record to support complaint charging a manufacturer of outdoor supply equipment in Long Island City, N.Y., with misrepresenting the size of sleeping bags by giving as "cut size" or "full cut size" on attached labels, sizes larger than the actual dimensions of the sleeping bags.

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OPINION OF THE COMMISSION

By the COMMISSION:

This matter is before the Commission upon its review of the hearing examiner's initial decision. The complaint charges that respondent has misrepresented the finished size of sleeping bags which it manufactures by setting forth on labels attached thereto certain dimensions, designated as "cut size" and "full cut size," which are greater than the actual dimensions of the finished product.

The record shows that the measurements which respondent places on the label are in fact the dimensions of the fabric from which the sleeping bag is made and are not the true dimensions of the bag itself. The record also contains an admission by respondent that the measurements of the fabric, known in the trade as the "cut size," are invariably larger than the finished size of the sleeping bag.

The hearing examiner concluded from this evidence that the buying public, being unaware of the significance of the terms "cut size" and "full cut size," would be led to believe that the dimensions set forth on labels attached to respondent's sleeping bags are the finished sizes of such products. He held, therefore, that respondent's practice of disclosing the "cut size" of sleeping bags on labels and in advertising has the tendency and capacity to mislead and deceive purchasers of such products. The record, however, does not support these conclusions. There is no evidence that the public is unaware of the significance of the terms "cut size" and "full cut size" or that the public believes that the dimensions shown on respondent's labels as "cut sizes" are the actual dimensions of its sleeping bags.

Since evidence adduced thus far in the proceeding is not adequate to sustain the allegation that respondent's practice of marking sleeping bags to show the cut sizes thereof has the tendency and capacity to mislead the public into believing that these dimensions are the actual dimensions of the finished product, the initial decision will be vacated and the case remanded to the hearing examiner for the purpose of receiving such evidence as may be available on this point.

ORDER

This matter having been considered by the Commission upon its review of the hearing examiner's initial decision, filed September 16, 1959; and

The Commission, for the reasons stated in the accompanying opinion, having determined that said initial decision should be vacated and the case remanded to the hearing examiner:

It was ordered, On the 27th day of October, 1959, that the aforesaid initial decision be vacated and set aside.

It was further ordered, That this case be remanded to the hearing examiner for further proceedings in conformity with the views expressed in the aforesaid opinion.

It was further ordered, That after such proceedings have been terminated the hearing examiner shall forthwith make and file, in