

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

S. KLEIN DEPARTMENT STORES, INC., ET AL.

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

Docket C-759. Complaint, June 15, 1964—Decision, June 15, 1964

Consent order requiring a New York City operator of department stores in New York and New Jersey, three retailers of men's wearing apparel in Miami Beach, Fla., and two manufacturers in New York City, to cease misrepresenting the source of men's wearing apparel sold by Klein by carrying out their planned course of action pursuant to which the Florida retailers transmitted their labels and price tickets to aforesaid manufacturers in New York City for attachment to articles of merchandise, including men's sports wear, sent directly by the manufacturer to the respondent S. Klein's Department Stores in New York and New Jersey; and requiring Klein's

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operator to cease representing falsely, by means of said attached labels and price tickets and in advertisements in newspapers, that the stock of "MEN'S DELUXE SUMMER AND RESORT WEAR" so labeled was the same merchandise as that stocked and offered for sale by respondent retailers in Miami Beach.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof and hereinafter more particularly designated and described, have violated the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45) and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint pursuant to its authority thereunder and charging as follows:

PARAGRAPH 1. Respondent S. Klein Department Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at Union Square, in the city of New York, State of New York.

PAR. 2. Respondent S. Klein Department Stores, Inc., is now, and at all times material hereto has been, engaged in the business of operating department stores selling goods, wares, and articles of merchandise, including men's wearing apparel, to the public, in competition with other corporations, firms and individuals also engaged in selling to the public goods, wares, and articles of merchandise of the same kind and nature as that sold by said respondent. Said respondent owns and operates department stores located in the cities or counties of New York, Westchester and Hempstead, in the State of New York, and in the city of Newark, in the State of New Jersey.

In the course and conduct of its business, respondent named in Paragraph Two of this complaint is now, and for some time last past has been, engaged in disseminating and in causing to be disseminated in newspapers of interstate circulation, advertisements designed and intended to induce sales of its goods, wares and articles of merchandise.

In the course and conduct of its business, the respondent named in Paragraph Two of this complaint, now causes and for some time last past has caused substantial amounts of said men's wearing apparel to be shipped from various manufacturers and distributors thereof in the State of New York to various retailers thereof in the State of Florida from whence said articles of merchandise were and are shipped by the said retailers to various branches of respondent S. Klein Department Stores, Inc. located in the States of New York and New Jersey.

In the course and conduct of its business, the respondent named in Paragraph Two of this complaint, now causes, and for some time last past has caused, the dissemination by the aforesaid retailers in the State of Florida to the various manufacturers and distributors of said retailers' articles of merchandise, who are located in the State of New York, said retailers' labels and price tickets for affixture and attachment to articles of merchandise which are now, and some time last past have been, sent directly to various branches of respondent named in Paragraph Two of this complaint.

In these instances the aforesaid respondent is causing, and for some time last past has caused, such articles of merchandise, labels and price tickets to be shipped and transported across state lines. Said respondent is therefore, and for some time last past has been engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent Roney Plaza Shop, 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 2323 Collins Avenue in the City of Miami Beach, in the State of Florida.

Respondent Mickey Hayes is an individual and an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

PAR. 4. Respondents Roney Plaza Shop, Inc., and Mickey Hayes are now, and at all times material hereto have been, engaged in the business of operating a retail store selling to the public various types of goods, wares and articles of merchandise, including men's wearing apparel, in competition with other corporations, firms and individuals also engaged in selling to the public goods, wares and articles of merchandise of the same kind and nature as that sold by the respondents Roney Plaza Shop, Inc., and Mickey Hayes. The said men's wearing apparel all have price tickets affixed thereto and labels attached thereon identifying such merchandise as being part of the stock of the Roney Plaza Shop of Miami Beach, Florida.

In the course and conduct of their business, respondents named in Paragraph Three of this complaint, now cause, and for some time last past have caused, substantial amounts of said men's wearing apparel to be shipped from various manufacturers and distributors thereof in the State of New York to their place of business located in the State of Florida from whence said articles of merchandise are and were shipped by the said respondents to various branches of respondent S. Klein Department Stores, Inc., located in the States of New York and New Jersey.

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In the course and conduct of their business said respondents, named in Paragraph Three of this complaint, are now, and for some time last past have been, transmitting to the various manufacturers and distributors of their articles of merchandise, who are located in the State of New York, their labels and price tickets for affixture and attachment to articles of merchandise which are now, and for some time last past have been, sent directly to various branches of respondent S. Klein Department Stores, Inc., located in the States of New York and New Jersey.

In these instances, the aforesaid respondents are causing, and for some time last past have caused, such articles of merchandise, labels and price tickets to be shipped and transported across state lines. Said respondents are, therefore, and for some time last past have been, engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondent Martin-Burns Sportables Americana, 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 the Americana Hotel in the city of Miami Beach, State of Florida.

Respondents A. Mortimer Bernstein and Martin Wexler are individuals and are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 6. Respondents Martin-Burns Sportables Americana, Inc., A. Mortimer Bernstein and Martin Wexler are now, and at all times material hereto have been, engaged in the business of operating a retail store selling to the public various types of goods, wares and articles of merchandise, including men's wearing apparel, in competition with other corporations, firms and individuals also engaged in selling to the public goods, wares and articles of merchandise of the same kind and nature as that sold by the respondents Martin-Burns Sportables Americana, Inc., A. Mortimer Bernstein and Martin Wexler. The said men's wearing apparel all have price tickets affixed thereto and labels attached thereon identifying such merchandise as being part of the stock of Martin-Burns Sportables Americana, Inc. of Miami Beach, Florida.

In the course and conduct of their business, respondents named in Paragraph Five of this complaint are now, and for some time last past have been, transmitting to the various manufacturers and distributors of their articles of merchandise, who are located in the State of New York, their labels and price tickets for affixture and attachment to articles of merchandise which are now, and for some time last past have been, sent directly to various branches of respondent S. Klein

Department Stores, Inc., located in the States of New York and New Jersey.

In these instances, the aforesaid respondents are causing, and for some time last past have caused, such labels and price tickets to be shipped and transported across state lines. Said respondents are, therefore, and for some time last past have been, engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondent Cuzzens, Inc., trading as Cuzzens of the Fontainebleau, 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 the Hotel Fontainebleau, in the city of Miami Beach, Florida.

Respondents Stanley Fried and Donald Fine are individuals and are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 8. Respondents, Cuzzens, Inc., trading as Cuzzens of the Fontainebleau, Stanley Fried and Donald Fine are now, and at all times material hereto have been, engaged in the business of operating a retail store selling to the public, various types of goods, wares and articles of merchandise, including men's wearing apparel, in competition with other corporations, firms and individuals also engaged in selling to the public goods, wares and articles of merchandise of the same kind and nature as that sold by the respondents Cuzzens, Inc., trading as Cuzzens of the Fontainebleau, Stanley Fried and Donald Fine. The said men's wearing apparel all have price tickets affixed thereto and labels attached thereon identifying such merchandise as being part of the stock of Cuzzens, Inc.

In the course and conduct of their business, respondents named in Paragraph Eight of this complaint, are now, and for some time last past have been, transmitting to the various manufacturers and distributors of their articles of merchandise who are located in the State of New York, their labels and price tickets for affixture and attachment to articles of merchandise which are now, and for some time last past have been, sent directly to various branches of respondent S. Klein Department Stores, Inc. located in the States of New York and New Jersey.

In these instances, the aforesaid respondents are causing, and for some time last past have caused, such labels and tags to be shipped and transported across state lines. Said respondents are, therefore, and for some time last past have been, engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

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PAR 9. Respondent Grand Textile Corp., trading as Flair-Text, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1199 Broadway, in the city of New York, State of New York.

Respondent I. J. Goldberg is an individual and an officer of said corporate respondent. He formulates directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

PAR. 10. Respondent Merrill-Sharpe Limited is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 180 Madison Avenue, in the city of New York, State of New York.

Respondents Joseph H. Sharf and Vincent Merola are individuals and are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 11. The respondents referred to in Paragraphs Nine and Ten have been engaged in the business of manufacturing and selling or in selling and distributing, various goods, wares, and articles of merchandise including men's shirts, to retailers and jobbers located in various parts of the United States in competition with each other and with other corporations, firms and individuals also engaged in the manufacture, distribution and sale of articles of merchandise of like nature.

In the course and conduct of their business, all of the aforesaid respondents named herein, have caused to be transported from one State to another, letters, monies, checks, bills and information, and have engaged in intercourse of a commercial nature in connection with the shipments and sale of the various articles of merchandise referred to above. In addition, said respondents are causing, and for some time last past have caused, said articles of merchandise to be shipped and transported across state lines, and therefore, are now, and for some time last past have been, engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 12. Some time prior to 1960, through a series of transactions in interstate commerce, as hereinafter alleged, respondents S. Klein Department Stores, Inc., Roney Plaza Shop, Inc., Martin-Burns Sportables Americana, Inc., and Cuzzens, Inc., trading as Cuzzens of the Fontainebleau, and the respondents named in Paragraphs Nine and Ten inclusive of this complaint, and David Rappaport, Emanuel Rappaport, Murray Siller, Jerome Siller, and Stanley Siller entered into an understanding, agreement, combination and conspiracy between

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and among themselves to pursue, and they did pursue, a planned common course of action between and among themselves to deceive and mislead the purchasing public, or cause the purchasing public to be deceived and misled, through false and deceptive advertising and misrepresentations in connection with the purchasing, advertising, labeling, offering for sale and selling of a substantial quantity of men's wearing apparel by respondent S. Klein Department Stores, Inc.

Pursuant to said understanding, agreement, combination, conspiracy and planned common course of action, and in furtherance thereof, said respondents and David Rappaport, Emanuel Rappaport, Murray Siller, Jerome Siller, and Stanley Siller acted in concert and in cooperation in doing and performing the following methods, acts and practices:

(a) Respondent S. Klein Department Stores, Inc., entered into separate agreements and understandings with respondents Roney Plaza Shop, Inc., Martin-Burns Sportables Americana, Inc., and Cuzzens, Inc., trading as Cuzzens of the Fontainebleau, hereinafter referred to as the respondent Florida corporations, and with the respondents named in Paragraphs Nine and Ten inclusive of this complaint, and hereinafter referred to as respondent manufacturers and distributors, and David Rappaport, Emanuel Rappaport, Murray Siller, Jerome Siller and Stanley Siller, whereby respondent S. Klein Department Stores, Inc. was permitted and authorized to purchase quantities of men's wearing apparel from respondent manufacturers and distributors and from David Rappaport, Emanuel Rappaport, Murray Siller, Jerome Siller and Stanley Siller, and to publicize said purchases and to advertise and sell said men's wearing apparel with labels and price tickets of respondents Roney Plaza Shop, Inc., Martin-Burns Sportables Americana, Inc., and Cuzzens, Inc., trading as Cuzzens of the Fontainebleau, affixed thereto and attached thereon. Said price tickets and labels are and were furnished to respondent manufacturers and distributors, and to David Rappaport, Emanuel Rappaport, Murray Siller, Jerome Siller, and Stanley Siller, by respondent Florida corporations.

(b) Pursuant to these understandings and agreements, the said respondent manufacturers and distributors and David Rappaport, Emanuel Rappaport, Murray Siller, Jerome Siller, and Stanley Siller were authorized to deliver part of these merchandise purchases to the respondent Florida corporations in Miami Beach, Florida, from whence they were reshipped by said Florida corporations to the various branches of respondent S. Klein Department Stores, Inc., in the States of New York and New Jersey, and to deliver part of these merchandise purchases directly to the various branches of S. Klein

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Department Stores, Inc., in the States of New York and New Jersey.

(c) Subsequent to entering into the understandings and agreements referred to and described heretofore, respondent S. Klein Department Stores, Inc., did purchase various quantities of men's wearing apparel bearing the labels and price tickets of the respondent Florida corporations from the respondent manufacturers and distributors and from David Rappaport, Emanuel Rappaport, Murray Siller, Jerome Siller and Stanley Siller. In some cases, such merchandise purchases were shipped to the respondent Florida corporations in Miami Beach, Florida from whence they were reshipped by the said Florida corporations to various branches of respondent S. Klein Department Stores, Inc., in the States of New York and New Jersey, and in the remaining cases, said merchandise purchases were shipped directly to the various branches of respondent S. Klein Department Stores, Inc., in the States of New York and New Jersey. In all cases said respondent Florida corporations furnished the respondent manufacturers and distributors and David Rappaport, Emanuel Rappaport, Murray Siller, Jerome Siller and Stanley Siller the labels and price tickets which were affixed thereto and attached thereon.

(d) Following the making of the understandings and agreements referred to and described in the foregoing subparagraphs of Paragraph Twelve, respondent S. Klein Department Stores, Inc., made the following typical, but not all inclusive statements in a series of advertisements appearing in newspapers of interstate circulation:

RONNEY PLAZA!

(See "Roney Shop's" label and price tag on every garment)

MEN'S SHORT-SLEEVE DELUXE DRESS SHIRTS**DELUXE SLACKS "RONNEY SHOP'S" original**

MEN'S DELUXE SUMMER and RESORT WEAR personally screened and approved by the owner of the "Roney Shop" of Miami Beach for S. Klein!
See the honored label in every garment!

MAGNIFICENT SUMMER MEN'S WEAR

boasting the label of

"MARTIN BURNS"

the elite Men's Shop in the Americana Hotel of Miami Beach!

SEE THE HONORED MARTIN BURNS' LABEL IN EVERY GARMENT!
SUPERB TROPICAL SUITS MARTIN BURNS

Sportables by Martin-Burns at the Americana Bar Harbour, Fla.

The owner of Martin Burns has personally screened these current season suits, shirts, sport jackets, slacks and ties, to be certain each and every one is worthy

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of the Martin-Burns' label. A proud name, seen only on men's wear of style-leadership and upper-echelon quality! SEE THE HONORED MARTIN BURNS' LABEL IN EVERY GARMENT!

DELUXE SUMMER MEN'S WEAR CUZZEN

of the Fontainebleau

The owner of Cuzzens has personally screened and approved these current season suits, shirts, sport jackets, slacks and ties, to be certain each and every one is worthy of the Cuzzens label. A proud name, seen only on men's wear of style-leadership and upper-echelon quality! SEE THE HONORED CUZZENS LABEL IN EVERY GARMENT.

DELUXE SUMMER MEN'S WEAR

boasting the label of

CUZZENS of the Fontainebleau

PAR. 13. Through the use of the aforesaid statements, and others similar thereto but not included herein, and through use of the aforesaid labels which were affixed to said merchandise, respondent S. Klein Department Stores, Inc., has represented, and now represents, directly or indirectly that:

The stock of men's wearing apparel advertised and offered for sale, bearing the labels and price tickets of the respondent Florida corporations, is the same merchandise as that stocked and offered for sale by the respondent Florida corporations.

PAR. 14. In truth and in fact:

Said men's wearing apparel, advertised and offered for sale by respondent S. Klein Department Stores, Inc., bearing the labels and price tickets of the respondent Florida corporations, was not the same merchandise as that stocked by said respondent Florida corporations.

Therefore, the statements and representations by respondent S. Klein Department Stores, Inc., referred to in Paragraphs Twelve and Thirteen are false, misleading and deceptive.

PAR. 15. The understanding, agreement, combination, conspiracy and planned common course of action in interstate commerce, and the methods, acts and practices of the respondents, as hereinbefore alleged, were designed and perpetrated to form some basis for respondent S. Klein Department Stores, Inc., using the aforesaid false, misleading and deceptive statements and representations in newspaper advertisements and on labels and price tickets, and to increase substantially the sale of men's wearing apparel by all of the respondents to the detriment of competition. The use by respondent S. Klein Department Stores, Inc., of the aforesaid false, misleading and deceptive statements and representations has the capacity and tendency to mislead

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and deceive members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were true, and into the purchase of substantial quantities of respondent S. Klein Department Stores, Inc.'s articles of merchandise because of such mistaken and erroneous belief. As a result of the aforesaid understanding, agreement, combination, conspiracy and planned common course of action and the methods, acts and practices between and among all of the respondents herein and David Rappaport, Emanuel Rappaport, Murray Siller, Jerome Siller, and Stanley Siller, as a result of the use by respondent S. Klein Department Stores, Inc., of the aforesaid false, misleading and deceptive statements in newspaper advertising and on their labels and price tickets, substantial trade in commerce has been unfairly diverted to the respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 16. All of the respondents were and are in substantial competition, in commerce, with other corporations, firms and individuals engaged in the sale of men's wearing apparel of the same general nature as that sold by the respondents.

PAR. 17. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the injury and prejudice of the public and of the respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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,

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

1. Respondent S. Klein Department Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Union Square, in the city of New York, State of New York.

Respondent Roney Plaza Shop, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2323 Collins Avenue, in the city of Miami Beach, in the State of Florida.

Respondent Mickey Hayes is an officer of said corporation Roney Plaza Shop, Inc., and his address is the same as that of said corporation.

Respondent Martin-Burns Sportables Americana, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at the Americana Hotel, in the city of Miami Beach, State of Florida.

Respondents A. Mortimer Bernstein and Martin Wexler are officers of said corporation Martin-Burns Sportables Americana, Inc., and their address is the same as that of said corporation.

Respondent Cuzzens, Inc., trading as Cuzzens of the Fontainebleau, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at the Hotel Fontainebleau, in the city of Miami Beach, State of Florida.

Respondents Stanley Fried and Donald Fine are officers of said corporation Cuzzens, Inc., and their address is the same as that of said corporation.

Respondent Grand Textile Corp., trading as Flair-Tex, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1199 Broadway, in the city of New York, State of New York.

Respondent I. J. Goldberg is an officer of said corporation Grand Textile Corp., and his address is the same as that of said corporation.

Respondent Merrill-Sharpe Limited, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 180 Madison Avenue, in the city of New York, State of New York.

Respondents Joseph H. Sharf and Vincent Merola are officers of said corporation Merrill-Sharpe Limited, 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 respondent corporation S. Klein Department Stores, Inc., and its officers; respondent corporation Roney Plaza Shop, Inc., and its officers and Mickey Hayes, individually and as an officer of said corporation; respondent corporation Martin-Burns Sportables Americana, Inc., and its officers and A. Mortimer Bernstein and Martin Wexler, individually and as officers of said corporation; respondent corporation Cuzzens, Inc., trading as Cuzzens of the Fontainebleau or under any other name or names and its officers, and Stanley Fried and Donald Fine, individually and as officers of said corporation; respondent corporation Grand Textile Corp., trading as Flair-Tex or under any other name, or names and its officers, and I. J. Goldberg, individually and as an officer of said corporation; respondent corporation Merrill-Sharpe Limited and its officers, and Joseph H. Sharf and Vincent Merola, individually and as officers of said corporation; and the agents, representatives and employees of all the above-named corporations and individuals, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of apparel merchandise, or related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from engaging in, entering into, or carrying out any planned course of action, understanding, agreement, combination or conspiracy between any two or more of said respondents or between any one or more of said respondents and another, or others not parties hereto, to:

Engage in any activities, acts or practices, in purchasing, selling, manufacturing or distributing said merchandise or products, whereby the prior places of sale of said merchandise or products is misrepresented, by any means or in any manner, or where the intent, purpose or effect thereof is to deceive, mislead or to make any false claims concerning the prior places of sale of said merchandise or products.

It is further ordered, That respondent S. Klein Department Stores, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any apparel mer-

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chandise, or related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly:

(a) That any of respondent's merchandise or products has been owned, was a part of the stock of, had been offered for sale by, or had been purchased from any corporation, firm or individual unless respondent establishes that such is the fact;

(b) That said merchandise is the same as that stocked or offered for sale by any other corporation, firm or individual unless respondent establishes that such is the fact.