

Complaint

71 F.T.C.

IN THE MATTER OF
THE CARL MFG. CO. ET AL.

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

Docket 8689. Complaint, June 27, 1966—Decision, June 16, 1967*

Order terminating a proceeding against a Lisbon, Ohio, catalog merchandiser which had been charged with misrepresenting its business status, prices and savings, based upon an Assurance of Voluntary Compliance dated June 14, 1967.

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 Carl Mfg. Co., a corporation, and Joyce Tuseck and Frank J. Tuseck, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Carl Mfg. Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 110 West Washington Street, Lisbon, Ohio.

Respondents Joyce Tuseck and Frank J. Tuseck are individuals and officers of said corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their principal office and place of business is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of office, factory and store supplies and equipment and other articles of general merchandise to the purchasing public.

The individual respondents are also officers and principal stockholders of Pioneer Co., an Ohio corporation, which is engaged in the business of manufacturing, offering for sale, sale and distribution of hospital equipment and convalescent needs. The principal office and place of business of said Pioneer Co., is located at the

* Reported as amended by order of hearing examiner, dated Nov. 1, 1966, by amending Paragraph Six so as to conform with the evidence.

same address as that of the said corporate and individual respondents.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the aforesaid products, when sold, to be shipped from their aforesaid place of business in the State of Ohio, and from the various places of business of their suppliers located in other States of the United States to purchasers thereof located in States other than the States in which the shipments originated, 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. Respondents, in the course and conduct of their aforesaid business, and for the purpose of inducing individuals, firms and corporations to purchase their said products have made certain statements and representations, directly or by implication, in catalogs, brochures and other mailing pieces with respect to their business status, prices and savings.

Typical and illustrative, but not all inclusive, of such statements and representations are the following:

The Carl Mfg. Co. a diversified manufacturer of business necessities selling direct to you.

Order Direct from The Carl Mfg. Co.

Buy Direct.

Save! Order Direct.

All Products On This Page Shipped from W. Va. Factory.

All Items In This Page Are F.O.B. Our Factory.

All Shipments Are F.O.B. Our Factories.

PAR. 5. By and through the use of the corporate respondent's name, separately and in connection with the aforesaid and other statements and representations, and through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, respondents represented, and now represent, directly or by implication:

1. That respondents are the manufacturers of all the said products offered for sale by them.

2. That all of said products are offered for sale at manufacturer's prices.

3. That purchasers save the difference between the manufacturers' prices of said products and the usual retail prices therefor.

PAR. 6. In truth and in fact:

1. All of the merchandise sold by respondents is not manufactured by respondent The Carl Mfg. Co.

2. All of said products are not offered for sale at manufacturers' prices.

3. Purchasers of said products do not save the difference between the manufacturers' prices and the retail prices therefor on all merchandise sold or offered for sale by respondents.

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

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

PAR. 8. There is a preference on the part of members of the purchasing public for dealing directly with manufacturers of products, rather than with outlets, distributors, jobbers or other intermediaries, such preference being due in part to a belief that by dealing directly with the manufacturers, lower prices and other advantages may be obtained, a fact of which the Commission takes official notice.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity 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 said products from respondents by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. William A. Somers for the Commission.

Kennedy & Beck, Lisbon, Ohio, by *Mr. Richard D. Kennedy* for the respondents.

INITIAL DECISION BY WILMER L. TINLEY, HEARING EXAMINER

NOVEMBER 1, 1966

PRELIMINARY STATEMENT

The Federal Trade Commission, on June 27, 1966, issued and

subsequently served its complaint charging the respondents with violations of Section 5 of the Federal Trade Commission Act by misrepresenting, in effect, that respondents are the manufacturers of all of the products offered for sale by them, and that by buying directly from respondents purchasers save the difference between manufacturers' prices and the usual retail prices of the products. The answer which was filed by respondents on August 1, 1966, made limited admissions, but denied the allegations of interstate commerce and the alleged misrepresentations.

The hearing was held in Youngstown, Ohio, on August 29, 1966, and the presentation of evidence was concluded on that day. The only witness presented was one of the individual respondents. Upon the conclusion of his direct testimony, no cross-examination being desired, counsel supporting the complaint rested his case-in-chief (Tr. 140-1).

Counsel for respondents thereupon moved to dismiss the complaint primarily because of failure by counsel supporting the complaint to prove injury to the public or to competitors, including failure to establish any difference between manufacturers' prices and the prices at which the corporate respondent sells. The hearing examiner referred to Paragraph Eight of the complaint in which the Commission took official notice of certain facts relevant to those considerations, and stated that on defense respondent would have an opportunity to prove that the facts officially noticed were not correct. Ruling on the motion to dismiss was deferred until the close of the case for the reception of evidence (Tr. 141-63; Section 3.6(e) of the Commission's Rules of Practice).

In the discussion of respondents' motion to dismiss, counsel supporting the complaint conceded that the evidence had established that the corporate respondent is the manufacturer of at least two of the products which it offers for sale (Tr. 148-9). In these circumstances he considered that the allegations of Paragraph Six of the complaint to the effect that the corporate respondent manufactures "none" of the merchandise sold by it should be modified.

Counsel supporting the complaint, accordingly, moved to amend Paragraph Six of the complaint to conform to the evidence in accordance with Section 3.7(a)(2) of the Commission's Rules of Practice. After discussion, counsel for the respondents withdrew his objection to the proposed amendment, and the hearing examiner granted the motion to amend Paragraph Six of the complaint to read as follows (Tr. 164-7):

PARAGRAPH SIX: In truth and in fact:

1. All of the merchandise sold by respondents is not manufactured by respondent The Carl Mfg. Co.
2. All of said products are not offered for sale at manufacturers' prices.
3. Purchasers of said products do not save the difference between the manufacturers' prices and the retail prices therefor on all merchandise sold or offered for sale by respondents.

Counsel for respondents presented as his witness the same individual respondent who had previously been presented by counsel supporting the complaint. Upon completion of the direct and cross-examination of that witness, both sides rested and the record was closed for the reception of evidence. The transcript of testimony consists of 189 pages. Four exhibits offered by counsel supporting the complaint (CX 1 through 4) were received in evidence, and one was rejected (CX 5A-C). No exhibits were offered by counsel for respondents.

Counsel were allowed 30 days from August 29, 1966, to file proposed findings, conclusions and order, and were allowed 10 days thereafter to file replies thereto (Tr. 189). Proposals were filed by counsel supporting the complaint on September 30, 1966. No proposals were filed by counsel for respondents, and no reply proposals were filed by either counsel.

After having considered the record in this proceeding, including the proposals of counsel supporting the complaint, the hearing examiner issues this initial decision. Proposed findings which are not adopted herein, either in the form proposed or in substance, are rejected as not being supported by the record or as involving immaterial or unnecessary matter. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of this initial decisions, are hereby denied. The parenthetical references herein to the transcript of testimony (Tr.) and Commission Exhibits (CX), and to other parts of the record, including numbered paragraphs of the Findings of Fact (Fi.), are intended to be convenient guides to the principal items of evidence supporting findings of fact, and do not represent complete summaries of the evidence which was considered in making such findings.

FINDINGS OF FACT

1. Respondent The Carl Mfg. Co., sometimes referred to herein as Carl, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 110 West Washington Street, Lisbon, Ohio (Complaint and Answer).

2. Respondent Joyce Tuseck, an individual, is president of Carl, and her husband, respondent Frank J. Tuseck, an individual, is secretary-treasurer of Carl. Their principal office and place of business is the same as that of Carl (Complaint and Answer; Tr. 25-6).

3. Respondents Joyce Tuseck and Frank J. Tuseck, sometimes referred to herein as the individual respondents, own all of the stock, and formulate, direct and control the acts and practices of Carl, including the acts and practices hereinafter set forth (Complaint and Answer; Tr. 26). They are individually responsible for those acts and practices, and any references herein to acts or practices by Carl are also intended to be references to acts or practices by the individual respondents except to the extent otherwise specifically indicated.

4. Carl is now, and for some time has been, engaged in the advertising, offering for sale, sale and distribution of office, factory and store supplies and equipment and other articles of general merchandise to the purchasing public (Complaint and Answer). The supplies, equipment and general merchandise sold and distributed by Carl are described in detail in its catalogs and other advertising material (CX 1, 2, 3; Tr. 129-31). The current catalog, CX 1, has been in effect since about the first of 1966, and approximately 800,000 copies of it have been distributed to prospective customers, approximately 700,000 copies having been distributed outside of the State of Ohio. Carl also distributed about a million copies of an earlier catalog, CX 3, which was in effect from about the first of 1964 to the end of 1965 (Tr. 131-3, 137-40).

5. In 1965 the gross sales of Carl amounted to over \$590,000, and during the fiscal year ending June 30, 1966, they amounted to more than \$690,000 (Tr. 26-7). It was stipulated that 85-percent of the gross sales of Carl are generally made to purchasers whose addresses are in States other than Ohio (Tr. 6-7). The merchandise sold by Carl is generally shipped from its warehouse located in Lisbon, Ohio, to its customers located in Ohio and in other States, but in some instances merchandise is shipped directly to customers located in various States from the factories of Carl's suppliers (Tr. 174-6, 181-4). At all times mentioned herein Carl has maintained a substantial course of trade in the products which it sells in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. The complaint alleged, and the answer admitted, that the individual respondents are also officers and principal stockholders

of Pioneer Co., an Ohio corporation. The undisputed testimony, however, is that respondent Frank J. Tuseck owns all of the stock of Pioneer Co. (Tr. 40). The principal office and place of business of Pioneer Co. is located at the same address as Carl (Complaint and Answer).

7. Pioneer Co., which is not named as a respondent herein, is engaged in the business of manufacturing, offering for sale, sale and distribution of hospital equipment and convalescent needs (Complaint and Answer), described in detail in its current catalog which has been in use since about the first of 1964 (Tr. 38-40; CX 4). The only testimony concerning the manufacturing operations of Pioneer Co. relates to certain step stools and commodes, and its only apparent relevance is with respect to the question of whether these items, and possibly others, are manufactured by Pioneer Co. or by Carl (Proposals by counsel supporting the complaint, pp. 4-5).

8. The testimony is to the effect that Pioneer Co. and Carl both offer for sale and sell the same step stool and the same portable commode, but that each sells these items under its own name. Carl sells about 100 of the step stools in a year, and Pioneer Co. about 300, but their respective sales of the commode are not indicated (Tr. 40-1, 52-3, 103; CX 1, 3, 4). It is asserted by the witness that the step stools are produced by Carl (Tr. 40), and that the commodes are produced by both companies (Tr. 52-3, 103). He stated that the material used in the production of these items is purchased by both companies (Tr. 51); that the tools and equipment are owned primarily by Pioneer Co.; that the manufacturing functions are performed primarily by the employees of Carl; and that Pioneer Co. and Carl occupy the same building and the same rooms (Tr. 105-6). The witness also said that Pioneer has had two employees for at least three years who do some of the manufacturing operations, and that all of the other manufacturing operations are done by Carl employees (Tr. 47-8, 105); and that Pioneer Co. compensates Carl for the work done by Carl employees in producing items for Pioneer on a flat fee basis plus additional amounts invoiced periodically (Tr. 50-2, 56, 107).

9. The precise arrangement between Pioneer Co. and Carl under which the step stools and portable commodes are produced is not clear to the hearing examiner. It is clear, however, that Carl is wholly owned by the husband and wife who are the individual respondents, that Pioneer Co. is wholly owned by the husband and that the two companies are operated by the individual respondents with little attention, insofar as here pertinent, to the refinements

of corporate organization or ownership. In these circumstances it is the opinion of the hearing examiner that insofar as the combined operations of Pioneer Co. and Carl in producing the step stools and commodes constitute manufacturing, Carl is engaged in manufacturing these items for the purposes of this proceeding.

10. The respondents began using the name "Carl Mfg. Co." in about 1963 when Carl was incorporated (Tr. 185-6). The Carl catalog which was in effect from about the first of 1964 through 1965, CX 3, and the catalog which has been in effect since then, CX 1 (Tr. 140), feature the name "Carl Mfg. Co." on the cover pages and on various other pages throughout the catalogs, together with various statements emphasizing the significance of the term "Mfg." in the name. For example, on the cover page of each catalog, immediately under the name, appears the statement:

A Diversified Manufacturer of Business Necessities Selling Direct to You.

Other statements having a similar connotation which appear in the catalogs include:

Order Direct From Carl Mfg. Co. (CX 3, cover page.)

Buy Direct. (CX 1, p. 15; CX 3, p. 7.)

Save! Order Direct. (CX 1, pp. 33, 41; CX 3, pp. 25, 29.)

All Items In This Catalog Are F.O.B. Our Factory. (CX 3, p. 29.)

All Shipments Are FOB Our Factories. (CX 1, p. 48; CX 3, back page.)

11. No testimony was offered concerning the meaning which is conveyed by the name and the foregoing statements and representations, and others of similar import, in Carl's catalogs and advertising, and none was needed. In the context in which they are made, the statements are clear and unambiguous. The term "Mfg." in the name is clearly an abbreviation of the word "Manufacturing," and constitutes a representation that Carl is engaged in the business of manufacturing. The only reasonable significance of such a representation is that it refers to merchandise offered for sale in Carl's catalogs and advertising. The other statements specify and amplify that meaning by urging prospective customers to "Buy Direct From Carl Mfg. Co.," "A Diversified Manufacturer * * * Selling Direct to You" and "Save." Since there is no limitation or qualification of these representations, they clearly imply that all of the products offered for sale by Carl are manufactured by it, particularly so when made in connection with such statements as "All Items In This Catalog Are F.O.B. Our Factory" and "All Shipments Are FOB Our Factories."

12. It is found, therefore, that by and through the use of the

name, "Carl Mfg. Co.," separately and in connection with the aforesaid statements and representations, and others, and through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, respondents have represented, and now represent, directly or by implication:

1. That respondents are the manufacturers of all of the products offered for sale by Carl;

2. That all of said products are offered for sale at manufacturers' prices; and

3. That purchasers from Carl save the difference between manufacturers' prices of said products and their usual retail prices.

13. In Paragraph Eight of the complaint the Commission took official notice of facts with respect to a public preference and understanding in connection with dealing directly with manufacturers. After conclusion of the case-in-chief in support of the complaint, and before the defense was started, the hearing examiner referred to the official notice taken by the Commission, stating that it was consistent with determinations by the Commission, based upon the testimony of witnesses, in a long line of cases covering many years. (For extensive summary see CCH Trade Reg. Rep. ¶7577.49-7577.66.) He also pointed out that the official notice taken by the Commission was binding upon the hearing examiner, and that in offering defense evidence respondents would be afforded full opportunity to disprove the facts officially noticed by the Commission (Tr. 159-62; Sec. 3.14(d) Commission's Rules of Practice).

14. Counsel for respondents offered no evidence directly challenging the facts officially noticed by the Commission, and did not request suspension of the proceeding to afford him an opportunity to obtain such evidence. With some possible bearing upon this point, but with direct reference to the allegations of injury to the public and competitors (Complaint Par. 10), the witness, who is an individual respondent, testified in response to leading questions by counsel for respondents, that he did not know of any member of the public or any competitor who had been injured by the dissemination of respondents' catalogs and advertising (Tr. 178-9). While of doubtful, if any, probative value at best, such testimony provides no color of proof contrary to the facts officially noticed by the Commission.

15. On the basis of the facts officially noticed by the Commission, no evidence to the contrary having been presented, it is found that there is a preference on the part of members of the

purchasing public for dealing directly with manufacturers of products, rather than with outlets, distributors, jobbers or other intermediaries, such preference being due in part to a belief that by dealing directly with the manufacturers, lower prices and other advantages may be obtained.

16. Paragraph Six of the complaint alleged, in effect, that Carl does not manufacture any of the products sold by it. Upon conclusion of his case-in-chief, counsel supporting the complaint conceded that the evidence had established that Carl is the manufacturer of at least two of the products which it offers for sale (Tr. 148-9). He moved, therefore, to amend Paragraph Six of the complaint to conform with that concession, and to allege, in effect, that not all of the merchandise sold by Carl is manufactured by it. Counsel for respondents withdrew his initial objection, and the complaint was amended to that extent (Tr. 164-7; Preliminary Statement herein).

17. The primary remaining issue, therefore, is whether or not respondents manufacture all of the products offered for sale by Carl. That issue is resolved by the testimony of an individual respondent which makes it clear that many of the products advertised in Carl's catalogs are not manufactured by respondents. The representations in Carl's name and advertising to the effect that respondents manufacture all of the products offered for sale by Carl, and related representations (Fi. 10-12), are accordingly false and misleading. For the purpose of determining the nature and scope of the remedy which is required to eliminate from respondents' advertising the deception inherent in such representations, it is appropriate to examine in detail the extent to which respondents manufacture the products advertised and sold by Carl.

18. No evidence, other than the testimony of respondent Frank J. Tuseck, was offered to establish the processes which must be performed by a company to justify the claim that it is the manufacturer of particular products. Counsel supporting the complaint elected to rely instead upon general definitions and prior decisions of the Commission and the courts (Proposals by counsel supporting the complaint, pp. 5-6).

19. The prior decision of the Commission which appears to the hearing examiner to be most nearly in point with the circumstances in this proceeding is *In the Matter of the Lafayette Brass Manufacturing Co., Inc., et al.*, 57 F.T.C. 704, decided in 1960. In its opinion in that case the Commission quoted, at page 715, from an 1898 definition of "manufacture" by the Supreme Court in *Tide Water Oil Company v. United States*, 171 U.S. 210, which stated,

in part, that "the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily, the article so manufactured takes a different form, or at least subserves a different purpose from the original materials; and usually it is given a different name." After referring to "successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product," the definition stated that "the finished product of one manufacture" becomes "the material of the next in rank * * *."

20. In its opinion in the *Lafayette Brass* case, the Commission, at page 715, gave as examples of operations which may be considered to be a process of manufacture, "the assembling of a 'hook' washing machine hose * * * which involves the cutting of the hose, the cutting and bending of aluminum tubing and the coupling of the tubing to the hose; and the assembling of certain sprinklers * * * which involves such operations as grinding off aluminum flash, drilling holes, punching out gaskets and punch pressing retainer and base plates, together with the assembling of the various parts." The examples of manufacturing processes there recognized by the Commission are similar to certain of the processes involved in this proceeding and provide a proper standard for application here.

21. In their place of business in Lisbon, Ohio, described by the witness as including a factory and warehouse, respondents employ 32 persons in functions which the witness considered to be manufacturing processes, approximately five of those persons being employed in printing operations (Tr. 55-6, 105, 110, 183). Respondents also own and control a company in Erie, Pennsylvania, which is extensively engaged in manufacturing (see Fi. 28).

22. As he was testifying, the witness encircled in blue ink each item in CX 1, Carl's current catalog, which he considered to be manufactured by Carl (Tr. 29-33, 138). He did not indicate that any of the many other items in that catalog are manufactured by Carl. Before appearing as a witness, he also marked in red ink with a star-like symbol certain items in CX 3, Carl's catalog which was in effect from about the first of 1964 to the end of 1965. He testified that each item in CX 3 marked with the star was manufactured by Carl, and that no other items in that catalog were manufactured by it (Tr. 42-3, 53-5, 139-40). With the exception of business forms, which will be referred to later herein (see Fi. 33-45), the only items thus identified by the witness as being manufactured by Carl were:

- No. 344, Shelf and 18 File Boxes (CX 1, p. 3)
- No. 345, Shelf with 9 boxes (CX 1, p. 3)
- No. 349, Step Stool (CX 1, p. 7)
- No. 350, Step Stool with handrail (CX 1, p. 7)
- No. 4T-24, Commode (portable toilet) (CX 1, p. 29; CX 3, p.

21).

23. The current catalog of Pioneer Co., CX 4, which has been in effect since about the first of 1964 (Tr. 39), also has red stars marking a number of items such as foot stools, crutches, walkers, commodes, stands, screens and canes. This catalog was sent to counsel supporting the complaint by the witness in August 1965, at the same time as CX 3, and presumably the red stars were inserted by the witness and were intended by him to identify the items in CX 4 which he considered to be manufactured by respondents (Tr. 42, 47). The witness did not testify specifically to that effect, however, and there is no testimony concerning the manufacturing procedures of respondents in connection with any of the items in CX 4 except certain foot stools (Tr. 40-1) and a commode (Tr. 101-3), which were also marked in Carl's catalogs as products of respondents' manufacture. In these circumstances, and because respondents are not charged with misrepresenting that they manufacture the merchandise offered for sale by Pioneer Co., the red stars in CX 4 will be disregarded except in connection with the foot stools on the second page and the commode on the ninth page.

24. The witness testified that for about 18 months Carl has been manufacturing the step stool and the step stool with handrail shown on page 7 of Carl's current catalog, CX 1, as items No. 349 and No. 350, respectively (Tr. 33-4). Each of these stools consists of a 12" by 14" wooden platform covered by a rubber mat and mounted on legs made of bent aluminum tubing. Item No. 350 has added to it a handrail also made of bent aluminum tubing. These are the same items as those shown on the second page of the Pioneer Co. catalog, CX 4, where they are identified as foot stools (Tr. 40-1; see Fi. 8 and 9). They are not shown in Carl's earlier catalog, CX 3 (Tr. 40-1).

25. The witness also testified that Carl manufactures a portable toilet shown on page 29 of Carl's current catalog, CX 1, and on page 21 of its earlier catalog, CX 3, as "No. 4T-24 Commode." This item consists of an enameled wooden seat attached to aluminum legs in such manner that the seat and legs can be folded into a flat position when not in use (Tr. 52-3, 101-2). This is apparently the same item as that shown on the ninth page of the Pioneer

Co. catalog, CX 4, where it is identified as "Folding Commode FC-170" (Tr. 52-3, 103; see Fi. 8 and 9).

26. The enameled wooden seats of the commodes are received by Carl as completed items (Tr. 102), and the wooden platforms for the step stools are apparently received by Carl as ready-made items, but the rubber mats covering them are cut and applied by Carl (Tr. 45-6). The remaining manufacturing operations performed by Carl on the step stools and the commode are essentially the same (Tr. 101-2). The aluminum tubing which constitutes the legs and handrails of these items is received by Carl as straight lengths of tubing from 12 to 20 feet long (Tr. 103). This tubing is cut and bent to the proper dimensions by Carl, drilled with the necessary holes, and the burrs resulting from the cutting and drilling are removed. Carl also installs the necessary brackets, screws and rivets, inserts plastic plugs in the ends of the legs, and over them installs rubber tips, and performs the other operations required to put these items together as finished products (Tr. 45-6, 102-3).

27. Counsel supporting the complaint concedes that Carl manufactures the step stools and the commode referred to above (Tr. 148-9). The hearing examiner is of the opinion that this is a proper concession, and finds that Carl is the manufacturer of these items.

28. Respondents recently acquired Erie City Manufacturing Company, located in Erie, Pennsylvania, which manufactures the wheel chairs identified as items No. 357 and No. 359 on page 7 of Carl's current catalog, CX 1. Carl owns 65 percent and respondent Frank J. Tuseck owns 35 percent of that company. It is engaged in the manufacture of wheel chairs, invalid commodes, invalid walkers and related items, and its annual sales amount to approximately \$1,500,000 (Tr. 107, 109-10, 112, 169). The Erie company sells primarily to wholesale druggists and mail-order houses located throughout the United States (Tr. 110). The only items which it supplies to Carl and which are shown in Carl's catalog are the wheel chairs referred to above. Its manufacturing processes in connection with these wheel chairs consist of welding, bending, drilling, de-burring, grinding, assembly and the installation of components such as seats and backs (Tr. 110-2). Since respondents own and control the factory which manufactures the wheel chairs advertised on page 7 of CX 1, it is found that respondents manufacture those wheel chairs.

29. The witness testified that Carl produces the shelves and file boxes shown on page 3 of CX 1, identified as "No. 344, Shelf and

18 File Boxes," and "No. 345, Shelf with 9 Boxes" (Tr. 56-8). When fully assembled, these items consist of open metal shelves supported by metal uprights with cardboard file boxes fitted into the shelf space. They are designed for the storage of legal size and letter size papers, and the fronts of the cardboard file boxes are imprinted with a form providing for identification of their contents.

30. When received by Carl, the cardboard file boxes have already been imprinted and are folded flat. They may be converted into complete file boxes ready for use by unfolding them and adjusting their flaps and lids (Tr. 63-4). The metal shelves and uprights are received by Carl unassembled, but ready for assembling. The uprights and shelves have already been cut and shaped in the proper dimensions and drilled with the necessary holes, and the nuts and bolts needed for their assembly are received by Carl in completed form. The metal shelves and uprights, and the nuts and bolts are stock items purchased by Carl from its suppliers (Tr. 73-5). The witness testified, however, that the cardboard cartons are produced to Carl's specifications with respect to the hinge and flange of the lid, the holes for hand gripping, and the imprinted form for content identification, including the Carl name (Tr. 74-8). The boxes, uprights, shelves, nuts and bolts are repackaged by Carl so as to include the proper number of each for a complete unit. The repackaged units are shipped by Carl to its customers in the flat, unassembled form, and in some instances they are fully assembled as finished units before being shipped out (Tr. 64-7).

31. The shelves and file boxes identified as No. 344 and No. 345 on page 3 of CX 1 appear to the hearing examiner to be the same as the items identified as "3R-8 Storage File" and "3R-9 Double Size Storage File" shown on the last page of CX 3, which is unnumbered but which if numbered would be page 32. It should be noted, however, that these items were not marked in CX 3 with red stars, and that the witness did not testify that these items shown in CX 3 were manufactured by Carl. It should also be noted that the witness, and individual respondent, testified, in effect, that the items in CX 3 which are not marked with a red star were not manufactured by Carl (Tr. 42-3, 53-5). Such testimony is, of course, limited to the effective period of that catalog, which was 1964 and 1965 (Tr. 139-40), but there is nothing in the testimony to suggest that there was any change in Carl's method of buying and selling these shelves and file boxes subsequent to that period. In short, it appears that when the witness sent CX 3 to counsel

supporting the complaint on August 13, 1965 (Tr. 36), he did not consider that Carl was the manufacturer of the shelves and file boxes in CX 3.

32. The components of the shelves and file boxes are purchased by respondents as finished products. When these components are sorted and repackaged by respondents and shipped in flat form so that they can be assembled by the purchasers into complete units, such sorting and packaging clearly do not constitute manufacturing operations. Even when the shelves and file boxes are assembled by Carl before being shipped (and the frequency with which this is done was not indicated), Carl's assembly operations, which are nothing more than would otherwise be done by the ultimate buyer, fall short of manufacturing procedures. It is the opinion of the hearing examiner that respondents do not manufacture the shelves and file boxes.

33. Respondents contend, and counsel supporting the complaint denies, that Carl manufactures an extensive list of business forms shown in its current and earlier catalogs, CX 1 and CX 3 (p. 5-6 Proposals by counsel supporting the complaint). The only evidence concerning the processes performed by Carl in connection with these items is the testimony of respondent Frank J. Tuseck, and there is no dispute or countervailing evidence with respect to what Carl actually does. The controversy turns upon whether or not its processes amount to manufacturing.

34. Since probably more than half of Carl's orders and approximately 35 percent to 40 percent of its dollar volume are represented by these business forms (Tr. 171-2), its manufacturing processes in connection with them warrant careful examination. The business forms which were marked by the witness as products of Carl's manufacture are shown in Carl's current catalog, CX 1, at pages 10 through 20, and in its earlier catalog, CX 3, at pages 1 through 12. They are substantially the same in both catalogs and the testimony related specifically to those appearing in CX 1.

35. Carl does not manufacture the paper or the ink. Some of the items do not require any operations by Carl except imprinting the name and address specified by the customer. With respect to other items, however, the paper is received in large sheets without any printing, and is cut by Carl to proper size, printed in full as business forms and assembled with cardboard backs and an adhesive compound into pads (Tr. 79-82). In most of its printing Carl uses a "crash impression," which presses hard enough to indent the paper, but in some of its applications it uses a "kiss impression" which causes no indentation. It does no engraving or

embossing (Tr. 98-9). The witness considered that Carl is engaged in manufacturing business forms rather than in job printing, and testified that Carl is "the only one that I know of in our industry that manufactures standard forms" (Tr. 100-1). The processes performed by Carl in connection with the business forms marked by the witness are set out in detail below.

36. In producing the Application For Credit, Form AC-6, and the Conditional Sales Agreement, Form CS-5 (CX 1, p. 13), Carl buys the paper in large, unprinted sheets, cuts it to size and does all of the printing. It then assembles the individual forms into packs containing 50 or 100 sheets each, adds a cardboard backing to each pack and binds the backing and sheets together with an adhesive compound to form a pad. The pads are then trimmed and packaged and kept in inventory ready for sale. These forms are stock items and are not imprinted with the names and addresses of individual customers (Tr. 90-2).

37. The Credit Inquiry Form, Item #201, and the Remittance Advice form, Item #199 (CX 1, p. 14), are produced in the same manner as forms AC-6 and CS-5 (Tr. 92). The Animated Collection Notices, forms 3000 A, B, C and D (CX 1, p. 18), which are of Carl's own design, and on which it does all of the printing, and the "Fast Reply" and "While You Were Out" forms, Items #203 and #252 (CX 1, p. 20), are also produced in substantially the same manner (Tr. 96-7).

38. The "From The Desk Of" forms, Item 250 (CX 1, p. 14), the Billheads, forms 25, 26 and 27 (CX 1, p. 15), the Letterheads, Items #251 and #202, and the Statements, Items #A-11, #B-12 and #C-14 (CX 1, p. 20), are also produced by Carl in substantially the same manner as forms AC-6 and CS-5, except that the name and address specified by the customer is added by Carl upon receipt of an order, and when preferred by the customer these forms are not bound into pads (Tr. 92, 95, 97).

39. It is the opinion of the hearing examiner that the operations performed by Carl in producing forms AC-6 and CS-5, and other forms which are produced in substantially the same manner, constitute manufacturing processes, and that Carl manufactures those business forms.

40. The "E-Z Letters," form #E-Z 4 U (CX 1, p. 11), and the "E-Z Invoices," form #E-Z 2 (CX 1, p. 12), are designed by Carl and produced to its specifications by its supplier. Their designs are unique, and so far as the witness knows they are not produced for anyone else. They are received by Carl as printed forms which have been bound together in sets of three sheets

with carbon interleaves (form #E-Z 2 is also available in sets of four or five sheets). Carl imprints the first sheet of each set with the name and address and any additional printing specified by its customers and the printing is carried through to the other sheets by the carbon interleaves (Tr. 82-7, 94). The Purchase Orders, form #E-Z 7 (CX 1, p. 13), the Statements, form #E-Z 5 (CX 1, p. 14), the "Kwik-Rite" Message Reply forms KR-8 and KR-11, and the "Kwik-Memo," form KM-30 (CX 1, p. 19), are also produced to Carl's specifications and designs and are received and imprinted by Carl in the same manner, except that certain of them are available only in sets of two sheets instead of three (Tr. 90, 93, 96-7).

41. The Bills of Lading, Item No. E-Z 9 (CX 1, p. 15), are also produced to Carl's specifications and design and are received by Carl as printed forms bound in sets of three sheets with carbon interleaves. They are imprinted by Carl in substantially the same manner as form #E-Z 4 U, except with additional details requested by the customer. Often the customer will want individual items of his merchandise printed on the bill of lading and usually wants his name and address printed in at least two places (Tr. 94-5).

42. The "Distinctive Window Envelopes With a Custom Design," forms WT-3 and WC-2 (CX 1, pp. 12 and 13), are produced to Carl's specifications by its supplier, and so far as the witness knows they are not produced for anyone else. They are received by Carl as fully manufactured envelopes and it imprints the name and address and any additional printing specified by the customer (Tr. 87-8). The same procedures apply to the "Remit-O Envelopes" (CX 1, pp. 16 and 17), which include imprinted designs and messages when received by Carl (Tr. 95-6).

43. The hearing examiner is far from satisfied that Carl manufactures the letter, invoice and other forms which it receives bound in sets of two or three or more sheets with carbon interleaves, or that it manufactures the window or "Remit-O" envelopes. The fact that these forms may be manufactured by others to Carl's specifications does not constitute Carl as the manufacturer, but that is not the full answer. When received by Carl, these forms are fully manufactured items with particular characteristics and uses as business forms. After receiving them, however, Carl imprints them with the name and address and any additional printing specified by the customer. By such printing these forms are converted into business forms useful to the particular customer

and to no one else. To that extent they are undoubtedly changed and serve a different purpose from the forms received by Carl.

44. No evidence, other than the testimony of an individual respondent, was offered as to whether or not the imprinting of the name and address and certain additional printing specified by the customer on otherwise fully manufactured business forms constitutes a manufacturing process. Counsel supporting the complaint has not cited, and the hearing examiner has not found, any prior decision of the Commission or the courts which appears to be sufficiently in point to provide an informative guide or standard for the resolution of this question; and the hearing examiner does not have a sufficient expertise in printing procedures to enable him to make an informed judgment with respect to it.

45. Although the hearing examiner entertains certain doubts that the printing done by Carl upon otherwise completely manufactured business forms constitutes manufacturing operations by Carl, the record does not provide a basis for an informed determination on this question. To the extent that he asserts that respondents are not the manufacturers of particular items in Carl's catalogs, counsel supporting the complaint has the burden of proof. The evidence establishes that Carl is the manufacturer of certain of the business forms marked by the witness in Carl's catalogs, and counsel supporting the complaint has not carried his burden of proving that Carl is not the manufacturer of other business forms marked by the witness. The record accordingly fails to establish that Carl is not the manufacturer of all of the business forms marked by the witness on pages 10 through 20 of its current catalog, CX 1, and pages 1 through 12 of its earlier catalog, CX 3.

CONCLUSIONS

1. In its factory in Lisbon, Ohio, Carl employs 32 persons in its manufacturing processes, approximately five of whom are employed in its printing operations. In that factory Carl manufactures step stools, a portable commode and a line of business forms which are advertised in its catalogs. In the factory of Erie City Manufacturing Company, which they own and control, respondents also manufacture the wheel chairs advertised in Carl's current catalog, and a variety of other items which are not offered for sale by Carl.

2. Respondents do not, however, manufacture any of the other items of merchandise advertised in Carl's catalogs. Items which are not manufactured by respondents constitute the majority of the items advertised in Carl's catalogs. The unqualified representa-

tions in Carl's name and advertising statements that respondents are the manufacturers of all of the products offered for sale by them, and related representations (Fi. 10-12), are, therefore, false, misleading and deceptive.

3. The use by respondents of the false, misleading and deceptive statements and representations referred to above has had, and now has, the tendency and capacity 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 products from respondents by reason of said erroneous and mistaken belief.

4. The use by respondents of said false, misleading and deceptive statements and representations was, and is, to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitutes, an unfair method of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

5. The public interest requires that the deception in Carl's name and advertising representations be eliminated, but does not warrant restrictions which go beyond the accomplishment of that purpose. The term "Mfg." in Carl's name, and the related representations, are not false or misleading with respect to the items advertised in Carl's catalogs which are manufactured by respondents, and items in that category probably account for most of Carl's orders and almost half of its dollar volume. The remedy should be accommodated to that situation insofar as it can be done consistent with adequate protection of the public interest.

6. In a somewhat similar situation the Commission held that excision of the word "Manufacturing" from a trade name is not warranted if there is some other means by which its deceptive implications can be removed. It believed that the likelihood of deception would be eliminated through clear disclosure of the true nature of the business operations involved. In that case it required that "in immediate connection and conjunction" with each use of the name containing the word "Manufacturing" a clear and conspicuous disclosure be made that the company "is primarily a distributor and assembler of the products it sells" (*Lafayette Brass Manufacturing Co., Inc., et al.*, 57 F.T.C. 704, at 716-717, (1960)).

7. In the present case it is clear that Carl does not manufacture most of the products advertised in its catalogs, but the record does not firmly establish that such products account for the greater

part of its orders or of its dollar volume. The record does not provide a sound basis, therefore, for requiring a statement that Carl is "primarily" a distributor and assembler of the products it sells. In the circumstances here presented it is the opinion of the hearing examiner that the deceptive implications of the term "Mfg." in Carl's name can be eliminated by a clear and conspicuous statement that it is a distributor and assembler of many of the products it sells; and that the deceptive implications of representations concerning savings by buying directly from the manufacturer can be eliminated by specifically limiting such statements to those items which are in fact manufactured by respondents.

8. Compliance with such requirements does not appear to be difficult if undertaken in a good faith effort to eliminate the deception. For example, the statement, "A Diversified Manufacturer of Business Necessities Selling Direct to You," which is now used in conjunction with the corporate name, could be changed to a statement such as "A Diversified Distributor, Assembler and Manufacturer of Business Necessities." The word "Manufacturer" should not be used in such a statement before the words "Distributor" and "Assembler" because of the implication which would thus be conveyed that the company assembles and distributes only the products which it manufactures; and the words "Selling Direct to You" should be eliminated in any qualification of the corporate name because of their apparent general application to all of the products Carl sells. Such statements as "Buy Direct," and "Save! Order Direct" should be made only with clear and specific reference to products actually manufactured by Carl. Such statements as "All Items In This Catalog Are F.O.B. Our Factory" could be modified by changing the word "Catalog" to "Page" and using such statements only on those pages devoted exclusively to products manufactured by Carl. To the extent that respondents consider it appropriate to do so, there should be no difficulty in accurately identifying the items in Carl's catalog which are shipped from its "factory," when it is the manufacturer; from its "warehouse," when it is the distributor or assembler; or from the factories of its suppliers, when shipments are made from such factories.

9. The foregoing examples represent only suggestions as to possible methods of compliance to indicate the scope and purpose of the remedy which in the opinion of the hearing examiner is needed to eliminate the deception in Carl's name and in the related representations in its advertising. They are not intended to set out the exact expressions to be used, nor to define the limits

Order

71 F.T.C.

of the corrections which should be made in respondents' advertising. Any uncertainty as to the scope and specific requirements of the remedy may be readily resolved by appropriate inquiry under the Commission's established compliance procedures (Section 3.26(b), Rules of Practice).

ORDER

It is ordered, That respondent, The Carl Mfg. Co., a corporation, and its officers, and respondents, Joyce Tuseck and Frank J. Tuseck, individually and as officers 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 office, factory or store supplies or equipment or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Mfg." or the word "manufacturing" or any other word or words of the same or similar import or meaning as part of the corporate or trade name or names of said respondents unless in immediate connection and conjunction with each use of such name a clear and conspicuous disclosure is made that the organization using such name is a distributor and assembler of many of the products it sells.
2. Representing, directly or by implication, that products not manufactured in a factory owned, operated and controlled by said respondents are offered for sale at manufacturers' prices.
3. Representing, directly or by implication, that purchasers of products not manufactured in a factory owned, operated and controlled by said respondents save the difference between the manufacturers' prices and the usual retail prices thereof.
4. Misrepresenting, in any manner, the savings afforded purchasers of said products.

ORDER TERMINATING PROCEEDING

The initial decision of the hearing examiner in this proceeding was filed on November 1, 1966, and on November 15, 1966, respondents filed their notice of intention to appeal. On January 19, 1967, respondents not having filed an appeal brief, the Commission ordered that the effective date of the initial decision be stayed until further order of the Commission.

On May 25, 1967, respondents submitted the Assurance of Voluntary Compliance contained in the appendix of this order. The

specific obligations and undertakings set forth in the Assurance of Voluntary Compliance parallel the prohibitions of the order to cease and desist contained in the initial decision. It also recites, page 1180:

"Affiants further promise and assure the Federal Trade Commission that they shall render immediate good faith compliance with their foregoing commitment to cease and desist herein, with the added understanding that they shall have until December 31, 1967, to compile, print and distribute new catalogs and other advertising materials which conform with said commitment."

In view of the present circumstances, the Commission does not believe it to be necessary to proceed further in this matter. The proceeding will be reopened, however, if and when it should appear that respondents are not in full compliance with the Assurance of Voluntary Compliance. Subject to the filing by each respondent of an acceptable written report of compliance, to be filed on or before January 15, 1968,

It is ordered, That this proceeding be, and it hereby is, terminated.

APPENDIX

ASSURANCE OF VOLUNTARY COMPLIANCE

JOYCE TUSECK and FRANK J. TUSECK, by and on behalf of themselves and of The Carl Mfg. Co., a corporation, being first duly sworn, depose and say:

That The Carl Mfg. Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 110 West Washington Street, Lisbon, Ohio; that Joyce Tuseck, an individual, is president of said corporation, and her husband, Frank J. Tuseck, an individual, is secretary-treasurer of said corporation; and that their principal office and place of business is the same as that of said corporation.

That Joyce Tuseck and Frank J. Tuseck own all of the stock of The Carl Mfg. Co., hereinafter sometimes referred to as *Carl*; that they formulate, direct, control, and are individually responsible for the acts and practices of said corporation, including the acts and practices hereinafter referred to; and that they are duly authorized to represent, bind and obligate said corporation.

That The Carl Mfg. Co. and Joyce Tuseck and Frank J. Tuseck are now and have been generally engaged in the advertising, offer-

ing for sale, sale and distribution of office, factory and store supplies and equipment and other articles of general merchandise to the purchasing public; that they usually ship their said products from The Carl Mfg. Co.'s warehouse located in Lisbon, Ohio, to their customers located in Ohio and other States, but in some instances the said products are shipped directly to their various customers from the factories of their suppliers; and that at all times they have maintained a substantial course of trade in the aforementioned products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

That Joyce Tuseck and Frank J. Tuseck are also officers of Pioneer Co., an Ohio corporation, which is engaged in the business of manufacturing, offering for sale, selling and distributing hospital equipment and convalescent needs, described in detail in *Pioneer's* own sales catalog; and that Frank J. Tuseck owns all the stock of Pioneer Co., whose principal office and place of business is located at the same address as that of The Carl Mfg. Co.

That all the supplies, equipment and general merchandise sold by affiants, by and through The Carl Mfg. Co. as aforesaid, are and have been described in detail in The Carl Mfg. Co.'s catalogs and other advertising material distributed under the name of The Carl Mfg. Co. to said firm's various customers and prospective customers.

That use of the name "Carl Mfg. Co." began in 1963, when said firm was incorporated, and the *Carl* catalogs have featured said name on the cover pages and on various other pages throughout the catalogs, together with various statements and representations emphasizing, directly or indirectly, the significance of the term "Mfg." in said name, as for example:

The cover pages of each *Carl* catalog have borne the following statement immediately under the firm's name: "A Diversified Manufacturer of Business Necessities Selling Direct to You." Other statements having similar connotation and which have appeared in the *Carl* catalogs include:

Order Direct From Carl Mfg. Co.; Buy Direct; Save! Order Direct; All Items In This Catalog Are F.O.B. Our Factory; All Shipments Are FOB Our Factories.

That affiants realize that, in the context in which the firm's name and the aforesaid statements and representations, including others of similar import, were used in the *Carl* catalogs and advertising materials, the meaning conveyed thereby has been clear and unambiguous; that the term "Mfg." in the firm's name is

clearly an abbreviation of the word "manufacturing" and constitutes a representation that the firm is engaged in the business of manufacturing; that the reasonable significance of such representation is that it refers to merchandise offered for sale in the *Carl* catalogs and advertising; that the other statements specify and amplify that meaning by urging prospective customers to "Buy Direct From Carl Mfg. Co.," "A Diversified Manufacturer * * * Selling Direct to You" and "Save"—clearly implying, absent qualification or limitation, that all of the products and merchandise offered for sale by The Carl Mfg. Co. are manufactured by said firm—and particularly even more so when made in connection with such statements as "All Items In This Catalog Are F.O.B. Our Factory" and "All Shipments Are FOB Our Factories."

That affiants therefore realize additionally that by and through the use of the name, "The Carl Mfg. Co.," separately and in connection with the aforesaid statements and representations, and others, and through the use of the aforesaid statements and representations, and others of similar import and meaning, they have represented, directly or by implication:

- (1) That they are the manufacturers of all the products offered for sale by The Carl Mfg. Co.;

- (2) That all of said products are offered for sale at manufacturers' prices; and

- (3) That purchasers from The Carl Mfg. Co. save the difference between manufacturers' prices of said products and the usual retail prices therefor.

Further, affiants are aware that there is a preference on the part of members of the purchasing public for dealing directly with manufacturers of products, rather than with outlets, distributors, jobbers or other intermediaries, such preference being due in part to a belief that by dealing directly with the manufacturers, lower prices and other advantages may be obtained.

That affiants further concede that very few of the many articles of merchandise advertised and offered for sale in The Carl Mfg. Co.'s catalogs and other advertising materials are manufactured by such firm; that the great majority of said products are manufactured by firms other than The Carl Mfg. Co.; and that the unqualified representations in said firm's name and in the advertising statements and representations implying that said firm is the manufacturer of all the products offered for sale and sold by it are, thus, misleading and deceptive.

In good faith recognition of their awareness and concessions in the premises, affiants hereby further depose and assure:

That The Carl Mfg. Co., a corporation, and its officers, and Joyce Tuseck and Frank J. Tuseck, individually and as officers of said corporation, and the aforesaid parties' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of office, factory or store supplies or equipment or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, will forthwith cease and desist from:

(1) Using the term "Mfg." or the word "manufacturing" or any other word or words of the same or similar import or meaning as part of the corporate or trade name or names of said parties unless in immediate connection and conjunction with each use of such name a clear and conspicuous disclosure is made that the organization using such name is a distributor and assembler of many of the products it sells.

(2) Representing, directly or by implication, that products not manufactured in a factory owned, operated and controlled by said parties are offered for sale at manufacturers' prices.

(3) Representing, directly or by implication, that purchasers of products not manufactured in a factory owned, operated and controlled by said parties save the difference between the manufacturers' prices and the usual retail prices thereof.

(4) Misrepresenting, in any manner, the savings afforded purchasers of said parties' products.

Affiants further promise and assure the Federal Trade Commission that they shall render immediate good faith compliance with their foregoing commitment to cease and desist herein, with the added understanding that they shall have until December 31, 1967, to compile, print and distribute new catalogs and other advertising materials which conform with said commitment.

As a further assurance of their good faith, affiants, upon request, will submit to the Commission, for the inspection of the Commission, any and all catalogs and other advertising materials circulated or disseminated by said affiants.

Affiants have executed this Assurance of Voluntary Compliance in an effort to cooperate with the Federal Trade Commission and it does not constitute an admission that they have violated any of the laws or regulations administered and/or enforced by the Commission.

Affiants also understand and recognize that the execution and submission of this Assurance of Voluntary Compliance to the Federal Trade Commission will not preclude the Commission from

CONTINENTAL SCARF AND NOVELTY CO.

1181

1156

Complaint

taking such action in the future as it may deem appropriate,
pursuant to statutory authority and in the public interest.

Affiants duly affirm that they have executed this Assurance of