

of the Court of Appeals as such, which contains dicta with which the Commission does not necessarily agree. Since the Commission does not believe that the public interest would be advanced by a further proceeding to establish whether respondent has violated Section 2(c), the complaint must be dismissed.

IN THE MATTER OF
EARL SCHEIB, INC., ET AL.

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

Docket 8483. Complaint, May 2, 1962—Decision, Oct. 22, 1963

Order requiring Beverly Hills, Calif., operators of paint and body repair services for automobiles at various locations, to cease representing falsely in advertisements in newspapers, on television and through other advertising media, that their customary offer of \$29.95 was a special, reduced price; that their \$19.95 paint offer was of the same quality as that at \$29.95, when in fact, it was a bait offer, made to attract customers who were then urged to take a much higher priced job; and that all their work carried a 3-year guarantee.

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

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Trade Commission, having reason to believe that Earl Scheib, Inc., a corporation, and Earl A. Scheib, individually and as an officer 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 Earl Scheib, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 8737 Wilshire Boulevard, Beverly Hills, California.

Respondent Earl A. Scheib is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of paint, and in performing an automobile paint and body repair service, to the public.

In connection with the performance of the paint and the body repair service to a customer's automobile, respondents own, operate and control (1) a factory in which the paint is manufactured, (2) area warehouses in which the paint is warehoused or stored and from which the paint is distributed to the various paint and body repair shops and (3) various paint and body repair shops at and in which the said paint and body repair services are performed. All of the manufacturing, storing and distribution of paint, and the performance of paint and body repair services, are done through separate corporations, not specifically designated herein, which are incorporated in the state or district in which said factory, warehouse distributor or paint and body repair shop is located.

Prior to the month of February 1962, the individual respondent owned all of the capital stock of the various corporations above mentioned and all of the capital stock of a corporation known as Earl Scheib, Inc., a California corporation which acted in a managerial capacity for said other corporations. In the month of February 1962, the corporate respondent was organized in the State of Delaware. Thereafter, the individual respondent transferred to the said Delaware corporation all of the stock owned by him in the various operating corporations as above set forth, and including the stock owned by him in Earl Scheib, Inc., the California corpora-

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tion, to the corporate respondent herein, in exchange for approximately 95% of the capital stock of the corporate respondent. On February 28, 1962, Earl Scheib, Inc., the California corporation, was merged with the corporate respondent herein and thereby the said corporate respondent became the parent of all the various corporations operating the factory, warehouses and paint and body repair shops.

The individual respondent, through control of the corporate respondent, and formerly through control of the said California corporation, formulated, directed and controlled, and now formulates, directs and controls, the acts and practices of each of the said subsidiary corporations in conjunction with the corporate respondent, and formerly the said California corporation.

Whenever it is alleged hereafter that the respondents committed certain acts and practices which are claimed to be false, misleading and deceptive, it is intended to be alleged that the said acts and practices were committed by the individual respondent, Earl A. Scheib, in conjunction with Earl Scheib, Inc., the California corporation, or in conjunction with Earl Scheib, Inc., the Delaware corporation, as the case may be.

PAR. 3. In the course and the conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said paint to be shipped from their paint factory located in the State of California to their warehouses located in various other States of the United States, including the State of California. Thereafter shipments are made from the warehouses located in various States of the United States, including the State of California, to the locations of their auto paint and body repair shops located throughout the United States and in the District of Columbia. At said locations, paint is sold and painting and body repair service is performed on the customer's automobile. In the course and conduct of said business respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said automobile paint and in the automobile painting and body repair service in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale and purchase of their automobile paint and body repair service, respondents have made certain statements and representations with respect to the nature, extent, quality, workmanship, guarantees and prices of the same in advertisements in newspapers, publications and through other advertising media, all of which are circulated into various States of the United States

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other than, and including, the State of origin of the advertisement and in the District of Columbia; and by advertisements on television which are telecast across State lines into States, other than, and including, the State of origin of the advertisement, and in the District of Columbia. Typical, but not all inclusive, of such statements and representations are the following:

1. In connection with a \$29.95 offer:

Special, \$29.95.

Vacation Special, \$29.95.

Winter Special, \$29.95.

Fall Special, \$29.95.

Special this week, \$29.95.

Yet my price is still—for limited time—only \$29.95.

Even with this costly new silicone, I will still paint any car—for limited time—for only \$29.95.

2. In connection with a \$19.95 offer:

7 more days, \$19.95. Any car. Variety of colors.

19.95. That is the full price to paint any car.

That's right—that's the full price—just \$19.95 this week. You save \$10! Instead of \$29.95 its only \$19.95 whether you own an Austin or a Cadillac.

3. In connection with a guarantee:

Your three year written guarantee is honored at any Earl Scheib Paint Shop in over 100 cities against fading, peeling, crinkling.

PAR. 5. Through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set forth herein, the respondents have represented, and now represent, directly or indirectly:

1. In connection with the \$29.95 offer, that \$29.95 is a special, reduced or bargain price.

2. In connection with the \$19.95 offer, that \$19.95 is the full price to paint any automobile in a variety of colors with the same quality and workmanship, the same selection of colors and the same guarantee as in a \$29.95 job.

3. In connection with the guarantee, that all paint work is guaranteed regardless of price, against fading, peeling and crinkling for three years.

PAR. 6. The aforesaid statements and representations were, and are, false, misleading and deceptive. In truth and in fact:

1. The price of \$29.95 is not a special, reduced or bargain price but, on the contrary, said price is respondents' customary, usual and regular price.

2. The offer to paint any automobile for \$19.95 in a variety of colors with the same quality workmanship, selection of colors and

guarantee as in a \$29.95 job is not a bona fide offer but, on the contrary, it is made for the purpose of inducing the public to come to respondents' place of business to obtain said \$19.95 paint job. When a customer responds to such advertisement and goes to one of the various paint shops, employees and representatives of respondents disparage said \$19.95 paint job in such a manner as to discourage the offer and attempt to, and frequently do, sell a much higher price paint job to said customer. In instances where the customer insists on the \$19.95 paint job he is then informed by respondents' employees and representatives that such work is not guaranteed and is not of the same quality as the \$29.95 job.

3. All of respondents' paint work is not guaranteed against fading, peeling and crinkling for three years regardless of the price, but, on the contrary, in order to obtain said guarantee, body repair work must be performed and no guarantee is issued for work performed for the price of \$19.95.

PAR. 7. 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 manufacture, sale and distribution of products of the same general kind and nature as that sold by respondents and also with those engaged in the business of painting and performing body repair work on automobiles.

PAR. 8. The use by respondents of the aforesaid 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 the purchase of substantial quantities of respondents' said paint and automobile paint and body repair services because of such erroneous and mistaken beliefs.

PAR. 9. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Roy B. Pope supporting the complaint.

Buchalter, Nemer, Fields & Savitch, by *Mr. Irwin R. Buchalter*, Los Angeles, Calif., for respondents.

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INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

DECEMBER 4, 1962

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on May 2, 1962, charging them with engaging in unfair acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act by the use of false and misleading advertising in connection with the respondents' business of repairing and repainting automobiles. A copy of said complaint with notice of hearing was duly served upon respondents. Respondents thereafter appeared by counsel and filed answer denying, in substance, having engaged in the illegal practices charged.

Hearings on the charges were thereafter held at which time testimony and other evidence were offered in support of, and in opposition to, the allegations of the complaint, said evidence being duly recorded and filed in the office of the Commission. At the close of all the evidence and pursuant to leave granted by the undersigned, proposed findings, conclusions of law, proposed order and briefs were filed on October 29, 1962, by counsel supporting the complaint and for the respondents.

Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

After having reviewed the entire record in this proceeding and the proposed findings and conclusions and supporting briefs, the undersigned finds that this proceeding is in the interest of the public and, based on the entire record, makes the following:

FINDINGS OF FACT

1. Respondent, Earl Scheib, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 8737 Wilshire Boulevard, Beverly Hills, California. Earl Scheib, Inc., was organized in the State of Delaware on December 22, 1961.

2. Earl A. Scheib is the President of Earl Scheib, Inc. The business address of Earl A. Scheib is 8737 Wilshire Boulevard, Beverly Hills, California.

3. Corporate respondent is now, and for some time last past has been engaged in the advertising, offering for sale, and through its subsidiaries, sales and distribution of paint, and in performing an

automobile paint and body repair service to the public. It is a nationwide automobile paint company with approximately 128 auto paint shops presently in operation through the United States.

4. In connection with the performance of the paint and body repair service to a customer's automobile, corporate respondent owns, operates and controls through its subsidiaries (1) two factories in which the paint is manufactured, (2) area warehouses in which the paint is warehoused or stored and from which the paint is distributed to the various paint and body repair shops, and (3) various paint and body repair shops in which the said paint and body repair services are performed. All of the manufacturing, storing and distribution of paint, and the performance of paint and body repair services, is done through separate corporations not specifically named herein, which are incorporated in the states or districts in which said factory, warehouse distributor, or paint and body repair shop is located.

5. Prior to the month of February 1962, the individual respondent owned all of the capital stock of the various corporations above mentioned and all of the capital stock of a corporation known as Earl Scheib, Inc., a California corporation, which acted in a managerial capacity for said other corporations. Thereafter, the individual respondent transferred to a new Delaware corporation (corporate respondent) all of the stock owned by him in the various operating corporations as above set forth, and including the stock owned by him in Earl Scheib, Inc., the California corporation, to the corporate respondent herein, in exchange for approximately 95% of the capital stock of the corporate respondent. On February 28, 1962, Earl Scheib, Inc., the California corporation, was merged with the Delaware corporate respondent herein, and thereby the corporate respondent became the parent of all the various corporations operating the paint factories, warehouses and paint and body repair shops.

6. The individual respondent, through control of the corporate respondent, and formerly through control of said California corporation, and otherwise, formulated, directed and controlled and now formulates, directs and controls the acts and practices of corporate respondent and of each of said subsidiary corporations in conjunction with the corporate respondent, and formerly the said California corporation. This direction and control includes all of respondents' advertising practices and materials involved in this proceeding.

7. In the course and conduct of their business, as aforesaid, respondents now cause and for some time last past have caused, paint to be shipped from the paint factories to the warehouses located in

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various other States of the United States. Thereafter, shipments are made from the warehouses to the locations of the auto paint and body repair shops located throughout the United States and in the District of Columbia. At said locations, paint is sold and painting and body repair service is performed on the customer's automobile. In the course and conduct of said business, respondents maintain, and at all times herein have maintained, a substantial course of trade in said automobile paint and in automobile painting and body repair service in commerce, as "commerce" is defined in the Federal Trade Commission Act.

8. In the conduct of the business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals, in the manufacture, sale and distribution of products of the same general kind and nature as that sold by respondents and also with those engaged in the business of painting and performing body repair work on automobiles.

9. In the course and conduct of the business, and for the purpose of inducing the sale of purchase of the automobile paint and body repair service, the respondents have made certain statements and representations with respect to the nature, extent, quality, workmanship, guarantees and prices of the same in advertisements in newspapers, publications and through other advertising media, all of which are circulated into various States of the United States other than, and including, the State of origin of the advertisement and in the District of Columbia; and by advertisements on television which are telecast across State lines into States other than and including the State of origin of the advertisement, and in the District of Columbia. Typical, but not all inclusive, of such statements and representations are the following statements which are exactly as they appeared in the context of their advertising format in conjunction with other matters:

(1) In connection with a \$29.95 offer:

Special, \$29.95.

Vacation Special, \$29.95.

Winter Special, \$29.95.

Fall Special, \$29.95.

Special this week, \$29.95.

Yet my price is still—for limited time—only \$29.95.

Even with this costly new silicone paint, I will still paint any car—for limited time—for only \$29.95.

(2) In connection with a \$19.95 offer:

7 more days. \$19.95. Any car. Variety of colors.

\$19.95. That is the full price to paint any car.

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That's right—that's the full price—just \$19.95 this week. You save \$10. Instead of \$29.95 its only \$19.95 whether you own an Austin or a Cadillac.

That's the full price, just \$19.95, and you select from a variety of beautiful colors, close out of 1960 colors.

(3) In connection with a guarantee:

Your three year written guarantee is honored at any Earl Scheib Paint Shop in over 100 cities against fading, peeling, crinkling.

10. The first charge of deception against the respondents is the use of the word "special" and words of similar import as set forth in part in subparagraph 1 of the Ninth Finding above. \$29.95 is the price which respondents have consistently charged since they began business for the repainting of an automobile with the exception of the \$19.95 price and the \$24.95 price in California. The advertising indicates that the \$29.95 price is a special reduction or bargain price from respondent's usual price. This is not true; consequently, it is false and misleading to so advertise the \$29.95 offer.

Respondents urge that the meaning which they intended to give to the word "special" was that it was special when compared to the prices charged and services offered by respondents' competitors. But the advertising used by the respondents in this regard could very easily indicate that this was the meaning which they intended. However, it is clear from examining the advertising that it distinctly conveys the meaning that the \$29.95 price is a reduction from respondents' normal and usual price. The word "special" is used in such close association with the price of \$29.95 that it is impossible to separate the two as they appear in the advertisements. In fact, the theme of the advertisements is that the \$29.95 price is a truly unusual offer definitely limited in duration. A true "special" offered by the respondents is the \$19.95 paint job discussed in the next finding. Throughout the record, it is referred to as a "special", which it is since it is a temporary offer at \$10.00 less than respondents usual and customary price. Consequently, the examiner finds that respondents' use of the word "special" and words of similar import in advertising its \$29.95 paint job is false and misleading. *International Association of Photographers*, 52 F.T.C. 1450, 1461 (1956); *American Albums, Inc.*, 53 F.T.C. 913, 915 (1957).

11. The second charge of false and misleading advertising is that respondents' advertising of a special \$19.95 paint job was no more than a sham to get prospective customers into the Earl Scheib shops and thereafter to disparage the \$19.95 paint job and attempt to sell the customer up to the \$29.95 paint job. In this connection, it is respondents' practice at about the time new models of automobiles are brought onto the market in the fall of each year to re-examine

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their entire line of automobile paints, introduce new colors, and eliminate out-of-date or slow-moving colors. In addition, in the various paint shops the remnants of paint used to paint automobiles were saved in a drum during the year and were called "slop" paints. The respondents used these "slop" paints and the discontinued lines of paints in carrying out its \$19.95 special offer.

The record establishes that the paint used in the \$19.95 paint jobs was of the same quality as used for the \$29.95 paint jobs. The record also establishes that the quality of workmanship in the preparation of the auto and applying of the paint was also the same.

The testimony of the witnesses called by complaint counsel dealt with statements made by Earl Scheib representatives pertaining to the differences between the \$19.95 paint job and the \$29.95 paint job and with the selections of colors available at the \$19.95 price.

The record establishes that representatives of Earl Scheib, Inc., advised at least some prospective customers that the paint used in the \$19.95 paint job was a flat enamel paint which required waxing and polishing and did not contain silicones as did the paint used in the \$29.95 jobs. As a result, prospective customers purchased the \$29.95 paint job. Commission Exhibit 28 A to F makes it clear that this manner of selling prospective customers up to the \$29.95 paint job was discussed and planned by Earl Scheib representatives. It was emphasized in this document that the customer was to be advised that respondents' Diamond Gloss silicone paints were used in the \$29.95 job. The impression left, without actually stating it, was that such was not the case in the lower-priced special paint jobs. Respondent Scheib and his representatives testified that this bulletin was suppressed as soon as it came to Mr. Schieb's attention; however, Commission Exhibits 29 and 30, which were published by respondents immediately after Commission Exhibit 28, do not direct that the approaches to prospective customers described in Commission Exhibit 28 be stopped. Consequently, it is found that the respondents, through their representatives, have practiced deception on prospective customers by disparaging the quality of the paint used in the \$19.95 paint job in an effort to sell the \$29.95 paint job. There is no substantial evidence that respondents' representatives stated that a different or poorer quality of workmanship is used in the \$19.95 paint job than is used in the \$29.95 job, or that the \$19.95 paint job does not carry the same guarantee.

A number of witnesses were called by complaint counsel who testified that they, in response to advertisements for the \$19.95 special, made appointments or went to Earl Scheib paint shops only to dis-

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cover that the colors available were so limited in number (two to ten) and of such undesirable colors that they either refused to have their cars painted or purchased the \$29.95 paint job to obtain a satisfactory color.

Respondents urge that their advertising in this regard is clear and indicates that only a very few colors were offered in the advertisements. This argument is based on the use of the words "close-out of 1959 (1960, 1961) colors" both on television and in the newspapers. Complaint counsel, however, urge that the use by the respondents in their television and newspaper advertising of the words "variety of colors" and "select from the beautiful variety of our close-out of 1960 colors" indicates that a wide variety of colors were available to prospective customers, and that the selection of a very few (two to ten) undesirable colors when they arrive for their paint jobs makes such advertising false and misleading. Respondents' advertising never indicated the actual number of colors available at any time during the \$19.95 special deals. The record establishes that there is a very large number of paint colors for automobiles—estimates in the record range as high as 3,000.

It is found, therefore, that the advertising by respondent that there was a variety of paints available during a close-out of a previous year's line of paints was false and deceptive in that respondent made available only a very few (two to ten) selections of undesirable colors. It is also found that one of the purposes of this advertising was to entice prospective customers into the Earl Scheib paint shops and sell them up to the \$29.95 paint job.

12. The third principal charge of deceptive advertising was that involving respondents' three-year guarantee in connection with its paint jobs. At the close of the case-in-chief and before any defense evidence was offered, complaint counsel was permitted to amend the charges pertaining to respondents' representations concerning its guarantee to the following:

All of respondents' paint work is not guaranteed against fading, peeling and crinkling for three years regardless of the price; but on the contrary, in order to obtain such guarantee body work must be performed; further, the guarantee which is given to the customers is not an unconditional guarantee but a pro rata guarantee, and when a customer seeks to have the guarantee complied with an additional charge is demanded.¹

¹ The charge as it originally appeared in the complaint was as follows: "All of respondents' paint work is not guaranteed against fading, peeling and crinkling for three years regardless of the price, but, on the contrary, in order to obtain said guarantee, body repair work must be performed and no guarantee is issued for work performed for the price of \$19.95."

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However, in his proposed findings counsel in support of the complaint only requests a finding as follows:

Respondents' paint jobs are not guaranteed for three years without additional cost to the purchaser. On the contrary, the guarantee is pro-rated over a three year period.

Consequently, it appears that counsel in support of the complaint has dropped the charge that respondents require body work before a guarantee is given as well as the charge of failure to give guarantees on the \$19.95 paint job dropped during the trial. In any event, there is no substantial or credible evidence in the record that respondents do require body work to be done before the three-year guarantee is given to customers for any of the paint jobs.

The respondents have, however, regularly advertised that a three-year guarantee is given on its paint jobs without disclosing that the guarantee is a *pro rata* guarantee whereby before the guarantee is honored the customer must pay a percentage of the original cost based on the number of the 36 months elapsed since the original paint job. The failure to reveal this fact in the advertising constitutes false and misleading advertising. *Parker Pen Co. v. Federal Trade Commission*, 159 F. 2d 509 (7th Cir., 1946), 4 S.&D. 597.

13. Respondents' counsel urges that respondents have at all times been willing to eliminate any of its advertising which the Commission feels is deceptive. In fact, counsel urges that promptly upon notice that the Commission was questioning its advertising, it stopped the use of the word "special" in advertising its \$29.95 paint job and also changed its guarantee advertising to make it clear that the guarantee is *pro rata* when this was questioned. This change in the respondents' advertising practices did not occur until after respondents were being investigated and since respondents are still engaged in the same business and advertising extensively, the examiner does not feel that the discontinuance was of a nature which would warrant dismissal of these charges and feels that the protection of the public interest requires an order to cease and desist.

14. Respondents' counsel also urges that since respondents were willing to take a consent order prohibiting the use of the word "special" and requiring full disclosure of the nature of the guarantee before the complaint issued in this matter and so advised Commission representatives that the Commission is now foreclosed from issuing any order in these areas. This argument is rejected.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

2. Complaint herein states cause of action and this proceeding is in the public interest.

3. The use by respondents of the aforesaid 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 the purchase of substantial quantities of respondents' automobile paint and body repair services because of such erroneous and mistaken beliefs.

4. The aforesaid acts and practices of the respondents as found herein are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitutes, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That Earl Scheib, Inc., a corporation, and its officers, and Earl A. Scheib individually and as an officer of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of paint, or other products or in the painting and repairing of automobiles, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That merchandise is sold or services performed at a "special" price or words of similar import unless said price is a reduction from the customary, usual and regular price at which the merchandise has been sold, or the services performed by the respondents, in their recent regular course of business; or otherwise misrepresenting, in any manner, the amount of savings to purchasers of respondents' merchandise or services;

2. That any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or perform the services so offered at the stated price;

3. That any merchandise sold or services performed, or offered to be sold or performed, is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and completely disclosed.

It is further ordered, That the charges in the complaint that respondents have failed to give three-year guarantees with their \$19.95 paint job and that respondents have required that body work be done in order to obtain such three-year guarantee be dismissed.

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OPINION OF THE COMMISSION

MAY 24, 1963

By MACINTYRE, *Commissioner*:

This matter is before the Commission for consideration of respondents' exception to Paragraph Two of the order to cease and desist contained in the hearing examiner's initial decision filed December 4, 1962. The provision which respondents find objectionable prohibits them from representing directly or by implication:

That any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or perform the services so offered at the stated price.

The respondents claim that this order is too broad in its terms in that it goes beyond the scope of the facts upon which it is based and that it is vague and uncertain and does not apprise them of their obligation to comply.

The facts upon which this prohibition is based as revealed by the record can be briefly stated. The respondents operate a nationwide chain of automobile painting shops. While their regular and usual price of painting an automobile is \$29.95, they on occasion advertise to paint "any car" in a "variety of colors" for a limited time for \$19.95. The hearing examiner found upon reliable evidence that one of the purposes of this special advertising offer was to entice prospective customers into the respondents' paint shops, and to there try to sell them the \$29.95 paint job. The evidence reveals that respondents used two techniques to switch customers to the more expensive job. Salesmen were instructed to advise prospective customers and did advise them that the paint used in the \$19.95 job was inferior to that used in the higher priced job. They also disparaged it by advising customers that it was a flat paint and that it did not contain silicones. The other procedure used was to offer the prospective customer such a limited choice of colors that they would, upon their own volition, ask for the more expensive paint job. The record reveals that some of respondents' outlets offered the prospects only two colors, and apparently the maximum offered by any outlet was ten colors. The colors themselves were apparently not very desirable, for one witness described them as "off" colors, "flesh" colors, and colors you do not ordinarily see on cars. Another described the colors as "hideous."

It is the Commission's conclusion based upon its review of the facts in evidence, that the primary purpose of the \$19.95 paint job advertising was to induce prospects to call at respondents' places of business where an attempt would be made to switch them to the higher

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priced \$29.95 job. This is, in short, a typical "bait and switch" promotion scheme, and it does violate the Federal Trade Commission Act.

Respondents suggest an order which would merely "prohibit the use of any misrepresentation by advertising the availability of colors when such number of colors is not actually available." While this suggestion has merit in that it is specific, it is much too narrow to cope with the bait advertising practices utilized by respondents. It is the Commission's view that bait advertising orders should inveigh against failure to disclose any material facts in advertisements designed to lure prospects to the advertisers' places of business for the purpose of obtaining leads or prospects for the sale of merchandise higher in price than that advertised. To accomplish these ends, we shall enter an order in lieu of Paragraph Two of the hearing examiner's order which will direct respondents to cease and desist from:

2. Advertising or offering to paint an automobile at an attractively low price for the purpose of obtaining leads or prospects for the sale of a more expensive painting job, unless all material details of the low price job, including the colors and comparative quality of paints available, are clearly and conspicuously disclosed.

While respondents have not excepted to Paragraph One of the initial decision's order to cease and desist, we note the meaning of this provision is clouded by its uncertain construction. To correct this deficiency and without intending thereby to affect in any manner its scope, the Commission has modified Paragraph One and will set aside the hearing examiner's version.

With the exception of Paragraphs One and Two of the order to cease and desist, the initial decision of the hearing examiner is adopted as the decision of the Commission.

FINAL ORDER

OCTOBER 22, 1963

Pursuant to § 4.22(c) of the Commission's Rules of Practice, published May 16, 1962, 27 Fed. Reg. 4600, 4621 (superseded August 1, 1963), respondents were duly served with the Commission's decision on respondents' exception to the hearing examiner's initial decision and with an order affording them the opportunity to file within twenty (20) days any exceptions they may have to the terms of the Commission's Proposed Final Order; and

Respondents having filed no exceptions to said Proposed Final Order within the twenty (20) day time allotted therefor, the Pro-

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posed Final Order becomes, and is hereby issued as, the Final Order of the Commission:

It is ordered, That Earl Scheib, Inc., a corporation, and its officers, and Earl A. Scheib, individually and as an officer of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of paint, or other products or in the painting and repairing of automobiles, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "special" or any word or words of similar import, in advertising or sales literature, to refer to any price charged for any merchandise or services, unless such price constitutes a reduction from the customary, usual and regular price at which the merchandise has been sold, or the services performed by the respondents, in their recent regular course of business; or otherwise misrepresenting, in any manner, the amount of savings to purchasers of respondents' merchandise or services.

2. Advertising or offering to paint an automobile at an attractively low price for the purpose of obtaining leads or prospects for the sale of a more expensive painting job, unless all material details of the low price job, including the colors and comparative quality of paints available, are clearly and conspicuously disclosed.

3. Representing, directly or by implication, that any merchandise sold or services performed, or offered to be sold or performed, is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and completely disclosed.

It is further ordered, That the charges in the complaint that respondents have failed to give three-year guarantees with their \$19.95 paint job and that respondents have required that body work be done in order to obtain such three-year guarantee be dismissed.

It is further ordered, That the hearing examiner's initial decision, excepting Paragraphs One and Two of the order to cease and desist which are set aside, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That 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 set forth herein.

Complaint

IN THE MATTER OF

THE KRISTEE PRODUCTS COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-610. Complaint, Oct. 22, 1963—Decision, Oct. 22, 1963*

Consent order requiring Akron, Ohio, distributors of household and automotive merchandise to cease making a variety of misrepresentations by brand names and advertising, including false claims that their nonmetallic so-called "PLASTIC ALUMINUM" products were composed principally of aluminum; and false representations in catalogs, display outfits and circulars that aforesaid products were a plastic metal and formed a hardened metal when used; that "MIRACLE WALL CLEANER" cleaned wallpaper, painted walls, etc. "LIKE MAGIC * * * Instantly * * *"; and that their "NEW BATTERY LIFE" eliminated recharging or buying new batteries and was "Absolutely guaranteed."

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 The Kristee Products Company, a corporation, and William C. Krisher, Oliver W. Lutes, Harold L. Zimmerman and Rose O. Muck, 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 The Kristee Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 44 North Summit Street in the city of Akron, State of Ohio.

Respondents William C. Krisher, Oliver W. Lutes, Harold L. Zimmerman and Rose O. Muck are officers of the corporate respondent. They formulate, direct and control the policies, 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 for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of household merchandise and automotive merchandise, including products designated "KRISTEE PLASTIC ALUMINUM" or "DURO PLASTIC