erred in the matter.

Respondent, in a further argument, contends that the hearing examiner erred in ordering the hearing to proceed although respondent's health allegedly prevented him from being present. The initial hearing was scheduled for January 28, 1958, but was not held until June 24, 1958, due to several postponements requested by respondent's counsel on the ground that respondent suffered from sundry physical ailments. Upon granting the last continuance to June 24, 1958, the

³ The understanding of the consumer is the controlling test as to whether the representation is deceptive. Representations are false and misleading if they have a tendency or capacity to deceive. *Progress Tailoring Co. v. Federal Trade Commission*, 153 F. 2d 103, 105 (7th Cir. 1946).

examiner stated that "in the event respondent should seek a further postponement of the initial hearing on the ground of illness or condition of health, it will be necessary for respondent to make a showing by and through medical authorities satisfactory to the Federal Trade Commission as to the physical condition of respondent and his inability to attend such hearing." In the light of this explicit instruction, it seems inexcusable that respondent's counsel, if further delay was to be requested by reason of health, should fail to submit a doctor's statement addressed to the Commission or the examiner advising that illness would prevent Mr. High from appearing. The personal letter to Mr. High from his doctor commenting on Mr. High's general health is far from being satisfactory in the circumstances. In any event, respondent has not shown that his presence at the trial was at all essential or necessary. He had counsel and letters in this record contain the representation that said counsel was "General Counsel" for "The Spotlight," so it cannot be justly argued that he was unfamiliar with the business. We are satisfied that the examiner did not abuse his discretion in ordering that the hearing proceed even though Mr. High was not present. Furthermore, it is significant that respondent's counsel rested his case after respondent's witnesses had been heard without requesting an adjournment to permit the respondent himself to testify subsequently and did not oppose the closing of the record by the hearing examiner. At a time when there is much criticism of delays in the administrative process,⁴ we do not think the Commission would be justified in indefinitely suspending its proceeding.

The order contained in the initial decision is contested on the ground that it is not supported by the facts. Particular reference is made to the part under subparagraph (c) of paragraph 1 which prohibits, with certain exceptions, representations that employers or concerns solicited will benefit from advertisements published in respondent's publication. Respondent was charged by the complaint, in this connection, with representing "[t]hat advertisements inserted in said publication [The Spotlight] will be of benefit to the employers solicited" and the allegation was that this was false because many such employers would not be benefited for the several reasons or in the several ways listed. We are not convinced, however, that counsel in support of the complaint has shown that such advertisements will be totally unproductive merely by showing that the advertiser will

⁴ See, for example, an article by respondent's counsel, which states: "Over a half a century's experience with the administrative process in operation has proven the claim of its proponents that it would realize the basic goal of every legal system—that of dispensing speedy and inexpensive justice—to be more or less a will-o'-the-wisp." B. Schwartz, *Administrative Justice and its Place in the Legal Order*, 30 N.Y.U.L. Rev. 1390, 1401 (1955).

625

Order

not benefit in the respects mentioned in the complaint. We conclude that the pertinent charge in the complaint is not supported by the record. This aspect of respondent's appeal is granted and the initial decision should be modified accordingly.

Respondent's several other contentions or exceptions have been considered and they are all rejected. The appeal of the respondent is granted to the extent indicated in this opinion and otherwise denied. It is directed that an appropriate order be entered modifying the initial decision in conformity with the views herein expressed and adopting it, as so modified, as the decision of the Commission.

FINAL ORDER

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

The Commission, for the reasons stated in its accompanying opinion, having granted in part and denied in part the appeal, and having directed that the initial decision be modified in accordance with the views expressed in the opinion and that it be adopted, as so modified, as the decision of the Commission:

It is ordered, That paragraph 6 contained in the substitute page 3 of the initial decision be, and it hereby is, modified to read as follows:

6. The evidence further shows that respondent represented that "The Spotlight" (a) was an official publication of the American Federation of Labor or the AFL-CIO, and (b) was distributed nationally. In truth and in fact, said newspaper is not affiliated with or endorsed by, and it is not an official publication of, either the American Federation of Labor or the AFL-CIO, and it is not distributed nationally, the subscribers being members of the American Federation of State, County and Municipal Employees who reside and work in the New York City metropolitan area.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified by deleting subparagraph (c) of paragraph 1 beginning with the words "That employers" and ending with the words "address thereof," inclusive.

It is further ordered, That the initial decision of the hearing examiner, as modified by the Commission, 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 him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist, as modified.

IN THE MATTER OF
ASSOCIATED DRY GOODS CORPORATION, ET AL.

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

Docket 7184. Complaint, July 11, 1958—Decision, Dec. 14, 1959

Order requiring a nation-wide merchandiser with main office in New York City to cease violating the Fur Products Labeling Act by falsely identifying animals producing certain furs and by failing in other respects to conform to labeling and invoicing requirements; and by advertising in newspapers which failed to disclose the names of animals producing certain furs or the fact that fur products contained artificially colored fur, and represented prices as reduced from higher prices without giving the time of such compared prices.

Mr. John J. McNally for the Commission.

Sheppard, Mullin, Richter, Balthis & Hampton, by *Mr. Gordon F. Hampton*, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are charged with having violated the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in connection with the sale and distribution of furs and fur products through the operations of the J. W. Robinson Company store in Los Angeles, California. By answer these charges of the complaint are denied. Hearings were held, at which evidence in support of and in opposition to the allegations of the complaint was received, duly recorded and filed with the Federal Trade Commission. Proposed findings and conclusions have been filed. Upon the basis of the entire record the following findings of fact have been made and conclusions reached:

1. Respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 261 Madison Avenue, New York, New York. It conducts business in the State of California under the name of J. W. Robinson Company. Respondent Rene P. Sommer is Divisional Merchandise Manager and Fur Products Buyer of the corporate respondent, and in such capacity controls, directs and formulates the acts, practices and policies of the fur department of the corporate respondent doing business as J. W. Robinson Com-