

after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

ALBERT H. BERKOWITZ ET AL. DOING BUSINESS AS
ROSE SMELTING & REFINING CO.

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

Docket C-18. Complaint, Nov. 7, 1961—Decision, Nov. 7, 1961

Consent order requiring Chicago partners to cease representing falsely in advertising in newspapers, trade journals and magazines, form letters, and other media, and by use of the words "Smelting" and "Refining" in their trade names, that they were smelters and refiners of precious metals and paid sellers the highest prices obtainable for old gold, jewelry, and other precious metals.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Albert H. Berkowitz and Shirley J. Berkowitz, individually and as partners doing business as Rose Smelting & Refining Co., hereinafter referred to

Complaint

59 F.T.C.

as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Albert H. Berkowitz and Shirley J. Berkowitz are individuals and partners doing business as Rose Smelting & Refining Co., with their office and principal place of business located at 29 East Madison Street, Chicago 2, Illinois. Respondents also use the trade names Rose Refining Co. and Rose Refiners.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the purchasing of gold, silver and other precious metals by mail, and at all times mentioned herein have maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of gold, silver and other precious metals to them by the public, respondents have made certain statements and representations in newspapers of interstate circulation, in trade journals and magazines of national circulation, in form letters circulated by said respondents, and in other advertising media. Among and typical, but not all inclusive, of the statements and representations so made are the following:

We will allow you 100% full value on all merchandise sent us, and you can be assured of honest and highest prices. Our check for full value is mailed to you on the same day your package reaches us.

Highest Cash Paid for old gold, jewelry, gold teeth, watches, rings, . . . eyeglasses, silver, platinum, mercury.

Highest Cash for Old Gold, * * *

Top Prices No Deductions.

PAR. 4. Through the use of the aforesaid statements and representations, and others similar thereto, and by the use of the words "Smelting", "Refining" and "Refiners" in their trade names, the respondents represent, and have represented, directly or by implication, that:

1. Respondents are smelters and refiners of gold and other precious metals, and that they own or control the smeltery and refinery where the gold and other precious metals sold to them are smelted and refined.

2. Respondents pay the full and highest price obtainable by sellers for their gold and other precious metals.

PAR. 5. The said statements and representations, as hereinbefore set forth, are false, misleading and deceptive. In truth and in fact:

1. Respondents are not smelters or refiners of precious metals, nor do they own, control or operate a smeltery or refinery.

2. Respondents do not pay the full and highest price obtainable to sellers for their gold and other precious metals.

PAR. 6. There is a preference on the part of a substantial portion of persons, having precious metals to sell, to deal direct with a smeltery or refinery, in the belief that by the elimination of middlemen the seller will obtain and receive a higher price and other advantages.

PAR. 7. Respondents, in the course and conduct of their business, are engaged in competition with other individuals and with firms and corporations who are likewise engaged in the purchasing of gold and other precious metals in commerce.

PAR. 8. The use by respondents of the aforementioned false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into selling to respondents products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agree-

ment, makes the following jurisdictional findings, and enters the following order:

1. Respondents Albert H. Berkowitz and Shirley J. Berkowitz are individuals and partners doing business as Rose Smelting & Refining Co., with their office and principal place of business located at 29 East Madison Street, Chicago 2, Illinois. Respondents also use the trade names Rose Refining Co. and Rose Refiners.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Albert H. Berkowitz and Shirley J. Berkowitz, individually and as partners trading and doing business as Rose Smelting & Refining Co., or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchasing of precious metals, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Smelting", "Refining" and "Refiners", or any other word of similar import, in any trade or corporate name, or representing in any other manner that respondents are smelters or refiners, or that they own, control or operate a smeltery or refinery.

2. Representing, directly or by implication, that they pay sellers of precious metals the full and highest obtainable prices therefor.

It is further ordered, That the respondents herein 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 this order.

IN THE MATTER OF

MARC GOTHEIL ET AL. TRADING AS GELMOR TRADING
COMPANY