

IN THE MATTER OF
LONE STAR CEMENT CORPORATION

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

Docket C-1159. Complaint, Jan. 16, 1967—Decision, Jan. 16, 1967

Consent order requiring a New York City manufacturer of portland cement to divest itself of ready-mix concrete plants and related equipment recently acquired from a Houston, Texas, ready-mix company.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I. DEFINITIONS

1. For the purpose of this complaint the following definitions shall apply:

(a) "Portland Cement" includes Types I through V of portland cement as designated by the American Society for Testing Materials. Neither masonry nor white cement is included.

(b) "Ready-mixed Concrete" includes all portland cement concrete manufactured and delivered to a purchaser in a plastic and unhardened state. Ready-mixed concrete includes central-mixed concrete, shrink-mixed concrete and transit-mixed concrete.

(c) "The Houston Area" consists of Harris County, Texas.

II. LONE STAR CEMENT CORPORATION

2. Respondent Lone Star Cement Corporation, hereinafter referred to as "Lone Star," is a corporation organized and existing under the laws of the State of Maine, with its principal office located at 100 Park Avenue, New York, New York.

3. Lone Star, the largest or second largest portland cement manufacturing company in the United States, operates fifteen portland cement manufacturing plants and thirteen distribution terminals located in thirteen different States. Through acquired subsidiaries, Lone Star is also engaged in the production and sale of ready-mixed concrete, concrete products and mineral aggregates. In 1964, Lone Star had sales of approximately \$155 million, assets of about \$217 million and net income of about \$14 million.

4. In the State of Texas, Lone Star operates cement manufacturing plants at Dallas, Houston and Maryneal, and distribution terminals at Amarillo, Corpus Christi and Orange. These plants have an annual capacity of approximately 10 million barrels of portland cement. Their output is marketed principally in the State of Texas. The Houston area is an important metropolitan market for the output of Lone Star's Houston plant.

5. Lone Star is and for many years has been engaged in the shipment of portland cement across State lines. Lone Star is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

III. W. D. HADEN CO.

6. W. D. Haden Co., hereinafter referred to as "Haden," is a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business located at 2243 Milford Street, Houston, Texas.

7. At the time of the acquisition, Haden was principally engaged in the production and sale of ready-mixed concrete in the Houston area and in the dredging for oyster shells. In 1960, Haden

had total sales of \$7,887,000, total assets of \$6,570,000, and net income of \$308,000.

8. Haden is, and was at the time of the acquisition, one of the three largest producers of ready-mixed concrete and one of the three largest consumers of portland cement in the Houston area. In 1960, Haden consumed 452,485 barrels of portland cement and sold 209,726 cubic yards of ready-mix concrete.

IV. THE ACQUISITION

9. On or about December 7, 1961, Lone Star acquired 40% of Haden's outstanding common stock for approximately \$1 million. On or about April 18, 1966, Lone Star acquired from Haden an option to purchase the remaining 60% of Haden's outstanding common stock and an irrevocable proxy to operate Haden's business.

10. The Haden acquisition by Lone Star was an act or practice in commerce within the meaning of the Federal Trade Commission Act.

V. THE NATURE OF TRADE AND COMMERCE

11. Portland cement is a material which, in the presence of water, binds aggregates, such as sand and gravel, into concrete. Portland cement is an essential ingredient in the production of ready-mixed concrete. There is no practical substitute for portland cement in the production of concrete.

12. The portland cement industry in the United States is substantial. In 1964, there were approximately 52 cement companies in the United States operating approximately 181 plants. Total shipments of portland cement in that year amounted to approximately 365 million barrels, valued at about \$1.1 billion.

13. Cement manufacturers sell their portland cement to consumers such as ready-mixed concrete companies and concrete products companies, and to contractors and building materials dealers. On a national basis, approximately 57% of all portland cement is shipped to firms engaged in the production and sale of ready-mixed concrete.

14. In recent years, there has been a significant trend of mergers and acquisitions by which ready-mixed concrete companies in major metropolitan markets in various portions of the United States have become integrated with portland cement companies. Since 1959, there have been at least 35 such acquisitions.

15. Each vertical merger or acquisition which occurs in the

portland cement industry potentially forecloses competing cement manufacturers from a segment of the market otherwise open to them and places great pressure on competing manufacturers likewise to acquire portland cement consumers in order to protect their markets. Thus, each such vertical acquisition may form an integral part of a chain reaction of such acquisitions—contributing to both the share of the market already foreclosed, and to the impetus for further such acquisitions.

16. In the Houston area, the trend toward vertical integration is well advanced. Additional vertical acquisitions have been made and a large ready-mixed concrete company has integrated backward by constructing its own cement plant. More than 40% of the market for portland cement in the Houston area already has been potentially foreclosed to competing cement manufacturers as the result of vertical integration.

VI. THE VIOLATION CHARGED

17. The effects of the acquisition of Haden by Lone Star, as hereinbefore described, both in itself and by aggravating the trend toward vertical integration between suppliers and consumers of portland cement, may be the following, among others:

a. Lone Star's competitors may have been and/or may be foreclosed from a substantial segment of the market for portland cement.

b. The ability of Lone Star's non-integrated competitors effectively to compete in the sale of portland cement and ready-mixed concrete has been and/or may be substantially impaired.

c. The entry of new portland cement and ready-mixed concrete competitors may have been and/or may be inhibited or prevented.

d. The production and sale of ready-mixed concrete, now a decentralized, locally controlled, small business industry, may become concentrated in the hands of a relatively few manufacturers of portland cement.

Now therefore, the acquisition of Haden by Lone Star is in unreasonable restraint of trade, is to the prejudice and injury of the public, has restrained and hindered, or has a dangerous tendency to restrain or hinder, competition unduly, and thereby constitutes an unfair method of competition and an unfair act and practice in commerce in violation of Section 5 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 respondent 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 Lone Star Cement Corporation is a corporation organized, existing and doing business under the laws of the State of Maine, with its office and principal place of business located at 100 Park Avenue, New York, New York.

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

I

It is ordered, That respondent Lone Star Cement Corporation (hereinafter "Lone Star") shall divest, absolutely and in good faith, by any appropriate means, to a person or persons approved by the Federal Trade Commission, Lone Star's ownership of and control over the ready-mixed concrete plants and related equipment, located at the following sites, constituting all of such plants and equipment acquired by Lone Star as a result of its acquisition of W. D. Haden Company. Said sites are described generally as follows:

Decision and Order

71 F.T.C.

<i>Plant Site</i>	<i>Address</i>
Fulton	200 Bennington Houston, Texas
Jefferson Street	1720 Delano Houston, Texas
Sims-Bayou	Foot of 96th Street Houston, Texas
Hadco	Highway 146 Seabrook, Texas
Alief	5700 Alief Road Houston, Texas
Greenbriar	4101 Greenbriar Houston, Texas

II

It is further ordered, That Lone Star, in divesting ownership of and control over ready-mixed concrete plants and related equipment under Paragraph I of this Order, make available to the person or persons acquiring each plant and related equipment such trucks as are necessary to establish such person or persons in the manufacture and sale of ready-mixed concrete from such plant.

III

It is further ordered, That Lone Star shall divest, absolutely and in good faith, to a person or persons approved by the Federal Trade Commission, so much of the real property underlying the Fulton, Jefferson Street and Sims-Bayou plants as is necessary for the efficient operation of said plants and related equipment:

Provided, however, That Lone Star may, at its option, lease or sublease said real property or portion thereof for a term which, if all renewal options are exercised, will extend for a period of at least ten (10) years.

IV

It is further ordered, That Lone Star begin to make efforts to divest itself of its ownership of and control over said assets promptly after the effective date of this Order and that they continue such efforts to the end that the divestiture thereof be accomplished within one (1) year.

V

It is further ordered, That, pending divestiture, Lone Star not make any changes in any of the aforesaid assets which would

impair their present capacity for the production and sale of ready-mixed concrete, or their market value.

VI

It is further ordered, That, in the aforesaid divestiture, none of the assets be transferred, directly or indirectly, to any person who is at the time of divestiture an officer, director, employee, or agency of, or under the control or direction of, Lone Star or any of its subsidiaries or affiliates, or to any person who owns or controls directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Lone Star or any of its subsidiaries or affiliates.

VII

It is further ordered, That from and after one (1) year from the effective date of this Order Lone Star cease and desist using the name "W. D. Haden Co." and the name "Haden" in any of its operations.

VIII

It is further ordered, That Lone Star shall not, for a period of ten (10) years, distribute ready-mixed concrete from any portion of the real property located at the sites described in Paragraph I of this Order and acquired from W. D. Haden Company.

IX

It is further ordered, That Lone Star, within sixty (60) days from the effective date of this Order, and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs I through IV of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this Order. All compliance reports shall include, among other things that will be from time to time required, a summary of all contracts and negotiations with persons who have or may have an interest in acquiring ownership of and control over the assets to be divested under this Order, the identity of all such persons, copies of all written communications to and from such persons, copies of any proposed or executed sales contracts and leases, and a statement of whether or not such persons intend to operate the divested ready-mixed concrete plants and equipment within Harris County, Texas.

IN THE MATTER OF

THE JOS. M. ZAMOISKI CO.

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

Docket 8711. Complaint, Sept. 16, 1966—Decision, Jan. 19, 1967

Consent order requiring a Baltimore, Md., distributor of Zenith color TV sets to cease making price misrepresentations, and furnishing retailers with price lists and other material which enable them to deceive the public as to prices and savings.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Jos. M. Zamoiski Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Jos. M. Zamoiski Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 1101 De Soto Road, Baltimore, Maryland, 21223. Respondent also operates and maintains a place of business at 2122 24th Place, NE., Washington, D.C., 20018.

PAR. 2. Respondent has been and is now engaged in the wholesale distribution of merchandise, including electrical household appliances and housewares that are sold to retail dealers for resale to the buying public.

Respondent sells some of its merchandise, including Zenith color television sets, under exclusive territorial distributorship grants which include the State of Maryland, District of Columbia, northern parts of the State of Virginia and northwestern parts of the State of West Virginia.

PAR. 3. In the course and conduct of its aforesaid business, respondent now causes, and for some time last past has caused, its merchandise, including Zenith color television sets, to be transported from its places of business in the State of Maryland and the District of Columbia to retail dealers located in other States

of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid, respondent supplies price schedules for Zenith color television sets to its retail dealers. Said price schedules designated "S" (stocking dealer) and "N/S" (non-stocking dealer), are composed by respondent and list "suggested retail prices" that are substantially higher than the retail prices suggested for the same Zenith color television sets by the manufacturer's national sales subsidiary, Zenith Sales Corporation.

Among and typical, but not all inclusive, of the suggested retail prices supplied by respondent, The Jos. M. Zamoiski Co., to its retailers during the first six months of 1966, as compared to the suggested retail prices listed for the same color television sets by Zenith Sales Corporation during the same period, are the following:

	The Jos. M. Zamoiski Co.	Zenith Sales Corp.	Amount higher
25" Console—			
Space Command:			
9851-H	\$995.00	\$850.00	\$145.00
9810-W	799.95	725.00	74.95
6521-W	795.00	699.95	96.05
25" Console—			
Regular:			
8326-H	750.00	675.00	125.00
8308-W	675.00	599.95	75.05
4519-W	675.00	579.95	95.05
21" Console—			
Regular:			
5320-W	559.95	499.95	60.00
5318-W	529.95	469.95	60.00

The aforementioned price schedules supplied to retail dealers by respondent also list "dealer cost" of Zenith color television sets. The "N/S" schedule listing costs to nonstocking dealers contains costs which are from \$10 to \$25 higher than dealer costs for the same sets as listed on the "S" schedule for stocking dealers. Respondent usually supplies both price schedules to each dealer. However, the actual net cost of said sets to the dealer is usually lower

than the listed cost on either of the aforesaid price schedules since dealers regularly receive an additional \$10 to \$40 off the cost of more than 75% of the Zenith color television sets sold by respondent. Moreover, the net cost to some of respondent's dealers is even lower due to special negotiated prices given these dealers.

Among and typical of the dealer costs listed on the "S" and the "N/S" price schedules supplied to dealers as aforesaid, and the actual net costs to said dealers are the following:

Model No.	Dealer cost on "N/S" schedule	Dealer cost on "S" schedule	Actual dealer cost	Amount by which "N/S" schedule exceeds actual dealer cost
9351-H	\$800.00	\$775.00	\$750.00	\$ 50.00
9310-W	655.00	630.00	533.74	121.26
6521-W	660.00	635.00	620.00	40.00
8326-H	600.00	575.00	550.00	50.00
8310-W	565.00	540.00	460.12	104.78
4519-W	550.00	525.00	510.00	40.00
5320-W	460.00	440.00	386.90	74.10
5318-W	445.00	425.00	400.00	45.00

PAR. 5. By and through the use of the aforesaid "suggested retail price" and "dealer cost" schedules, respondent represents, directly or by implication, and places in the hands of retailers and others the means and instrumentalities whereby they are enabled to, and do, represent directly or by implication:

(a) That the "suggested retail prices" as shown thereon are the suggested retail prices of the manufacturer of the merchandise listed thereon;

(b) That the "dealer cost" as shown thereon is the actual cost of the listed or identified merchandise to the retail dealer;

(c) That the "suggested retail prices" are not appreciably in excess of the prices at which such merchandise has been regularly offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area;

(d) That purchasers of said merchandise save an amount equal to the difference between the stated "suggested retail prices" and the prices at which they purchase such merchandise;

(e) That purchasers are buying said merchandise at a low markup or profit margin to the retailer, *i.e.*, the difference between the retailer's selling price and the "dealer's cost" as stated on the said schedule.

PAR. 6. In truth and in fact:

1. The "suggested retail prices" as shown on respondent's schedules are not the suggested retail prices of the manufacturer of such merchandise but are in excess thereof;

2. The "dealer cost" as shown on respondent's schedules is not the actual cost of the merchandise listed or identified thereon but exceed the actual dealer cost thereof;

3. The "suggested retail prices" as shown on respondent's schedules are appreciably in excess of the highest prices at which such merchandise has been offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area;

4. Purchasers of said merchandise do not save an amount equal to the difference between the stated "suggested retail prices" and the prices at which they purchase said merchandise;

5. Purchasers from such retailers are not buying said merchandise at a markup or profit margin to the retailer in an amount equal to the difference between said retailer's selling price and the "dealer's cost" as listed on the said price schedule.

Therefore the statements and representations as set forth in Paragraphs Four and Five hereof are false, misleading and deceptive

PAR. 7. In the course and conduct of its business and at all times mentioned herein, respondent has been in substantial competition in commerce with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as sold by respondent.

PAR. 8. The use by respondent of the aforementioned false, misleading and deceptive statements, representations and practices has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of said merchandise from respondent's retail dealers by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair methods of competition in commerce and unfair

and deceptive acts and practices in commerce, in violation of Section 5(a) (1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on September 16, 1966, charging respondent The Jos. M. Zamoiski Co., a corporation, with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint; and

The respondent having thereafter filed with the hearing examiner a motion requesting waiver of Rule 2.4(d) and withdrawal of its answer to said complaint, to which motion was attached an executed consent agreement entered into between respondent and counsel supporting the complaint; and

The hearing examiner having certified to the Commission the said motion, with attached agreement, which agreement contains, *inter alia*, a consent order, an admission by respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having determined that in the circumstances the public interest would be served by waiving, and having hereby waived, the provision of Rule 2.4(d) that the consent procedure shall not be available after issuance of complaint; and the Commission having further determined that the respondent's request to withdraw its answer to the complaint should be granted and having hereby duly stricken such answer from the record; and

The Commission having considered the aforesaid executed agreement, and having now determined that said agreement constitutes an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent The Jos. M. Zamoiski Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 1101 DeSoto Road, Baltimore, Maryland, and an additional office at 2122 24th Place, NE., in the city of Washington, District of Columbia.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, The Jos. M. Zamoiski Co., 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 Zenith color television sets or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any price is the manufacturer's suggested retail or list price unless respondent is able to establish that such amount is the price currently suggested by the manufacturer for the item of merchandise in question;

2. Representing that any amount is the cost of merchandise to a retailer or dealer unless respondent is able to establish that such amount is the actual net cost for the item of merchandise.

3. Representing that any amount is the customary or usual retail selling price of any item of merchandise which is appreciably in excess of the price at which such merchandise is regularly offered for sale and sold in the recent regular course of business by a substantial number of retail outlets in the same trade area;

4. Misrepresenting in any manner, the amount of savings to be realized by purchasers of respondent's merchandise from any retailer, dealer or other seller;

5. Misrepresenting in any manner, the retailer's, dealer's, or other seller's markup or profit margin for any merchandise.

6. Placing in the hands of retailers, dealers, or others, any pricelist, schedule or other material, information, or any other means or instrumentalities by and through which they are enabled to mislead or deceive members of the public in the respects hereinabove prohibited.

It is further ordered, That respondent shall within sixty (60) days of the issuance hereof serve by certified mail on each of its retailers, dealers or customers which sell Zenith products, a copy of this complaint and order, together with written instructions to such retailers, dealers or customers to destroy all previous price-lists furnished them by the respondent and to cease making any

of the representations prohibited in the order, and take such additional steps, under a plan to be submitted to and approved by the Commission, as will assure general compliance with such instructions.

It is further ordered, That for a period of six (6) months following the date of the acceptance of its compliance report, respondent spot check its retailers, dealers, and customers to make certain that said instructions have been carried out.

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

BOW SOLDER PRODUCTS CO., INC., ET AL.

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

Docket 8712. Complaint, Sept. 21, 1966—Decision, Jan. 19, 1967

Consent order requiring a Newark, N.J., distributor of commercial solders to cease misrepresenting the nature, quality or composition of its solders.

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 Bow Solder Products Co., Inc., a corporation, and Samuel Turkus, Jr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bow Solder Products Co., 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 251 Freeman Street, in the city of Brooklyn, State of New York.

Respondent Samuel Turkus, Jr., is an officer of the corporate respondent. He formulates, directs and controls the acts and prac-

tices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of commercial solders including wire solder designated "50/50 By Volume." Said solder is sold to wholesalers and retailers for ultimate resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their commercial wire solders, respondents have engaged in the practice of labeling and describing certain of said solders as "50/50 By Volume."

PAR. 5. By and through the use of the aforesaid manner of labeling and describing said wire solder, the respondents represented:

That their wire solder designated "50/50 By Volume" is a 50/50 solder which is known in the trade as a solder containing 50% tin and 50% lead by weight.

PAR. 6. In truth and in fact:

Their wire solder designated "50/50 By Volume" is not a 50/50 solder as known in the trade as it contains less than 50% tin and more than 50% lead by weight.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the conduct of their business, and at all time mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by respondents.

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

into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on September 21, 1966, charging respondents Bow Solder Products Co., Inc., a corporation, and Samuel Turkus, Jr., individually and as an officer of said corporation, with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The respondents having filed with the hearing examiner a motion requesting waiver of Rule 2.4(d) of the Commission's Rules, and thereafter respondents and counsel supporting the complaint having executed an agreement containing a consent order to cease and desist; and

The hearing examiner having certified to the Commission the aforementioned motion and agreement, which agreement contains, *inter alia*, a consent order, an admission by respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having determined that in the circumstances the public interest would be served by waiving, and so hereby waives, the provision of Rule 2.4(d) that the consent procedure shall not be available after issuance of complaint; and

The Commission having considered the aforesaid executed agreement, and having now determined that said agreement constitutes an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Bow Solder Products Co., 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 25 Amsterdam Street, in the city of Newark, State of New Jersey (formerly located at 251 Freeman Street, in the city of Brooklyn, State of New York, which is the address hereinbefore set forth in the complaint).

Respondent Samuel Turkus, Jr., is an officer of the corporate respondent and his office and principal place of business is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Bow Solder Products Co., Inc., a corporation, and its officers, and Samuel Turkus, Jr., individually and as an officer of said corporation, 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 solders, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the designation 50/50 alone or in conjunction with the words "By Volume" to designate, describe or refer to a commercial solder which does not contain 50% tin by weight: *Provided, however,* That it shall be a defense in any enforcement proceeding hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specification for Solder Metal as published by the American Society for Testing and Materials.

(2) Misrepresenting by any numerical designation or in any other manner the nature, quality or composition of any of their solders.

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.

Complaint

71 F.T.C.

IN THE MATTER OF

ELYSEE FASHIONS, INC., ET AL.

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

Docket C-1160. Complaint, Jan. 19, 1967—Decision, Jan. 19, 1967

Consent order requiring two New York City fur manufacturers to cease misbranding and falsely invoicing their fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act 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 Elysée Fashions, Inc., a corporation, and Milbrooke Fashions, Inc., a corporation, and Elias Miller and Seymour Miller, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under 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. Respondents Elysée Fashions, Inc., and Milbrooke Fashions, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Elias Miller and Seymour Miller are officers of said corporations. They formulate, direct and control the policies, acts and practices of said corporations.

Respondents are manufacturers of fur products with their office and principal place of business located at 262 West 38th Street, New York, New York.

PAR. 2. 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 manufacture for 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 manufactured for sale, 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. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. 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 with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. 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) Sample fur products used to promote or effect sales of fur products were not labeled to show the information required under the said Act and Regulations, in violation of Rule 33 of said Rules and Regulations.

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to show the country of origin of imported fur used in fur products.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder inasmuch as information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

PAR. 8. 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

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

The Commission, having reason to believe that the respondents have violated the said Acts, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Elysée Fashions, Inc., and Milbrooke Fashions, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 262 West 38th Street, New York, New York.

Respondents Elias Miller and Seymour Miller are officers of said corporations and their address is the same as that of said corporations.

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 Elysée Fashions, Inc., a corporation, and its officers, and Milbrooke Fashions, Inc., a corporation, and its officers, and Elias Miller and Seymour Miller, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, 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 the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.
2. Failing to affix a label to such fur product 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.
3. Failing to affix a label to such sample fur product used to promote or effect sales of fur products showing in words and 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 and of the Rules and Regulations promulgated thereunder.
4. Failing to set forth on a label the item number or mark assigned to such fur product.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.
2. Setting forth information required under Section 5(b) (1) of the Fur Products Labeling Act and the Rules

Complaint

71 F.T.C.

and Regulations promulgated thereunder in abbreviated form.

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.
