

the entrant;

2. Representing that such contest aids, materials, or services may be used as entries in competitive contests where inconsistent with the rules of such contests.

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
ANNE STARR, INC., ET AL.

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

Docket C-612. Complaint, Oct. 23, 1963—Decision, Oct. 23, 1963

Consent order requiring operators of a ladies' specialty shop in Quincy, Mass., to cease violating the Textile Fiber Products Identification and Wool Products Labeling Acts by failing to label textile fiber products with required information and by removing identifying labels prior to final sale; to cease violating the Fur Products Labeling Act by failing to show on labels the true animal name of furs, when furs were artificially colored and when they were "Natural", and to comply with other labeling requirements; substituting nonconforming labels for those originally affixed to fur products; and failing to keep required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, the Wool Products Labeling Act of 1939 and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Anne Starr, Inc., a corporation, and Anne Starr, individually and as an officer of said corporation, and Sol Ross, individually and as General Manager of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, the Wool Products Labeling Act of 1939 and the Fur 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. Respondent Anne Starr, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts.

Respondent Anne Starr is the President of the corporate respondent and respondent Sol Ross is the General Manager of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

The respondents operate a ladies' specialty shop and retail textile fiber products, wool products and fur products with their office and principal place of business located at Parkingway, Quincy, Massachusetts.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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PAR. 3. Certain of said textile fiber products, were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

PAR. 4. After certain textile fiber products were shipped in commerce, respondents have removed, or caused or participated in the removal of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to such products, prior to the time such textile fiber products were sold and delivered to the ultimate consumer, in violation of Section 5(a) of said Act.

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act 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.

PAR. 6. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, wool products, as "commerce" and "wool products" are defined in said Act.

PAR. 7. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under Section 4(a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form as required by the Rules and Regulations promulgated under said Act.

PAR. 8. Respondents with the intent of violating the provisions of the Wool Products Labeling Act of 1939 have removed or caused or participated in the removal of the stamp, tag, label or other identification required by the Wool Products Labeling Act of 1939 to be affixed to wool products subject to the provisions of such Act, prior to the time such wool products were sold and delivered to the ultimate consumer, in violation of Section 5 of said Act.

PAR. 9. The acts and practices of the respondents as set forth above in Paragraphs 6, 7 and 8 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.

PAR. 10. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 11. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto were fur products without labels and fur products with labels which failed:

1. To show the true animal name of the fur used in the fur products.
2. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored when such was the fact.

PAR. 12. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(c) The term "Natural" was not used on labels to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(d) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 13. Respondents in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur

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products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 14. Respondents in substituting labels as provided for in Section 3(e) of the Fur Products Labeling Act, have failed to keep and preserve the records required, in violation of said Section 3(e) and Rule 41 of the Rules and Regulations promulgated under the said Act.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

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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, the Textile Fiber Products Identification Act, the Wool Products Labeling Act of 1939 and the Fur Products Labeling 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 respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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. Respondent, Anne Starr, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place

of business located at Parkingway, in the city of Quincy, Commonwealth of Massachusetts.

Respondents Anne Starr and Sol Ross are officers of said corporation, and their address is the same as that of said corporation.

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 Anne Starr, Inc., a corporation, and its officers, and Anne Starr, individually and as an officer of the said corporation, and Sol Ross, individually and as General Manager of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or in the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Anne Starr, Inc., a corporation, and its officers, and Anne Starr, individually and as an officer of the said corporation, and Sol Ross, individually and as General Manager of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing or participating in the removal of, the stamp, tag, label, or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer unless a substitute stamp, tag, label, or other means of identification

is affixed thereto in accordance with the provisions of Section 5(b) of said Act.

It is further ordered, That respondents Anne Starr, Inc., a corporation, and its officers, and Anne Starr, individually and as an officer of the said corporation, and Sol Ross, individually and as General Manager of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the introduction into commerce, or the offering for sale, sale, transportation or delivery for shipment, in commerce, of any wool product, as "wool product" and "commerce" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from 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.

It is further ordered, That respondents Anne Starr, Inc., a corporation, and its officers, and Anne Starr, individually and as an officer of the said corporation, and Sol Ross, individually and as General Manager of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing or participating in the removal of any stamp, tag, label or other means of identification affixed to any wool product subject to the provisions of the Wool Products Labeling Act of 1939 with intent to violate the provisions of the said Act.

It is further ordered, That respondents Anne Starr, Inc., a corporation, and its officers, and Anne Starr, individually and as an officer of the said corporation, and Sol Ross, individually and as General Manager of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required

to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches.

3. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.

4. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products, which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

5. Failing to set forth on labels the item number or mark assigned to fur products.

It is further ordered, That respondents Anne Starr, Inc., a corporation, and its officers, and Anne Starr, individually and as an officer of the said corporation, and Sol Ross, individually and as General Manager of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from:

A. Misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act, labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

B. Failing to keep and preserve the records required by the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in substituting labels as permitted by Section 3(e) of the said Act.

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.

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IN THE MATTER OF

A. C. NIELSEN COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-613. Complaint, Oct. 23, 1963—Decision, Oct. 23, 1963*

Consent order requiring the world's largest marketing and audience research organization—which in 1961 received over 90 percent of the gross billings of \$4,532,000 derived from the national radio and television audience measurement market—to cease its efforts to monopolize and restrain trade in the reports and ratings measuring such audiences, including restrictive agreements with competitors, acquiring competitors' customers and trade names, interfering with the development and use of competing electronic and mechanical measuring devices through threats of patent proceedings, harassment, coercion and otherwise, and sabotaging competitors' financing of such efforts.

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 A. C. Nielsen Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C.A. Sec. 45) 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 A. C. Nielsen Company (hereinafter referred to as Nielsen) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2101 Howard Street, Chicago 45, Illinois. It maintains four (4) operating subdivisions including Retail Index Service, Coupon Clearing House, Special Research Department and Broadcast. Annual sales are in excess of \$27,000,000. Respondent through its Broadcast subdivision is now and for many years last past has been, engaged in the production and sale of market research and audience research analyses, ratings and reports. Respondent is, by far, the largest organization in the world in both marketing research and audience research.

PAR. 2. The audience research operations of respondent consist of two services: (1) The Nielsen Radio Index (NRI) and the Nielsen Television Index (NTI) which measure the audience for national (network) programs on radio and television; and (2) various local services to measure local radio and television audiences. National

radio and television audience measurement services differ materially from local radio and television audience measurement services in terms of price, types of customers, sampling methods, what is measured, data collected and types of reports produced; these services are non-interchangeable. For the purpose of measuring national radio and television audiences, respondent employs, among other things, a patented electronic device known as an "Audimeter".

PAR. 3. The measurement of national audiences of network programs, which respondent has restrained and monopolized as hereinafter alleged, reflects and affects the listening and viewing habits of the 46 million homes in the United States with television sets and the 50 million homes in the United States with radios. Nielsen's reports and ratings of network programs significantly affect programming: they are an important factor in determining the way that an estimated \$805,000,000 is spent on network television advertising and \$47,000,000 on network radio advertising. Respondent's customers for its national radio and television audience measurement services include the principal broadcasting networks, advertising agencies, and advertisers.

PAR. 4. By means of the unlawful conduct hereinafter alleged, respondent has achieved a monopoly of the national radio and television audience measurement market. In 1961, the gross billings derived from that market were approximately \$4,532,000; Nielsen's share of this market was in excess of 90%.

PAR. 5. Respondent causes, and has caused, the aforesaid national radio and television audience measurement reports and ratings, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said reports in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of business in such commerce is and has been substantial.

PAR. 6. In the course and conduct of its business in commerce, respondent has been and would now be, in active competition with other corporations, firms and individuals engaged in the production and sale of national radio and television audience measurement reports and ratings, except that respondent, by the acts and practices are herein alleged, has foreclosed virtually all competition in the sale of such reports and ratings.

PAR. 7. Since 1946 and continuing to the present time, respondent has engaged, and is now engaging in a program, the purpose or effect of which has been and is now to monopolize, attempt to monop-

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olize and to restrain trade in the production and sale of reports and ratings measuring national radio and television audiences. As part of, pursuant to and in furtherance of the aforesaid program, respondent has entered into contracts and combinations in restraint of trade in both character and effect and has pursued and performed, and is now pursuing and performing, among other things, the following acts, policies and practices:

1. Entered into an agreement in 1950 with C. E. Hooper, Inc., then its principal competitor in the production and sale of national radio and television measurements, whereby it acquired all customers and tradenames used in connection with C. E. Hooper's production and sale of said measurements. As part of the aforesaid agreement C. E. Hooper agreed that it would not engage in the production and sale of national radio and television measurements for a substantial period of time.

2. Engrossed and aggregated and is now engrossing and aggregating patents and inventions of importance relating to the use of electronic and mechanical devices for measurement of national radio and television audiences with the effect of suppressing competition and restraining the use of any device designed to compete with the "Audimeter" and other Nielsen devices.

3. Systematically engaged in and threatened and is now systematically engaging in and threatening interferences, opposition, and other patent proceedings to harass and coerce and to discourage potential and actual competitors from developing and using electronic and mechanical devices for the purpose of measuring national radio and television audiences.

4. Disparaged and hindered and is now disparaging and hindering competitors' efforts to develop competitive electronic and mechanical devices for measuring national radio and television audiences and has attempted to impede and sabotage the financing of these competitive efforts.

PAR. 8. By reason of the aforesaid agreement with C. E. Hooper and the various other acts and practices hereinbefore alleged, respondent has:

1. Established and maintained and is now maintaining a monopoly in, and has unreasonably restrained and is now restraining, the production and sale of national radio and television audience measurement reports and ratings;

2. Eliminated and prevented and is now preventing its actual and potential competitors from engaging in the production and sale of national radio and television audience measurement reports and ratings;

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3. Fixed and maintained and is now maintaining arbitrary, artificial and non-competitive prices for national radio and television audience measurement reports and ratings;

4. Excluded and is now excluding other persons from the opportunity of engaging in the business of producing and selling national radio and television audience measurement reports and ratings;

5. Established and maintained and is now maintaining a monopoly of patents in the United States covering various electronic and mechanical devices for use in the measurement of national radio and television audiences;

6. Discouraged and impeded and is now discouraging and impeding the progress of science and the useful arts by using the patent laws of the United States for purposes inconsistent with their constitutional basis and for the purpose or with the effect of monopolizing or attempting to monopolize the production and sales of national radio and television audience measurement reports and ratings;

7. Deprived and is now depriving users and the public of the benefits of the competition that would exist in the national radio and television audience measurement market but for the unlawful acts and practices of respondent alleged herein.

PAR. 9. The acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public, have a dangerous tendency unduly to hinder competition, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of, and 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 respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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. Respondent, A. C. Nielsen Company, 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 2101 Howard Street, in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondent A. C. Nielsen Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the production and sale of radio and television audience measurement reports and ratings, data or information relating thereto, in commerce, as "Commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Entering into, or continuing in effect, any contract, agreement, or understanding which operates to eliminate, lessen, suppress, or restrain a competitor or competitors, or which operates to cause or induce the withdrawal of any firm or individual from the production and sale of such reports and ratings.

2. For a period of ten (10) years from the date of service of this order upon respondent by the Federal Trade Commission, acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, ownership or control of, or financial interest in, the business, physical assets, or goodwill, or any part thereof, or any capital stock or securities of any other person engaged in the production and sale of such reports and ratings without prior approval of the Federal Trade Commission.

3. Hindering efforts of competitors to develop or use electronic or mechanical devices for measuring radio and television audiences by attempting in any way to impede or interfere with the financing of such competitive efforts.

It is further ordered, That respondent make available to any applicant who applies therefor, a nonexclusive royalty-free license extending for a period of four (4) years and thereafter for the remaining term of the patent, a nonexclusive license, on the basis of payment of reasonable and nondiscriminatory royalties, to make, use and vend any mechanical or electronic device for the measurement of radio and television audiences, under any, some or all patents and

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patent applications pertaining to such devices now owned or controlled by respondent, or which are issued or applied for within four (4) years from the date of service of this order upon respondent. Respondent is furthermore ordered, for a period of four (4) years from the date of service of this order upon it, to waive and relinquish all right to the collection of royalties from all outstanding licenses to make, use and vend any mechanical or electronic device for the measurement of radio and television audiences, under any, some or all patents and patent applications pertaining to such devices now owned or controlled by respondent. Respondent is furthermore ordered to cease and desist from making any disposition, whether by transfer or otherwise, of any of said patents which would deprive it of the power or authority to grant such licenses, unless it sells, transfers or assigns such patents, and requires, as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee thereof shall observe the requirements of this provision of this order and the purchaser, transferee or assignee shall file with the Commission, prior to the consummation of said transaction, an undertaking to be bound by this provision of this order.

It is further ordered. That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

DYESS FURNITURE COMPANY, INC., ET AL.

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

Docket 8555. Complaint, Mar. 4, 1963—Decision, Oct. 24, 1963

Order requiring the corporate operator of a warehouse and a chain of four retail stores in Mobile and Selma, Ala., Biloxi, Miss., and Pensacola, Fla., and the four chainstores, to cease representing falsely in newspaper advertisements and other promotional material distributed to prospective customers that the furniture and other merchandise they sold had been purchased from railroad companies after being damaged in transit or classified as "salvage" for some other reason; and that the selling price of their goods was "70%" less than the usual retail price in their trade areas.

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 Dyess Furniture

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Company, Inc., a corporation, and Railroad Furniture Salvage of Biloxi, Inc., Railroad Furniture Salvage of Mobile, Inc., Railroad Furniture Salvage of Pensacola, Inc., Railroad Furniture Salvage of Selma, Inc., corporations, and Albert W. Dyess, individually and as an officer of each of said corporations, 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 Dyess Furniture Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 73 Lipscomb Street, in the city of Mobile, State of Alabama.

Respondent Railroad Furniture Salvage of Biloxi, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal office and place of business located at 600 W. Railroad Avenue, in the city of Biloxi, State of Mississippi.

Respondent Railroad Furniture Salvage of Mobile, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 73 Lipscomb Street, in the city of Mobile, State of Alabama.

Respondent Railroad Furniture Salvage of Pensacola, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 725 West Garden Street, in the city of Pensacola, State of Florida.

Respondent Railroad Furniture Salvage of Selma, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 1505 Water Avenue, in the city of Selma, State of Alabama.

Respondent Albert W. Dyess is the President of all of the corporate respondents. He formulates, directs and controls the acts and practices of all of the corporate respondents, including the acts and practices herein set forth. His office and principal place of business is located at 73 Lipscomb Street, in the city of Mobile, State of Alabama.

PAR. 2. Respondents operate a warehouse and a chain of four retail stores and have been and are now engaged in the advertising, offering for sale, sale and distribution of furniture and other articles

of merchandise to members of the purchasing public by and through newspaper advertisements and other kinds of promotional material.

Corporate respondents Railroad Furniture Salvage of Biloxi, Inc., Railroad Furniture Salvage of Mobile, Inc., Railroad Furniture Salvage of Pensacola, Inc., and Railroad Furniture Salvage of Selma, Inc., are the aforesaid four retail stores and will be sometimes hereinafter referred to collectively as the R.R.F.S. retail stores.

PAR. 3. In the course and conduct of its business, respondent Dyess Furniture Company, Inc., has been and does now formulate, direct and control the acts and practices of the R.R.F.S. retail stores, including but not limited to the formulation, direction and control of the purchasing, warehousing, pricing, advertising, personnel, accounting and financial activities of the R.R.F.S. retail stores.

In the further course and conduct of its business, respondent, Dyess Furniture Company, Inc., has been and is now transmitting and receiving, by the United States mails and by other means, newspaper advertising, mats, checks, sales memoranda and other written documents to and from respondents' various places of business in the United States.

In the further course and conduct of its business, respondent Dyess Furniture Company, Inc., has caused and now causes, the aforesaid articles of merchandise to be shipped from its aforesaid place of business in the State of Alabama, and from the various places of businesses of its suppliers located in other States of the United States, to the R.R.F.S. retail stores located in various States of the United States.

In the further course and conduct of their business, respondents R.R.F.S. retail stores have been and are now engaged in disseminating and causing to be disseminated in newspapers of interstate circulation, advertisements designed and intended to induce sales of their merchandise.

In the further course and conduct of their business, respondents R.R.F.S. retail stores have caused and now cause the aforesaid articles of merchandise to be shipped from their aforesaid places of business to members of the purchasing public located in various other States of the United States.

All of the respondents have been and are operated as a single economic enterprise; all of the aforesaid acts and practices have been engaged in in the course and conduct of respondents' business; all of the aforesaid acts and practices have a close and substantial relationship to the interstate flow of respondents' business and all respondents have been and are engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of the various articles of merchandise offered for sale and sold by them, respondents have made and are now making numerous statements and representations with respect to the origin and character of said merchandise and the savings afforded to purchasers of said merchandise. Said statements and representations have been made in newspaper advertisements and other kinds of promotional material distributed to prospective customers. Among and typical of the statements and representations contained in said advertisements, but not all inclusive thereof, are the following:

RAILROAD FURNITURE SALVAGE
BRAND NEW—SLIGHTLY DAMAGED—CHEAP FOR CASH
121 Beauregard St.—Across from GM&O Terminal
SAVE ON ALL
FURNITURE
HERE . . . 30, 40,
EVEN 70%

PAR. 5. Through the use of the aforesaid corporate and trade names of the R.R.F.S. retail stores, and through the use of the aforesaid statements and representations and others similar thereto, but not specifically set forth, respondents have represented, directly or indirectly:

(a) That Railroad Furniture Salvage of Biloxi, Inc., Railroad Furniture Salvage of Mobile, Inc., Railroad Furniture Salvage of Pensacola, Inc., and Railroad Furniture Salvage of Selma, Inc., are companies which offer to sell and sell furniture and other articles of merchandise all of which has been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by said railroad companies.

(b) That the price at which respondents sell a portion of the furniture and other articles of merchandise they sell is "70%" less than the price at which said merchandise is usually and customarily sold at retail in all respondents' trade areas; and that purchasers of respondents' said merchandise realize a saving of "70%" when they purchase said merchandise from the respondents.

PAR. 6. In truth and in fact:

(a) Railroad Furniture Salvage of Biloxi, Inc., Railroad Furniture Salvage of Mobile, Inc., Railroad Furniture Salvage of Pensacola, Inc., and Railroad Furniture Salvage of Selma, Inc., are not companies which offer to sell and sell furniture and other articles of merchandise all of which has been purchased from railroad companies after such merchandise has been damaged while in transit

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or for some other reason classified as "salvage" by said railroad companies. Such sales have not constituted and do not now constitute a significant portion of respondents' business.

(b) The price at which respondents sell a portion of the furniture and other articles of merchandise they sell is not "70%" less than the price at which said merchandise is usually and customarily sold at retail in all respondents' trade areas; and purchasers of respondents' said merchandise do not realize a saving of "70%" when they purchase said merchandise from the respondents.

Said statements and representations were, therefore, false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 8. The use by the 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' articles of merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the 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, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

Mr. George J. Lubberda and Mr. Morton Nesmith supporting the complaint.

Mr. Pierre Pelham, of Mobile, Ala., for respondents.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against respondents on March 4, 1963, charging them with having engaged in unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the Federal Trade Commission Act. The complaint alleges in effect that respondents have misrepresented the source or character of the furniture and other merchandise they sell, as well as the savings available to customers.

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After being served with the complaint, respondents appeared by counsel and, following the denial of a motion for a more definite statement, filed answer denying any violation of law but admitting certain factual allegations concerning the nature of their business and their operations in "commerce", as that term is defined in the Federal Trade Commission Act.

A prehearing conference was held in Washington, D.C., May 17, 1963, and hearings were scheduled to begin July 16, 1963, in Mobile, Alabama. However, as a result of discussions initiated at the prehearing conference, counsel engaged in negotiations designed to obviate the necessity of hearings.

As a result of such negotiations, counsel filed, on July 8, 1963, a "Joint Motion to Accept Settlement Agreement", accompanied by a "Settlement Agreement." The agreement has been signed by all the respondents and their counsel and by counsel supporting the complaint. It has been approved by the Chief, Division of General Advertising, Bureau of Deceptive Practices, and by the Director of that Bureau.

In addition to setting forth an agreed statement of facts covering all the issues in the case, the agreement includes a waiver by respondents of any further procedural steps and of all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to the agreement. The agreement provides that if it is accepted by the hearing examiner, he may, without further notice to the respondents, issue an initial decision containing findings of fact and conclusions of law based upon this agreement, together with an order to cease and desist agreed upon by the parties.

Upon consideration of the agreement and the joint motion that it be accepted, the hearing examiner finds that it provides an appropriate basis for the disposition of this case. Although the agreed order to cease and desist involves some modification of the order set forth in the "Notice" section of the complaint, it appears that it is adequate to reach the practices found to be unlawful.

Accordingly, the joint motion is granted, and the agreement is accepted by the hearing examiner as a basis for this initial decision. On consideration of the agreement, together with the pleadings, the hearing examiner finds that this proceeding is in the interest of the public and, on the basis of the entire record, makes the following findings of fact and conclusions drawn therefrom, and issues the following order:

FINDINGS OF FACT

1. Respondent Dyess Furniture Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the

laws of the State of Alabama, with its principal office and place of business located at 73 Lipscomb Street, in the city of Mobile, State of Alabama.

Respondent Railroad Furniture Salvage of Biloxi, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal office and place of business located at 600 W. Railroad Avenue, in the city of Biloxi, State of Mississippi.

Respondent Railroad Furniture Salvage of Mobile, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 73 Lipscomb Street, in the city of Mobile, State of Alabama.

Respondent Railroad Furniture Salvage of Pensacola, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 725 West Garden Street, in the city of Pensacola, State of Florida.

Respondent Railroad Furniture Salvage of Selma, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 1505 Water Avenue, in the city of Selma, State of Alabama.

Respondent Albert W. Dyess is the president of all of the corporate respondents. He formulates, directs and controls the acts and practices of all of the corporate respondents, including the acts and practices herein set forth. His office and principal place of business is located at 73 Lipscomb Street, in the city of Mobile, State of Alabama.

2. Respondents operate a warehouse and a chain of four retail stores and have been and are now engaged in the advertising, offering for sale, sale and distribution of furniture and other articles of merchandise to members of the purchasing public by and through newspaper advertisements and other kinds of promotional material. The chain comprises corporate respondents Railroad Furniture Salvage of Biloxi, Inc., Railroad Furniture Salvage of Mobile, Inc., Railroad Furniture Salvage of Pensacola, Inc., and Railroad Furniture Salvage of Selma, Inc., sometimes referred to collectively in this decision as the R.R.F.S. retail stores.

3. In the course and conduct of its business, respondent Dyess Furniture Company, Inc., has been and is now formulating, direct-

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ing and controlling the acts and practices of the R.R.F.S. retail stores, including but not limited to the formulation, direction and control of the purchasing, warehousing, pricing, advertising, personnel, accounting and financial activities of the R.R.F.S. retail stores. In the further course and conduct of its business, respondent, Dyess Furniture Company, Inc., has been and is now transmitting and receiving, by the United States mails and by other means, newspaper advertising, mats, checks, sales memoranda and other written documents to and from respondents' various places of business in the United States. In the further course and conduct of its business, respondent Dyess Furniture Company, Inc., has caused, and now causes, furniture and other articles of merchandise to be shipped from its place of business in the State of Alabama, and from the various places of businesses of its suppliers located in other States of the United States, to the R.R.F.S. retail stores located in various States of the United States.

In the further course and conduct of their business, respondents R.R.F.S. retail stores have been and are now engaged in disseminating and causing to be disseminated in newspapers of interstate circulation, advertisements designed and intended to induce sales of their merchandise. In the further course and conduct of their business, respondents R.R.F.S. retail stores have caused and now cause such articles of merchandise to be shipped from their places of business to members of the purchasing public located in various other States of the United States.

All of the respondents have been and are operated as a single economic enterprise; all of the acts and practices here described have been engaged in in the course and conduct of respondents' business; all such acts and practices have a close and substantial relationship to the interstate flow of respondents' business; and all respondents have been and are engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business, and for the purpose of inducing the sale of the various articles of merchandise offered for sale and sold by them, respondents have made and are now making numerous statements and representations to prospective purchasers of their merchandise. Such statements and representations have been made in newspaper advertisements and other kinds of promotional material distributed to prospective customers. Among and typical of the statements and representations contained

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in such advertisements, but not all inclusive thereof, are the following:

RAILROAD FURNITURE SALVAGE
BRAND NEW—SLIGHTLY DAMAGED—CHEAP FOR CASH
121 Beaugard St.—Across from GM&O Terminal
SAVE ON ALL
FURNITURE
HERE . . . 30, 40,
EVEN 70%

except that the respondents do not now make and have not for the past year made reference to a "70%" saving in advertisements. Respondents, however, are now and have been for some time last past using such advertisements direct or implied savings claims such as comparative price claims.

5. Through the use of the corporate and trade names of the R.R.F.S. retail stores, and through the use of the statements and representations set forth in Paragraph 4, and others similar thereto but not specifically set forth, respondents have represented, directly or indirectly:

(a) That Railroad Furniture Salvage of Biloxi, Inc., Railroad Furniture Salvage of Mobile, Inc., Railroad Furniture Salvage of Pensacola, Inc., and Railroad Furniture Salvage of Selma, Inc., are companies which offer to sell and sell furniture and other articles of merchandise all of which has been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies.

(b) That the price at which respondents sell a portion of the furniture and other articles of merchandise they sell is "70%" less than the price at which such merchandise is usually and customarily sold at retail in all respondents' trade areas; and that purchasers of respondents' merchandise realize a saving of "70%" when they purchase such merchandise from the respondents.

6. In truth and in fact:

(a) Railroad Furniture Salvage of Biloxi, Inc., Railroad Furniture Salvage of Mobile, Inc., Railroad Furniture Salvage of Pensacola, Inc., and Railroad Furniture Salvage of Selma, Inc., are not companies which offer to sell and sell furniture and other articles of merchandise all of which has been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies.

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During the past 10 years respondents' sales of actual railroad salvage merchandise have been de minimis and such sales have not constituted and do not now constitute a significant portion of respondents' business.

(b) The price at which respondents sell a portion of the furniture and other articles of merchandise they sell is not "70%" less than the price at which such merchandise is usually and customarily sold at retail in all respondents' trade areas; and purchasers of respondents' merchandise do not realize a saving of "70%" when they purchase such merchandise from the respondents.

Such statements and representations were, therefore, false, misleading and deceptive.

7. "Railroad Furniture Salvage" are the principal words in the corporate and trade names of the R.R.F.S. furniture stores and constitute an asset of substantial value to respondents by virtue of respondents' long and unchallenged usage thereof and investment therein. Railroad Furniture Salvage was adopted by individual respondent Albert W. Dyess as the corporate and trade name of the Mobile, Alabama, furniture store in 1949, the Biloxi, Mississippi, furniture store in 1951, the Selma, Alabama, furniture store in 1952, and the Pensacola, Florida, furniture store in 1952, and the use of that trade name by respondents has been unchallenged and continuous since its adoption in each locale. Respondents have expended an average sum of \$60,000 annually during the past 10 years in the advertisement and promotion of that trade name, and the investment of respondents therein is substantial.

8. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of articles of merchandise of the same general kind and nature as those sold by respondents.

9. The use by the respondents of the false, misleading and deceptive statements, representations and practices referred to above has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' articles of merchandise by reason of such erroneous and mistaken belief.

CONCLUSIONS OF LAW

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

2. The complaint states a cause of action, and this proceeding is in the public interest.

3. The acts and practices of the respondents, as herein found, 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(a)(1) of the Federal Trade Commission Act.

4. The agreed order is adequate to stop the practices found to be unlawful. Although it involves some modification of the form of order that the Commission stated, in the "Notice" section of the complaint, it had reason to believe should issue if the facts were found to be as alleged in the complaint, the examiner has concluded that the order being entered by agreement of the parties is equally effective in achieving the corrective action required.

Whereas Paragraph 1 of the proposed order prohibited use of the words "Railroad Furniture Salvage" as part of respondents' corporate or trade names, the agreed order runs only against use of the word "Salvage." The misrepresentation alleged in Paragraphs 5(a) and 6(a) of the complaint, and found in Paragraphs 5(a) and 6(a) of the Findings of Fact, stems from use of the word "Salvage" in combination with the words "Railroad Furniture." Elimination of the word "Salvage" is sufficient to cure the misrepresentation thus charged and found. There is no basis in this record for a conclusion that the challenged misrepresentation would flow solely from use of the word "Railroad" in the corporate or trade name.

Subject to the restrictions contained in Paragraphs 2 and 3 of the order*, the agreed order thus permits nondeceptive use of the word "Railroad" in the corporate or trade names. The result is to preserve an asset of value to respondents**, while at the same time eliminating the misrepresentation stemming from use of the word "Salvage."

In the proposed order, the prohibition in Paragraph 2 was applicable "when such merchandise has not in fact been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as 'salvage' by said railroad companies." In the agreed order, this clause is deleted,

*Paragraph 2 broadly prohibits any representation through the use of the words "Railroad Furniture Salvage" or otherwise, that respondents' merchandise has been purchased from railroad companies after being damaged while in transit or for some other reason classified as salvage by a railroad company. Paragraph 3 prohibits any misrepresentation of the "source or character" of respondents' merchandise.

**In addition to noting the obvious value of retaining part of a trade name familiar to the public by virtue of long usage (see Par. 7, Findings of Fact), respondents also take the position that the word "Railroad" serves to identify the location of the stores. See respondents' Answer, Par. 10(b), 11 and 15, and Tr. 13-14, 24 and 26 (Prehearing Conference).

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and there is substituted therefor a proviso "that it shall be a defense in any enforcement proceeding for respondent[s] to establish the truth of such representation." In the opinion of the hearing examiner this change does not impair the effectiveness of the order in any way.

In summary, it is the conclusion of the hearing examiner that the agreed order is appropriate in all respects in the light of the facts found, and it is adopted as the order to be entered in disposition of this proceeding.

ORDER

It is ordered, That respondents Dyess Furniture Company, Inc., a corporation, and its officers, Railroad Furniture Salvage of Biloxi, Inc., a corporation, and its officers, Railroad Furniture Salvage of Mobile, Inc., a corporation, and its officers, Railroad Furniture Salvage of Pensacola, Inc., a corporation, and its officers, Railroad Furniture Salvage of Selma, Inc., a corporation, and its officers, and Albert W. Dyess, individually, and as an officer of each of said corporations, 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 furniture or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "SALVAGE" or any other word or words of similar import or meaning as part of their respective corporate names or trade names.
2. Representing, directly or by implication, through the use of the words "RAILROAD FURNITURE SALVAGE", or any other word or words of similar import or meaning, in advertising or in any other manner, that said merchandise has been purchased from railroad companies after said merchandise has been damaged while in transit or for some other reason classified as "salvage" by said railroad companies: *Provided, however*, That it shall be a defense in any enforcement proceeding for respondents to establish the truth of such representation.
3. Misrepresenting, in any manner, directly or by implication, the source or character of any of said merchandise.
4. Representing, directly or by implication, through the use of the words "SAVE ON ALL FURNITURE HERE * * * EVEN 70%", or any other word or words of similar import or meaning, that any saving in a designated amount from a trade area price is afforded in the purchase of merchandise unless the price at which it is

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offered is lower, in the amount or amounts claimed, than the generally prevailing price or prices at which said merchandise is sold in the trade area or areas in which the representation is made.

5. Misrepresenting, in any manner, directly or by implication, any savings available to purchasers of respondents' merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT
OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, effective August 1, 1963, the initial decision of the hearing examiner shall, on the 24th day of October 1963, 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 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

RICH PLAN CORPORATION ET AL.

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

Docket C-614. Complaint, Oct. 31, 1963—Decision, Oct. 31, 1963

Consent order requiring Dallas, Tex., operators of their so-called "Rich Plan" for selling freezers and food through nine divisions in Texas, Louisiana, Florida, Oklahoma and Arizona, under which they licensed some 141 dealers to sell freezers and food under their supervision, to cease representing falsely—in advertising in newspapers and magazines, in circulars, brochures, canned sales talk furnished dealers and otherwise—that purchasers of their "Plan" could buy both food and freezer for what they had been paying for food alone, would save enough on food purchases to pay for the freezer and would receive the freezer free, and that they had representatives throughout the country who would give buyers continued service; and to cease inducing customers to sign negotiable instruments in connection with purchases without informing them when such instruments were to be sold to finance companies or other commercial institutions.

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 Rich Plan Corpora-

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tion, a corporation, and Rich Plan of New Orleans, Inc., a corporation, hereinafter sometimes 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 Rich Plan Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its principal office and place of business located at 5307 East Mockingbird Lane in the city of Dallas, State of Texas.

Respondent Rich Plan of New Orleans, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 3203 Metairie Road, in the city of Metairie, State of Louisiana.

PAR. 2. Respondent Rich Plan Corporation is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of freezers, food and a freezer-food plan through nine wholly owned divisions which are located in the following cities:

- Austin, Texas.
- Alexandria, Louisiana.
- Dallas, Texas.
- Longview, Texas.
- Nashville, Tennessee.
- Orlando, Florida.
- Fort Lauderdale, Florida.
- Oklahoma City, Oklahoma.
- Phoenix, Arizona.

Additionally, respondent Rich Plan Corporation has licensed approximately 141 individuals, firms and corporations, hereinafter referred to as dealers, to promote, distribute and sell freezers and food under the trade name "Rich Plan". Said dealers agree to purchase their requirements of freezers and food from and through the respondent Rich Plan Corporation, and to sell freezers and food only in areas designated by respondent Rich Plan Corporation. The licensed dealers conduct their respective businesses under the supervision of and with the assistance and advice of respondent Rich Plan Corporation.

PAR. 3. Respondent Rich Plan of New Orleans, Inc., is a Rich Plan Corporation licensed dealer and is now, and for some time last

past has been, engaged in the offering for sale, sale and distribution of freezers, food and a freezer-food plan, under the trade name "Rich Plan".

PAR. 4. In the course and conduct of its business, as aforesaid, respondent Rich Plan Corporation now causes, and for some time last past has caused, freezers and food to be shipped from its place of business in the State of Texas to its wholly owned divisions and to dealers, including respondents Rich Plan of New Orleans, Inc., located in various other States of the United States.

In the further course and conduct of their business, advertising material, canned sales talk, price lists, food recipes, invoices, contracts, letters, checks, and other written instruments and communications have been and are being, exchanged by and between the Respondent Rich Plan Corporation, located in the State of Texas, and Rich Plan of New Orleans, Inc., located in the State of Louisiana.

The activities of respondents as herein described constitute acts and practices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and 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 freezers, food and freezer-food plans.

PAR. 6. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements 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 newspapers, magazines and other advertising media, and by means of circulars and brochures, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of food as the term "food" is defined in the Federal Trade Commission Act; and have disseminated, and caused the dissemination of, advertisements by various means, including those aforesaid, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of freezers and food in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. By means of advertisements disseminated as aforesaid, and by oral statements of respondents' sales representatives or agents, respondents have represented that:

1. Purchasers of respondents' freezer-food plan can purchase their food requirements and a freezer for the same or less money than such purchasers have been paying for food alone;

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2. Purchasers of respondents' freezer-food plan can save enough money on the purchase of their food to pay for a freezer;

3. Purchasers will receive a freezer free if they purchase the food plan;

4. Respondent Rich Plan Corporation has representatives throughout the country and therefore purchasers of respondents' freezer-food plan will have continued service if they move to any other area of the country.

PAR. 8. In the promotion and sale of respondents' freezer-food plan, respondents' sales representatives or agents fail to reveal that the instruments signed by said purchasers are negotiable, that said instruments will be transferred to finance companies who will become holders in due course and as such can enforce payment without regard to any personal defense that such purchasers could assert as to respondents.

PAR. 9. In truth and in fact:

1. Respondents' food prices are not so low that purchasers of respondents' freezer-food plan can purchase their food requirements and a freezer for the same or less money than such purchasers have been paying for food alone.

2. Purchasers of respondents' freezer-food plan do not save enough money on the purchase of their food to pay for a freezer.

3. Purchasers of respondents' freezer-food plan do not receive a freezer free. They are required to pay for the freezer they receive.

4. Respondent Rich Plan Corporation does not have representatives everywhere in the United States and therefore purchasers of respondents' freezer-food plan will not have continued service if they move to certain other areas of the country.

Therefore, the advertisements referred to in Paragraph 6 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, and the statements and representations referred to in Paragraph 7 were, and now are false misleading and deceptive.

PAR. 10. In the absence of advice that the instruments executed by them, for the purchase of the freezer or the food, are negotiable and will be sold to finance companies or other commercial institutions, and in the absence of being informed that they will have no personal defense against enforced collection by holders in due course, purchasers do not expect said executed instruments to be sold to finance companies or other commercial institutions, and said purchasers do not realize that they have no personal defense against collection by holders in due course. The failure of the respondents

to disclose all of the foregoing has the tendency and capacity to deceive said purchasers and constitutes false, misleading and deceptive practices and unfair methods of competition.

PAR. 11. By distributing advertising, canned sales talk, and other materials to Rich Plan licensed dealers and by various other means, respondent Rich Plan Corporation has placed in the hands of its licensed dealers the means and instrumentalities by and through which they may mislead the public as aforesaid.

PAR. 12. 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 freezers, food and freezer-food plans from the respondents' by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of the respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were, and are, all to the prejudice and injury of the public, and the respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act, and in violation of Sections 5 and 12 of said Act.

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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 respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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-

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

1. Respondent Rich Plan Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 5307 East Mockingbird Lane, in the city of Dallas, State of Texas.

Respondent Rich Plan of New Orleans, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 3203 Metairie Road, in the city of Metairie, State of Louisiana.

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

PART I

It is ordered, That respondent Rich Plan Corporation, a corporation, and its officers, and respondent Rich Plan of New Orleans, Inc., a corporation, and its officers, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of freezers, food or freezer-food plans in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that:
 - a. Purchasers of the freezer-food plan will receive the same amount of food and a freezer for the same or less money than the purchasers have been paying for food alone.
 - b. Purchasers of the freezer-food plan will save enough money on the purchase of the food to pay for the freezer.
 - c. Purchasers of the freezer-food plan will receive a freezer free if they subscribe to the freezer-food plan.
 - d. Purchasers of the freezer-food plan of respondent Rich Plan Corporation will have continued service regardless of the area or part of the country to which such purchasers may move.
2. Misrepresenting in any manner the areas in which service under respondents' freezer-food plan is available.
3. Misrepresenting in any manner the savings realized by the purchasers of a freezer-food plan, freezer, or food.

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4. Inducing individuals to sign any negotiable instrument in connection with a freezer or food plan if said instrument is to be sold to a finance company or other commercial institution unless it is clearly and conspicuously stated on the face of said instrument that it is to be sold to a finance company or other commercial institution and that the payer or payers thereof will be obligated to make full payment on said instrument without regard to any personal defense that said payer or payers could assert against respondents.

PART II

It is further ordered, That respondent Rich Plan Corporation, a corporation, and its officers, and respondent Rich Plan of New Orleans, Inc., a corporation, and its officers, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of food or any purchasing plan involving food do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in Paragraphs 1 through 3 of PART I of this Order.

2. Disseminating, or causing the dissemination of any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any food, or any purchasing plan involving food, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in Paragraphs 1 through 3 of PART I of this Order.

PART III

It is further ordered, That respondent Rich Plan Corporation, a corporation, and its officers, and respondent Rich Plan of New Orleans, Inc., a corporation, and its officers, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of freezers, food or freezer-food plans in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Furnishing or placing in the hands of others, advertising, canned sales talk, or other materials by and through which they

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may mislead or deceive the public as prohibited in Paragraphs 1 through 3 of PART I of this Order.

2. Transmitting, orally or otherwise, any information to others containing any of the representations or misrepresentations prohibited by Paragraphs 1 through 3 of PART I of this Order.

It is further ordered, That the respondents herein shall, within