

is the price at which respondents have usually and customarily sold the merchandise in the recent regular course of business.

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

CARLSON PHARMACEUTICALS, INC., ET AL.

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

Docket 8432. Complaint, June 16, 1961—Decision, Nov. 16, 1961

Order issued in default requiring Detroit distributors to cease representing falsely in advertising that their drug preparation "ARTH-RITE" was an effective treatment and cure for all kinds of arthritis and rheumatism and contained sleep-inducing ingredients.

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 Carlson Pharmaceuticals, Inc., a corporation, and Frank Handler, Jr., Eugene Graye and Frank Handler, Sr., individually and as officers of said corporation, hereinafter referred to 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. Respondent Carlson Pharmaceuticals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 4121 Puritan Avenue, in the City of Detroit, State of Michigan.

Respondent Frank Handler, Jr., Eugene Graye and Frank Handler, Sr. are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a preparation

Complaint

59 F.T.C.

is the price at which respondents have usually and customarily sold the merchandise in the recent regular course of business.

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

CARLSON PHARMACEUTICALS, INC., ET AL.

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

Docket 8432. Complaint, June 16, 1961—Decision, Nov. 16, 1961

Order issued in default requiring Detroit distributors to cease representing falsely in advertising that their drug preparation "ARTH-RITE" was an effective treatment and cure for all kinds of arthritis and rheumatism and contained sleep-inducing ingredients.

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 Carlson Pharmaceuticals, Inc., a corporation, and Frank Handler, Jr., Eugene Graye and Frank Handler, Sr., individually and as officers of said corporation, hereinafter referred to 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. Respondent Carlson Pharmaceuticals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 4121 Puritan Avenue, in the City of Detroit, State of Michigan.

Respondent Frank Handler, Jr., Eugene Graye and Frank Handler, Sr. are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a preparation

1156

Complaint

containing ingredients which come within the classification of drugs, as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation, the formula thereof and directions for use are as follows:

Designation: ARTH-RITE

Formula:

Salicylamide.....	324 mg.
Vitamin A (Fish Liver Oil).....	100 USP Units
Vitamin D (Irradiated Ergosterol).....	500 USP Units
Thiamine Mononitrate (Vitamin B ₁).....	2 mg.
Ascorbic Acid (Vitamin C).....	30 mg.
Iron (from desiccated ferrous sulfate).....	19 mg.
Powdered Extract of Alfalfa.....	130 mg.

Directions: Take 1 or 2 Capsules before breakfast and at bedtime. Not more than 6 Capsules in one day.

IMPORTANT

For more severe or persistent conditions, consult your doctor.

CONTENTS 60 CAPSULES

PAR. 3. Respondents cause the said preparation, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated and caused the dissemination of, certain advertisements concerning the said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and have disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Complaint

59 F.T.C.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

ARTH-RITE

ARTH-RITE

USE ARTH-RITE

Get Blessed Relief From
ARTHRITIS
and RHEUMATISM

Get PROMPT Relief

Stop Suffering Start Sleeping

Now Only \$5.85 For A Full
Months Supply of 60 Capsules

Money Back Unconditional

Contains No Opiates, Aspirins or Habit Forming Drugs

Carlson Pharmaceuticals, Inc.

4121 Puritan Dept. P10 Detroit 21, Mich.

(Picturization of an ARTH-RITE bottle to the right of the printed material and the word "ALFALFA" prominently featured on the bottle label with the legend "VIT. A, B, C, D & Extract of Alfalfa" printed above the top of the bottle.)

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, and are now representing, directly and by implication:

1. That ARTH-RITE is an adequate, effective and reliable treatment for all kinds of arthritis and rheumatism;
2. That ARTH-RITE will arrest the progress of, correct the underlying causes of, and cure all kinds of arthritis and rheumatism;
3. That ARTH-RITE is an adequate, effective and reliable treatment for the symptoms and manifestations of all kinds of arthritis and rheumatism, and will afford immediate, complete and permanent relief of the symptoms and manifestations thereof;
4. That the vitamins, minerals and extract of alfalfa in said product are of therapeutic value in the treatment of all kinds of arthritis and rheumatism, and for the symptoms and manifestations thereof;
5. That said product contains sleep-inducing ingredients.

PAR. 7. The said advertisements were and are misleading in material respects and constituted and now constitute, "false advertise-

1156

Decision

ments" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. ARTH-RITE is not an adequate, effective or reliable treatment for any kind of arthritis or rheumatism;

2. ARTH-RITE will not arrest the progress of, correct the underlying causes of, or cure any kind of arthritis or rheumatism;

3. ARTH-RITE is not an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis or rheumatism, and will not afford immediate, complete or permanent relief from any of the symptoms or manifestations thereof or have any therapeutic effect upon any of the symptoms or manifestations of any such conditions in excess of affording temporary relief of the minor aches or pains thereof;

4. The vitamins, minerals and extract of alfalfa in said preparation are of no therapeutic value in the treatment of any kind of arthritis or rheumatism or for any of the symptoms or manifestations thereof;

5. ARTH-RITE does not contain any sleep-inducing ingredients.

PAR. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constitutes, and now constitutes, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Michael J. Vitale for the Commission.

No appearance for the respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 16, 1961, charging Respondents with violation of the Federal Trade Commission Act by the dissemination in commerce, as "commerce" is defined in said Act, of false advertisements concerning their drug preparation, designated "Arth-Rite."

Thereafter, on June 30, 1961, Respondents were duly served with a copy of the complaint herein, and failed to submit any answer or make any reply thereto. Accordingly, on August 9, 1961, notice was issued of a hearing to be held in the Federal Trade Commission Building, Washington, D.C., and was duly served upon Respondents on August 14, 1961.

Thereafter a hearing was held in accordance with the aforesaid notice, whereat Respondents failed to appear, either in person or by counsel; whereupon counsel supporting the complaint moved that the Respondents be held in default, and submitted to the Hearing Examiner a proposed order to cease and desist. The motion was duly granted on the record.

The Hearing Examiner, exercising the authority conferred upon him by § 4.5(c) of the Commission's Rules Of Practice For Adjudicative Proceedings, now finds the facts to be as alleged in the complaint herein, and issues his initial decision, containing such findings, appropriate conclusions drawn therefrom, order to cease and desist, as follows:

FINDINGS AS TO THE FACTS

1. Respondent Carlson Pharmaceuticals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 4121 Puritan Avenue, in the City of Detroit, State of Michigan.

Respondents Frank Handler, Jr., Eugene Graye and Frank Handler, Sr. are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drugs, as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation, the formula thereof and directions for use are as follows:

Designation: ARTH-RITE

Formula:

Salicylamide.....	324 mg.
Vitamin A (Fish Liver Oil).....	1000 USP Units
Vitamin D (Irradiated Ergosterol).....	500 USP Units
Thiamine Mononitrate (Vitamin B ₁).....	2 mg.
Ascorbic Acid (Vitamin C).....	30 mg.
Iron (from desiccated ferrous sulfate).....	19 mg.
Powdered Extract of Alfalfa.....	130 mg.

Directions: Take 1 or 2 Capsules before breakfast and at bedtime. Not more than 6 Capsules in one day.

IMPORTANT

For more severe or persistent conditions, consult your doctor.

CONTENTS 60 CAPSULES

3. Respondents cause the said preparation, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce, as "com-

1156

Findings

merce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

4. In the course and conduct of their said business, Respondents have disseminated and caused the dissemination of certain advertisements concerning the said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and have disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth the following:

ARTH-RITEARTH-RITE

Get Blessed Relief From

ARTHRITIS

and RHEUMATISM

Get PROMPT Relief

Stop Suffering Start Sleeping

Now Only \$5.85 For A Full

Months Supply of 60 Capsules

Money Back Unconditional

Contains No Opiates, Aspirins or Habit Forming Drugs

Carlson Pharmaceuticals, Inc.

4121 Puritan Dept. P10 Detroit 21, Mich.

(Picturization of an ARTH-RITE bottle to the right of the printed material and the word "ALFALFA" prominently featured on the bottle label with the legend "VIT. A, B, C, D & Extract of Alfalfa" printed above the top of the bottle.)

6. Through the use of said advertisements, and others similar thereto not specifically set out herein, Respondents have represented, and are now representing, directly and by implication:

1. That ARTH-RITE is an adequate, effective and reliable treatment for all kinds of arthritis and rheumatism;

2. That ARTH-RITE will arrest the progress of, correct the underlying causes of, and cure all kinds of arthritis and rheumatism;

3. That ARTH-RITE is an adequate, effective and reliable treatment for the symptoms and manifestations of all kinds of arthritis

Conclusions

59 F.T.C.

and rheumatism, and will afford immediate, complete and permanent relief of the symptoms and manifestations thereof;

4. That the vitamins, minerals and extract of alfalfa in said product are of therapeutic value in the treatment of all kinds of arthritis and rheumatism, and for the symptoms and manifestations thereof;

5. That said product contains sleep-inducing ingredients.

7. The said advertisements were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

In truth and in fact:

1. ARTH-RITE is not an adequate, effective or reliable treatment for any kind of arthritis or rheumatism;

2. ARTH-RITE will not arrest the progress of, correct the underlying causes of, or cure any kind of arthritis or rheumatism;

3. ARTH-RITE is not an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis or rheumatism, and will not afford immediate, complete or permanent relief from any of the symptoms or manifestations thereof or have any therapeutic effect upon any of the symptoms or manifestations of any such conditions in excess of affording temporary relief of the minor aches or pains thereof;

4. The vitamins, minerals and extract of alfalfa in said preparation are of no therapeutic value in the treatment of any kind of arthritis or rheumatism or for any of the symptoms or manifestations thereof;

5. ARTH-RITE does not contain any sleep-inducing ingredients.

CONCLUSIONS

1. The dissemination by the Respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

2. The Commission has jurisdiction over the Respondents herein, and over their acts and practices as alleged in the complaint and hereinabove found.

3. This proceeding is in the public interest.

Accordingly,

It is ordered, That Respondents Carlson Pharmaceuticals, Inc., a corporation, and its officers, and Frank Handler, Jr., Eugene Graye and Frank Handler, Sr., individually and as officers of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation

designated ARTH-RITE, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or indirectly:

(a) That said preparation is an adequate, effective or reliable treatment for any kind of arthritis or rheumatism;

(b) That said preparation will arrest the progress of, correct the underlying causes of, or cure any kind of arthritis or rheumatism;

(c) That said preparation is an adequate, effective or reliable treatment for the symptoms and manifestations of any kind of arthritis or rheumatism, or will afford immediate, complete or permanent relief of the symptoms or manifestations of such conditions in excess of affording temporary relief of the minor aches or pains thereof;

(d) That the vitamins, minerals or extract of alfalfa contained in said preparation will relieve pain, or have any other therapeutic value for the relief of any kind of arthritis or rheumatism, or for the symptoms or manifestations thereof;

(e) That said preparation contains any sleep-inducing ingredients;

2. Disseminating or causing the dissemination by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any advertisement which contains any of the representations prohibited in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of November, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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 to cease and desist.

Complaint

59 F.T.C.

IN THE MATTER OF

KROYWEN COATS, INC., ET AL.

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

Docket C-28. Complaint, Nov. 16, 1961—Decision, Nov. 16, 1961

Consent order requiring two associated manufacturers in New York City to cease violating the Wool Products Labeling Act by labeling as "100% Cashmere" and "100% Pure Cashmere", ladies' coats which contained a substantial quantity of other fibers; by labeling such coats falsely with respect to the manufacturer or supplier; and by failing to disclose the true generic names of fibers present and the percentage thereof.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kroywen Coats, Inc., a corporation, Luxury Coats, Inc., a corporation, Ralph Miller, individually and as an officer of Kroywen Coats, Inc. and Luxury Coats, Inc., and Sidney Goldman, individually and as an officer of Kroywen Coats, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling 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 Kroywen Coats, Inc., and Luxury Coats, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 251 West 39th Street, New York, N.Y.

Individual respondent Ralph Miller is president of corporate respondent Kroywen Coats, Inc. and secretary of corporate respondent Luxury Coats, Inc. Individual respondent Sidney Goldman is secretary-treasurer of corporate respondent Kroywen Coats, Inc. Individual respondents Ralph Miller and Sidney Goldman formulate, direct and control the acts, practices and policies of the corporate respondent Kroywen Coats, Inc., including those hereinafter set forth. Individual respondent Ralph Miller formulates, directs and controls the acts, practices and policies of corporate respondent, Luxury Coats, Inc., including those hereinafter set forth. The ad-

dress and principal place of business of the individual respondents is the same as that of the corporate respondents.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1948, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled, tagged or otherwise identified.

Among such misbranded wool products were ladies coats labeled or tagged by respondents as "100% Cashmere" and "100% Pure Cashmere" whereas, in truth and in fact, said products contained a substantial quantity of fibers other than the hair or fleece of the Cashmere goat.

In addition, certain wool products, namely, ladies coats, were misbranded in that they were falsely or deceptively stamped, tagged, labeled or otherwise identified in such a manner as to misrepresent the name or identity of the manufacturer, supplier or source of fabric used in the manufacture of such ladies coats.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were ladies coats with labels which failed: (1) to disclose the true generic names of the fibers present and (2) to disclose the percentage of such fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, 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.

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 Wool Prod-

Order

59 F.T.C.

ucts Labeling Act of 1939, 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 agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Kroywen Coats, Inc. and Luxury Coats, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their office and principal place of business located at 251 West 39th Street, New York, New York.

Respondent Ralph Miller is an officer of Kroywen Coats, Inc. and Luxury Coats, Inc. and his address is the same as that of said corporate respondents.

Respondent Sidney Goldman is an officer of Kroywen Coats, Inc. and his address is the same as that of said corporate respondent.

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, Kroywen Coats, Inc., a corporation, and its officers, and Ralph Miller and Sidney Goldman, individually and as officers of said corporation, and Luxury Coats, Inc., a corporation, and its officers and Ralph Miller, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, of ladies' coats or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to name or identity of the manufacturer, supplier or source of the fabric used in such products.

3. Failing to securely affix to or place on each product, a stamp, tag, label or other means of identification showing in a clear and conspicuous manner, each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

4. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of fibers from the hair or fleece of the Cashmere goat.

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

HYMAN KAPLAN ET AL. TRADING AS STEWART AUTO
UPHOLSTERING COMPANY ET AL.

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

Docket 8222. Complaint, Dec. 16 1960—Decision, Nov. 21, 1961

Order requiring Washington, D.C., distributors of automobile seat covers, convertible tops, and floor mats, among other items, to consumers and other retailers, to cease representing excessive prices as their usual retail prices through such practices as setting forth such prices after the designation "Reg.", "Regular", or "List", followed by a lower sale price; and representing certain of their convertible tops as offered "with written guarantee" when their guarantees contained limitations not set forth.

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 Hyman Kaplan and Morris Kaplan, individually and as copartners trading as Stewart Auto Upholstering Company, and Henry Kaplan, an individual, hereinafter referred to as respondents, have violated the provisions of said

Complaint

59 F.T.C.

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 Hyman Kaplan and Morris Kaplan are individuals and copartners trading as Stewart Auto Upholstering Company, with their office and principal place of business located at 2525 M Street, NW., in the City of Washington, District of Columbia. Respondent Henry Kaplan is manager of the partnership business. His address is the same as that of the partners.

PAR. 2. Respondents are now, and for some time last past have been engaged in advertising, offering for sale, sale and distribution, among other things, of automobile seat covers, convertible tops, and floor mats to the public and to retailers for resale to the public in the District of Columbia and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise 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 their merchandise, respondents have made certain statements concerning said merchandise in newspapers of general circulation. Among and typical, but not all inclusive of such statements are the following:

"Diplomat" Plastiseal Seat Covers Reg. \$18.95.

\$13.77 Full set—Front and Rear.

"Diplomat" Plastiseal Auto Seat Covers—Regular \$18.95, \$13.95 with trade.

"Country Club" Nyspun Auto Seat Covers—Regular \$22.95, \$17.95 with trade.

Sensational Savings on Genuine "Rocket" Saran Seat Covers—Reg. \$16.95—\$12.77.

"Rocket" Saran Seat Covers Regular \$16.95—Today & Sat. \$12.87.

Two Day Super Special! Amazing Low Price! "Atlas" Saran Seat Covers Regular \$17.95—\$13.87.

Specially Priced! Deluxe 3-Ply convertible tops Vat Dyed Black or Tan—\$29.95 with written guarantee.

Less than ½ price! Front and Rear 4-Pc. Floor Mat Set First time ever at this low price! Reg. \$9.95—Monday Only \$4.87.

(List for \$7.95) Cushion Cap Cover \$2.72.

PAR. 4. By means of the aforesaid statements, and others of the same import but not specifically set out, respondents have represented, directly or by implication:

1. That the higher prices listed under the designation "Reg.", "Regular" and "List" were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that savings amounting to the differences between these higher prices and the lower sales price would result to purchasers.

2. Through the use of the terms "with written guarantee" that certain of their convertible tops are fully guaranteed.

PAR. 5. The aforesaid statements and representations were and are false, misleading and deceptive. In truth and in fact:

1. The higher prices listed under the designation "Reg.", "Regular" or "List" were not the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business but were in excess of such prices, and savings amounting to the differences between such higher prices and the lower sales prices would not result to purchasers.

2. Respondents' convertible tops are not fully guaranteed but such guarantees contain terms and conditions not set forth in the advertisements.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of automobiles seat covers, convertible tops and floor mats of the same general kind and nature as those sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, deceptive and misleading statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and to induce the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade in commerce has been unfairly diverted to respondents from their competitors and injury has been done thereby to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' 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.

Mr. Charles W. O'Connell for the Commission.

Mr. Ben Ivan Melnicoff, Washington, D.C., for respondents (until September 8, 1961).

Messrs. Hyman Kaplan, Morris Kaplan, and Henry Kaplan, pro se.

INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

The issue is whether the respondents have been engaged in unfair or deceptive acts or practices in commerce in violation of the pro-

visions of Section 5 of the Federal Trade Act Commission Act (a) through the listing of fictitious "regular" and "list" prices as former prices on merchandise in advertisements offering the merchandise for sale at sale prices, (b) through the advertisement of a "written guarantee" on certain merchandise when a full guarantee thereon was never intended to be made by respondents.

The proceeding was initiated by a complaint issued December 16, 1960, and was reassigned to the present examiner July 19, 1961, for hearing and the issuance of an initial decision therein. Hearing was held on July 25, to 28, 1961, inclusive, at Washington, D.C. On September 1, 1961, counsel for respondents, with due notice to respondents, filed a motion to withdraw his appearance in behalf of the respondents, which was granted. On September 15, 1961, respondents moved to withdraw their original answer to the complaint in the proceeding and to substitute therefor a "Substitute Answer." The concluding statement of the motion reads as follows: "Respondents further state that no successor attorney has been or will be appointed by them and that they now appear in this proceeding in their own behalf and without counsel." By order of the examiner dated October 2, 1961, a respondents' motion to withdraw their original answer and file a substitute answer was granted. Under the substitute answer, the respondents elect not to further contest the allegations set forth in the complaint, and, in accordance with Section 4.5(b)(2) of the Commission's revised rules of practice, admit all material allegations of the complaint to be true.

By stipulation filed September 15, 1961, the parties submitted a proposed order, which they deem appropriate in the premises, for the consideration of the examiner. The proposed order is adopted and set forth below.

The facts in this matter, as adduced by the pleadings, the testimony, and the documentary evidence, are these. Hyman Kaplan and Morris Kaplan, two of the three respondents, are individuals and copartners trading as Stewart Auto Upholstering Company, with office and principal place of business at 2525 M Street, N.W., in Washington, D.C. The third respondent, Henry Kaplan, of the same address, is manager of the partnership business. Respondents have at all times here pertinent been engaged in the sale and distribution of automobile seat covers, convertible tops, and floor mats, among other items, to consumers and other retailers in the District of Columbia in a substantial course of trade in "commerce" within the meaning of the Federal Trade Commission Act, and have been and are in substantial competition with other firms in the same lines of business in the same sales area.

From time to time in recent years, respondents ran advertisements on their merchandise in newspapers of general circulation in the area in which they operate. These advertisements, for the purpose of inducing purchases, contained certain statements with reference to the merchandise offered for sale, of which the following are typical:

- (a) "Diplomat" Plastiseal Seat Covers Reg. \$18.95. \$13.77 Full set—Front and Rear.
- (b) "Diplomat" Plastiseal Auto Seat Covers—Regular \$18.95—\$13.95 with trade.
- (c) "Country Club" Nyspun Auto Seat Covers—Regular \$22.95—\$17.95 with trade.
- (d) Sensational Savings on Genuine "Rocket" Saran Seat Covers Reg. \$16.95—\$12.77.
- (e) "Rocket" Saran Seat Covers Regular \$16.95—Today & Sat. \$12.87.
- (f) Two Day Super Special! Amazing Low Price! "Atlas" Saran Seat Covers Regular \$17.95—\$13.87.
- (g) Specially Priced! Deluxe 3-Ply convertible tops Vat Dyed Black or Tan—\$29.95 with written guarantee.
- (h) Less than ½ price! Front and Rear 4-Pc. Floor Mat Set First time ever at this low price! Reg. \$9.95—Monday Only \$4.87.
- (i) (List for \$7.95) Cushion Cap Cover \$2.72.

By means of the above-described newspaper advertisements and others of a similar or identical nature, respondents, directly or by implication, made certain representations which were in fact false, misleading and deceptive, to wit:

(1) That the higher prices listed under the designation "Reg.," "Regular" and "List" were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that savings amounting to the differences between these higher prices and the lower sales price would result to purchasers.

(2) Through the use of the term "with written guarantee" that certain of their convertible tops are fully guaranteed.

Whereas in truth and fact:

(1) The higher prices listed under the designation "Reg.," "Regular" or "List" were not the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business but were in excess of such prices, and savings amounting to the differences between such higher prices and the lower sales prices would not result to purchasers.

(2) Respondents' convertible tops are not fully guaranteed, but such guarantees contain terms and conditions not set forth in the advertisements.

CONCLUSIONS

On the basis of the foregoing evidentiary findings of fact, the examiner concludes:

- (1) That the use of the aforesaid false, deceptive and misleading statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and to induce the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade in commerce has been unfairly diverted to respondents from their competitors, and injury has been done thereby to competition in commerce.
- (2) That the above-described acts and practices of the respondent were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce within the intent and meaning and in violation of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Hyman Kaplan and Morris Kaplan, individually and as copartners trading as Stewart Auto Upholstering Company, or any other name, and Henry Kaplan, an individual, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automobile seat covers, convertible tops, automobile floor mats or any other merchandise, 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 any price is respondents' usual retail price when it is in excess of the price at which the merchandise has been usually and customarily sold by respondents at retail in the recent, regular course of business.
 - (b) That the price at which respondents offer merchandise affords a savings to purchasers from the price at which said merchandise has been usually and customarily sold by respondents in the recent regular course of business unless such representation is true.
2. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of said merchandise is reduced from the price at

which it is usually and customarily sold by respondents in the normal course of business.

3. Using the words "Reg.," "Regular" or "List," or any other word of the same or similar import to designate prices unless they are the prices at which the merchandise has been usually and customarily sold by respondents in the recent, regular course of business.

4. Representing, directly or by implication, that any of their products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 21st day of November 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission