
IN THE MATTER OF
GENERAL TRANSMISSIONS CORPORATION OF
WASHINGTON ET AL.

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

Docket 8713. Complaint, Sept. 26, 1966—Decision, Feb. 23, 1968

Order requiring a Washington, D.C., automobile transmission repair garage to cease misrepresenting the nature and cost of its services, deceptively quoting prices before all facts are known, neglecting to disclose that an "overhaul" does not include reassembly, falsely claiming that its transmissions are factory-rebuilt, making false guaranties, misusing the terms "free," "no money down," and "easy credit," and systematically defrauding its customers.

Complaint

73 F.T.C.

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 General Transmissions Corporation of Washington, a corporation, Walter Dlutz, individually and as an officer of said corporation, and William J. Greene,* individually and as an agent 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 General Transmissions Corporation of Washington is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 2912 Bladensburg Road, NE., in the city of Washington, District of Columbia.

Respondent Walter Dlutz is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His principal business address is 5818 Torresdale Avenue, in the city of Philadelphia, State of Pennsylvania.

Respondent William J. Greene is general manager of the corporate respondent. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, repair, overhauling, rebuilding, offering for sale, sale and distribution of automobile transmissions to the public within the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their said transmissions and transmission repair service, respondents have made and are now making many statements and representations about their products and services.

Typical, but not all inclusive, of said statements and representations appearing in respondents' advertising are the following:

*Respondent's correct name is William J. Green, Jr., as noted in the initial decision.

399

Complaint

TRANSMISSIONS AND MOTORS

LABOR CHARGES FOR REMOVAL, DISMANTLING, AND THOROUGH INSPECTION
OVERHAUL \$22

RESEAL

Plus Necessary Parts

Factory Rebuilt Trans.—\$99.50

(Most cars)

One Day Service! No Money Down; E-Z Terms; Free Towing
Available lifetime warranty; written guarantee on all work

* * * * *

WE CAN SAVE YOU MONEY

Modern Shop Equipment Assures Low Cost to You
Servicing your transmission is our only business

AVAILABLE LIFETIME WARRANTY

Written Guarantee on All Work

* * * * *

TRANSMISSIONS

<i>One day service</i>		<i>Our prices are the lowest</i>
OVERHAUL	-----	\$60
RESEAL	-----	\$25
REBUILTS	----- complete from -----	\$89

OPEN 24 HOURS A DAY—SUNDAYS 10-2

Come in Today for a Free Checkup

NO MONEY DOWN; E-Z TERMS; FREE TOWING

ASK ABOUT OUR LIFETIME GUARANTEE

OVERHAUL OF CLUTCHES, BANDS, SEALS, GASKETS, STEEL SEALING, RINGS AND LABOR

PAR. 4. By means of the statements and representations in their advertisements, as set forth in Paragraph Three hereof, and others similar thereto but not specifically referred to herein, respondents have represented directly or by implication that:

1. Respondents will remove, dismantle, thoroughly inspect, reassemble and reinstall a transmission for \$22.
2. Respondents are making a bona fide offer to overhaul any transmission for \$60 and reseal any transmission for \$25.
3. Respondents' offer to overhaul or reseal transmissions for \$22 plus parts is a bona fide offer.
4. Respondents' offer to overhaul a transmission includes removal, disassembly and replacement of all worn parts and the reassembly and reinstallation of the transmission in the vehicle.
5. Respondents' offer to sell and install rebuilt transmissions for as little as \$89 is a bona fide offer.

Complaint

73 F.T.C.

6. Respondents will overhaul or reseal a transmission or install a rebuilt transmission in one day.
7. Respondents grant credit to their customers on a no money down easy terms basis.
8. Respondents provide free towing service.
9. Respondents unconditionally guarantee all work done by them in writing.
10. Respondents sell and install factory rebuilt transmissions for most cars for \$99.50.
11. Respondents are expert in the repair of automotive transmissions and can be relied upon to repair them in such a manner that they will function properly.

PAR. 5. In truth and in fact:

1. In many instances after removing and dismantling a transmission respondents refuse to reassemble and reinstall it for \$22 price.
2. Respondents are not making a bona fide offer to overhaul transmissions for \$60 or reseal all transmissions for \$25, but are engaged in the practice of "lo-balling" wherein the customer is attracted into respondents' establishment by their advertised low prices for automobile components or transmission services, then induced into expensive additional repairs when faced with respondents' refusal to reassemble unless the said repairs are effected.
3. Respondents' offer to overhaul or reseal transmissions for \$22 plus parts is not a bona fide offer but is made for the purpose of attracting customers to their place of business where respondents can convince them that they need more costly repairs.
4. Respondents' offer to overhaul a transmission does not include replacement of all worn parts.
5. Respondents' offer to install rebuilt transmissions for as little as \$89 is not a bona fide offer but is made for the purpose of attracting prospective customers to respondents' place of business where an attempt is made, and frequently with success, to sell a more expensive rebuilt transmission.
6. Respondents usually take more than one day to overhaul or reseal a transmission or to install a rebuilt transmission or to otherwise repair a transmission.
7. Respondents do not extend credit to any customer but require cash payment or payment through a limited number of credit cards. A customer not having the limited credit cards or cash is denied possession of his car until financing is obtained from a finance company to which the customer is referred by respondents.
8. Respondents' offer of free towing service is not unconditional, but is limited in certain respects, which limitations are not disclosed in

respondents' advertising or made known to the customer prior to the rendering of service.

9. Respondents do not provide an unconditional guarantee on work performed by them. Such guarantee as they give is limited, which limitations are not contained in respondents' advertising or made known to the customer prior to sale.

10. Respondents do not sell factory rebuilt transmissions for most cars for \$99.50. The rebuilt transmissions sold by them have been rebuilt by them and cost substantially more than \$99.50.

11. Respondents, either through negligence or inability, on numerous occasions repair transmissions in such a manner that they do not function properly and often cause further damage of an extensive nature.

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

PAR. 6. In the further course and conduct of their said business respondents engage in the following unfair or deceptive acts and practices:

1. When a customer brings his automobile to respondents' place of business for transmission repairs he is usually told that the problem is slight and can be repaired for a small or nominal sum of money and that all work is unconditionally guaranteed. Respondents thereby obtain authorization to do limited repair work which is described in general terms. When the customer returns to pick up his automobile he is almost invariably told that he needs a major repair job, or a rebuilt transmission, costing a substantial sum of money. Often the customer is told the transmission has been removed from his car and disassembled whereupon respondents refuse to perform the originally authorized repair work or restore the vehicle to its previous condition and represent that the transmission cannot be reassembled or that the previously agreed upon price does not include reassembly and reinstallation of his transmission. Respondents thereby obtain further authorization to do the additional repair work or install a rebuilt transmission.

2. Upon completion of a transmission repair job respondents guarantee the job for a certain number of days under normal driving conditions, and for an additional number of days or miles, whichever occurs first, on a fifty-fifty parts plus labor basis. If the transmission has problems or malfunctions during the period of respondents' guarantee or warranty, the customer is told that they are minor, self-adjusting and will disappear with continued driving, thus respondents avoid or seek to avoid honoring their guarantee or warranty.

Initial Decision

73 F.T.C.

3. Respondents refuse to give their customers itemized bills for parts and repairs for which they are charged.

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

PAR. 8. The use by the respondents of the aforesaid false misleading and deceptive statements, and representations and unfair or deceptive acts 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 respondent's products and services by reason of said erroneous and mistaken belief and by reason of said unfair or deceptive acts and practices.

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

Mr. Robert E. Freer, Jr., and Mr. Anthony I. Janulewicz supporting the complaint.

Mr. Burton Caine, Wolf, Block, Schorr and Solis-Cohen, Philadelphia, Pa., for respondents.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

MARCH 14, 1967

STATEMENT OF PROCEEDINGS

The Federal Trade Commission complaint in this proceeding issued September 26, 1966, charging the corporate and individual respondents with violation of Section 5 of the Federal Trade Commission Act through the alleged use of unfair or deceptive acts and practices and unfair methods of competition in commerce in the sale and repair of automotive transmissions within the District of Columbia.

Respondents General Transmissions Corporation of Washington and William J. Green, Jr. (incorrectly named in the complaint William J. Greene), and respondent Walter Dultz on October 31, 1966, filed answers denying the charges of the complaint and affirmatively alleging that if respondents' acts and practices are unlawful, the

claimed existing similar acts and practices of respondents' competitors within the District of Columbia are equally unlawful, and further, that if respondents were to be subjected to an order to cease and desist and their competitors are simultaneously not so restricted that respondents will be seriously injured and may be forced out of business.

Respondents on November 14, 1966, filed motion to suspend proceedings supported by affidavit of William J. Green, Jr., as to the claimed existing similar acts and practices of respondents' competitors. Said motion to suspend was certified to the Commission on November 17, 1966, with the recommendation that it be denied and the Commission order denying the same was entered December 1, 1966. Respondents' application of December 3, 1966, to the hearing examiner for order to take depositions and the issuance of supporting subpoenas duces tecum was denied by the hearing examiner December 6, 1966. Respondents' request of December 9, 1966, to the Commission for permission to file interlocutory appeal from the hearing examiner's aforesaid order of December 6, 1966, was denied by order of the Commission on December 28, 1966, for reasons as stated in the said Commission order.

Respondents' accompanying motion of December 9, 1966, to the hearing examiner to suspend hearings in the interim pending Commission action on respondents' aforesaid requested permission to appeal to the Commission was denied by the hearing examiner on the record¹ and the hearing on the merits commenced December 13, 1966, and concluded December 19, 1966. At the close of the presentation of the case-in-chief respondents elected not to call the individual respondents or any other defense witnesses and rested their case.²

Respective counsel were afforded full opportunity to be heard, to examine and cross-examine all witnesses and to introduce such evidence as is provided for under Section 3.14(b) of the Commission's Rules of Practice for Adjudicative Proceedings. Proposed findings of fact, conclusions, and supporting briefs were filed by respective counsel. Counsel for respondents filed a reply to the proposed findings of fact, conclusions of law and order of counsel supporting the complaint. Complaint counsel waived the filing of a reply to the proposed findings of fact, conclusions of law and brief of counsel for the respondents.

Proposed findings of fact and conclusions submitted and not adopted in substance or form as herein found and concluded are

¹ Tr. 150.

² Tr. 914. See in this connection the above Commission order of December 28, 1966 [70 F.T.C. 1848], and reasons given therein for denying respondents' request for permission to file interlocutory appeal from the hearing examiner's order of December 6, 1966.

Findings

73 F.T.C.

hereby rejected. After carefully reviewing the entire record in this proceeding as hereinbefore described, and based on such record and the observation of the witnesses testifying herein,³ the following Findings of Fact and Conclusions therefrom are made, and the following Order issued:

FINDINGS OF FACT

1. Respondent General Transmissions Corporation of Washington is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 2912 Bladensburg Road, NE., in the city of Washington, District of Columbia.⁴

2. Respondent Walter Dlutz is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His principal business address is 5818 Torresdale Avenue, in the city of Philadelphia, State of Pennsylvania.⁵

3. Respondent William J. Green, Jr. (incorrectly named in the complaint William J. Greene), was general manager of the corporate respondent. He also formulated, directed and controlled the acts and practices of said corporate respondent, including the acts and practices

³ Observation by the hearing examiner of the customer-witnesses while testifying herein left no doubt as to the truthfulness of their expressed beliefs that they had been unfairly victimized in their business dealings with the respondents. Further, some testified to having taken recourse to lawsuits which were either settled before trial or went to trial and judgment against the respondents (customer-witness McDonald at Tr. 543; customer-witness Montgomery at 592-593; customer-witness Shanklin at 901-904). In the words of customer-witness Stiles at Tr. 319:

"It preyed on my mind for a while, for about a month and a half. So I finally decided that I could not get it out of my system, so I wrote to the Better Business Bureau. I made three copies.

"The Better Business Bureau—well, they sent me a letter a couple of days later which I have, which told me for further satisfaction to go to Small Claims Court, which I did.

"I had a marshal deliver some kind of order from the court for the manager to appear with me. He did not show up. I won the case.

"I took the judge's verdict back to the transmission company. He said just present it to him and cash on demand, you will get your money. So I went back in there and I was—at this time, I met Mr. Green. He said, just take your paper over there and drop it down and get the 'H' out of here. I thought I was—well, I am not going to say anything about his manner anymore."

⁴ Admitted in both answers.

⁵ Comm. Ex. Nos. 1, 2, 63-B. See also testimony of witness Dlutz at Tr. 151-163, 207-209, 211, 214-216, 240; customer-witness Stiles at Tr. 320; customer-witness Hayes at Tr. 438-440, 457-462; customer-witness Klein at Tr. 490, 502; customer-witness McDonald at Tr. 543; customer-witness Briscoe at Tr. 887, 890.

hereinafter set forth. His business address was the same as that of the corporate respondent.⁶

4. Respondents were and are now engaged in the advertising, repair, overhauling, rebuilding, offering for sale, sale and distribution of automobile transmissions to the public within the District of Columbia. Respondents at all times mentioned herein have maintained a substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents in the course and conduct of their aforesaid business have been and are in competition with corporations, firms and individuals similarly so engaged in such sales and services.⁷

5. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their said transmissions and transmission repair service, respondents have made and are now making many statements and representations about their products and services such as the following, among others:

TRANSMISSIONS
ONE-DAY SERVICE
DAILY: 24 HOUR SERVICE
"Our Prices Are The Lowest"
Hours: Sun. 10-2

OVERHAUL -----	\$60
RESEAL -----	\$25
REBUILTS -----	Complete from \$89

NO MONEY DOWN; EZ TERMS; FREE TOWING

Come In Today For A Free Checkup

GENERAL

Ask about our lifetime guarantee: overhaul of clutches, bands, seats, gaskets, steel seating rings and labor. 2919 Bladensburg Rd. 832-3700.⁸

⁶ Admitted in answer for the corporate respondent and individual respondent William J. Green, Jr. See also, testimony of witness Green at Tr. 177-186 and of the various customer-witnesses following. Respondent Green is now in charge of a Dutz franchised operation in Milwaukee, Wisconsin.

⁷ Admitted in answer for corporation as to the corporate respondent. See also, footnotes 5 and 6 above.

⁸ Comm. Ex. No. 9 inserted by the respondents in The Washington Post on October 24, 1965. For the evolution in style and content of respondents' newspaper advertising and that payments for the same were issued in Philadelphia, Pennsylvania, see the testimony of the classified advertising representative of this newspaper at Tr. 522-537 and Comm. Ex. Nos. 40, 41. This witness also testified that the daily circulation of the newspaper approximated 457,000 copies, the greater majority of which was in the metropolitan area of Washington, Virginia and Maryland.

Findings

73 F.T.C.

TRANSMISSIONS & MOTORS

Labor Charges for Removal, Dismantling and thorough inspection

OVERHAUL RESEAL (Central Charge Service) \$22

PLUS NECESSARY PARTS

FACTORY REBUILT TRANS.

(Most Cars) ----- \$99.50

AVAILABLE LIFETIME WARRANTY

WRITTEN GUARANTEE ON ALL WORK

ONE DAY SERVICE: NO MONEY DOWN; EZ TERMS; FREE TOWING

OPEN DAILY 7 A.M. to 7 P.M.

2912 BLADENSBURG RD., NORTHEAST, WASH., D.C.

832-3700

GENERAL TRANS. INC.⁹

GENERAL TRANSMISSION

COAST TO COAST

WHILE YOU WAIT

OVERHAUL \$65 ANY CAR

1 YEAR WARRANTY

INCLUDED AS REQUIRED

- Seals
- Clutches
- Bands
- Gaskets
- Fluid
- Labor

NO MONEY DOWN—UP TO 2 YRS. TO PAY

UP TO 2 YRS. TO PAY

FREE TOWING TO SHOP

DAILY, 8 to 7 SUNDAY, 10 to 2

2912 Bladensburg Rd., N.E.

832-3700

1327 S. Capitol St., S.E.

547-4477

Foot S. Capitol St. Bridge¹⁰

6. An examination by the hearing examiner¹¹ of respondents' newspaper advertisements in evidence shows their meaning to be plainly susceptible of being interpreted and understood by a prospective cus-

⁹ Comm. Ex. No. 50 inserted by the respondents in The Washington Daily News on April 4, 1966. Payments for these advertisements were also issued from the office of the individual respondent Dlut in Philadelphia, Pennsylvania. See testimony of the witness from this newspaper at Tr. 759-773 and Comm. Ex. Nos. 16, 52, 53, 54. According to this witness the newspaper had a daily circulation of approximately 225,000 copies in the District of Columbia, Virginia and Maryland.

¹⁰ Comm. Ex. No. 24 inserted by the respondents in The Washington Post on November 7, 1966.

¹¹ As to the propriety of a finding based on such an examination, see April 8, 1966, opinion of the Commission in Docket No. 8635, *Merck & Co., Inc., et al.* [69 F.T.C. 526], and cases therein cited.

tomor of the respondents¹² as representing, directly or impliedly, that:

(1) Respondents will give the prospective customer a free checkup and will remove, reseal or overhaul and reinstall the customer's transmission or a factory or other rebuilt transmission at the advertised price.

(2) Respondents will furnish the prospective customer free towing and one-day service with no down payment and easy credit terms.

(3) Respondents are transmission specialists and will furnish the prospective customer a lifetime guarantee, or a 1 year warranty or a written guarantee of their work.

(4) Respondents' entire charge to the prospective customer for each of the above will be its advertised price.

The record testimony in this proceeding shows a substantial number of instances wherein the respondents' methods of business operation conflict with and belie the meaning of their advertising as it is herein found susceptible of being interpreted and understood by the public.¹³

The record testimony herein also discloses respondents to have adopted a more or less common pattern in dealing with various of the testifying customer-witnesses: Upon first contact with the prospective customer the automobile was usually subjected to a short road test following which the prospective customer in some instances would be advised that only a minor transmission repair or servicing at a small charge appeared indicated.

Upon authorizing the work and leaving the premises the customer was later telephoned, or upon returning for his automobile was told, that the transmission had been removed and dismantled and allegedly shows the need for further work and additional replacement parts to be properly operable upon reinstallation in the automobile. The customer was thus confronted by the respondents with an unexpected substantially higher price than the nominal price which the respondents first led the customer to believe would only be necessary of payment.

¹² In *Aronberg v. Federal Trade Commission*, 132 F. 2d 165, at 167, the appellate court admonishes:

" * * * the buying public does not ordinarily carefully study or weigh each word in an advertisement. The ultimate impression upon the mind of the reader arises from the sum total of not only what is said but also of all that is reasonably implied. * * * The law is not made for experts but to protect the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions * * * ."

¹³ That the customer-witnesses testifying herein likewise so interpreted and understood the respondents' advertising is clear on the record in this proceeding. For example, see the testimony, among others, of customer-witness Stiles at Tr. 321-324, 327-331; customer-witness Sollers at Tr. 725-726, 730-731; customer-witness Schneider at Tr. 775-779.

Findings

73 F.T.C.

If the customer balked at paying this substantially advanced price, as one customer-witness put it, the respondents had him "over a barrel." The customer was told, for example, that to reassemble and reinstall the transmission without repair would require an additional charge over the advertised price, or that the transmission could not be reassembled for installation without the alleged necessary further work and parts. It was thus made exceedingly clear to the customer that he would either be spending more money to reassemble and reinstall a still faulty transmission in the automobile, or if the transmission was not capable of being reassembled and reinstalled without repair as the respondents alleged, that the customer would be unable to drive the automobile from the respondents' premises unless consenting to the proposed new transaction.¹⁴

7. In truth and in fact, the respondents in their hereinbefore described advertising are not making a bona fide offer to perform in the manner and at the prices therein stated, but are engaged in the practice of "lo-balling" wherein the prospective customer is enticed into the respondents' business establishment by their advertised low prices for automobile transmission sales and repairs, one-day service and other advertised inducements, and then inveigled by the respondents into the outlay of further substantial amounts of money when faced with the respondents' business tactics as hereinbefore and hereinafter related.

Only one of the many testifying customer-witnesses who went into the respondents' place of business and were assured that the advertised low price transmission sale, repair or service would solve their particular problem was able to repossess the automobile without paying more than the advertised price. In this one instance, customer-witness Klein testified that he was able to obtain the requested transmission work only after a lengthy discussion and steadfast refusal to authorize more to be done by the respondents to the automobile. Mr. Klein further testified to writing complaining letters to the Washington, D.C., Better Business Bureau, the respondent corporation at its local address and to the individual respondent Dlut, plus a personal telephone call to the respondent Dlut, in Philadelphia, Pennsylvania.¹⁵

The substantial amount of money which respondents' aforescribed business tactics further extracted from customer-witnesses in the face

¹⁴ For example, see among others, the testimony of customer-witness Jacobs at Tr. 248-252, 257-260; customer-witness Stiles at Tr. 310-313, 319-320; customer-witness Hayes at Tr. 438-444, 451, 458, 461; customer-witness Montgomery at Tr. 582-586, 592-593; customer-witness Briscoe at Tr. 870-878.

¹⁵ Customer-witness Klein's testimony and complaining letters are at Tr. 471-472, 490-491, 501-503, and marked Comm. Ex. Nos. 38 A-B, 39.

of respondents' advertised low prices testifies to the effectiveness of their methods of doing business challenged in the complaint.¹⁶ Commission Exhibit No. 17 shows the respondents to have collected \$448.05 from customer-witness Jacobs; Commission Exhibit No. 18 shows the respondents to have collected \$231.75 from customer-witness Johnson; Commission Exhibit No. 20 shows the respondents to have collected \$245.94 from customer-witness Holt; Commission Exhibit No. 25 shows the respondents to have collected \$133.90 from customer-witness Stiles; Commission Exhibit No. 35 shows the respondents to have collected \$289.43 from customer-witness Sollers; Commission Exhibit No. 36 shows the respondents to have collected \$154.50 from customer-witness Hayes; Commission Exhibit No. 42 shows the respondents to have collected \$199.82 from customer-witness Montgomery; Commission Exhibit No. 44 shows the respondents to have collected \$281.27 from customer-witness Satterfield; Commission Exhibit No. 57 shows the respondents to have collected \$210.20 from customer-witness Smith; Commission Exhibit No. 58 shows the respondents to have collected \$348.14 from customer-witness Briscoe.

8. The hearing examiner on the record before him in this proceeding can make no finding other than that the aforescribed advertising representations and accompanying acts and practices of the respondents are false, misleading and deceptive to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act as charged in the complaint in this matter.

Nothing in the record validly supports respondents' advertising representations to a prospective customer that they will remove, reseal or overhaul and reinstall the customer's transmission or a factory¹⁷ or other rebuilt transmission at the advertised price. With reference to the respondents' advertising representations to the prospective customer of free towing,¹⁸ one-day service¹⁹ with no down payment and

¹⁶ As set forth herein in preceding Paragraph 5, respondents' advertised price on October 24, 1965, for an overhaul was \$60, a reseal \$25 and for rebuilds complete from \$89; on April 4, 1966, respondents' advertised price for an overhaul and reseal, plus necessary parts was \$22, and for a factory rebuilt transmission for most cars \$99.50; on November 7, 1966, respondents' advertised price for an overhaul for any car was \$65, including parts, fluid and labor as required.

¹⁷ Witness Dultz at Tr. 208 testified that respondents do not sell factory rebuilt transmissions in the respondents' Washington operation.

¹⁸ See testimony of customer-witness Stiles as to towing conditions imposed by respondents and not disclosed in respondents' advertising at Tr. 318, 320, 322.

¹⁹ See the testimony relating to respondents' failure to supply this advertised one-day service inducement to customer-witness Jacobs at Tr. 248-252; to customer-witness Johnson at Tr. 278-279; to customer-witness Stiles at Tr. 312-313; and to customer-witness Satterfield at Tr. 681, 683-684. Customer-witness Klein's experience is set forth in footnote 15, *supra*.

Findings

73 F.T.C.

easy credit terms,²⁰ the record discloses these representations also to be illusory. Further, the respondents do not disclose certain limitations in their advertised guarantees or warranties of their automobile transmission sales, repairs and services and such are not unconditional as represented to the prospective customer.²¹

Illustrative of a prospective customer's reaction to the respondents' advertising is the following at Tr. 775:

Q. I now show you Commission's Exhibit 30 and ask you to identify that. It is a copy of an advertisement, is it not?

A. Yes, from one of the local newspapers. Also one that I responded to with regard to having my transmission resealed.

Q. Did you later include the original of this in a message to the Better Business Bureau?

A. Yes, I did.

Q. What is particularly important to you about that advertisement? What attracted you to that company first?

A. Well, a number of things. One was the cost, the location of the company on Wisconsin Avenue, which is about four miles from home, a written warranty on the work, or a written guarantee on the work, and the daily, one-day service.

Q. How did you interpret that one-day service?

A. Well, bring it in in the morning and take it home at night. I was so informed by the manager of the Wisconsin Avenue branch that that would be it, if I brought it in by 7:30 in the morning I would have it by 4:30 in the afternoon.

Typical of the other customer-witnesses subjected to respondents' business tactics is the further experience of this customer-witness according to his testimony at Tr. 776-777:

Q. Was there any question that anything else might be wrong with the automobile?

A. No, I didn't anticipate anything wrong. The car was functioning perfectly when I took it in there.

Q. What did you tell them?

A. I wanted a reseat job to correct the oil leakage.

Q. That is all you told them you wanted to do?

A. That's right.

²⁰ See testimony as to the experience of customer-witness Jacobs at Tr. 258-259; customer-witness Johnson at Tr. 283, 300; customer-witness Holt at Tr. 378 and Comm. Ex. Nos. 21, 22, 23; customer-witness Hayes at Tr. 444; customer-witness Briscoe at Tr. 879-883, and Comm. Ex. Nos. 59, 60.

²¹ See testimony of customer-witness Johnson at Tr. 282-285; customer-witness Holt at Tr. 389-392; customer-witness Briscoe at Tr. 883-885.

Q. What was your next contact with the company?

A. Well, when I took the car in, they said the \$22 on here covered labor only and there was another \$12 and something for the reseal kit, which were the parts.

Well, it said parts extra on there, so I told them to go ahead and reseal it.

About 4:15 the same day, I went back and they had a transmission laying on a work bench, and said, this is your transmission and here are some parts of metal that were found in it and the pump is completely shot and needs replacing. So I talked to the manager and said, what will that cost? He said, well, it would cost about another \$42, which raised the cost of the job to about \$76.

So I told him to go ahead with it, take the thing that was torn down, if they needed a new pump, to put it in. He said it would be ready the next afternoon.

Well, I called the next morning to find out if the car would be ready and he examined it further and said, "All the bushings are shot and needed replacing."

I said, what is that going to cost? He said, well, the total job is now \$107.

I said, forget it, reseal it the way I originally requested, and I'll pick it up tonight. So that, as far as I know, it was only resealed and I paid \$48 and something for the reseal job.

Q. This is different from the additional \$12 to the \$22. Why was it more?

A. Well, they said that the additional resealing parts were necessary due to the additional inspection that they had made to find then that the bearings were shot.

Finally and as did other of the customer-witnesses, this witness testified at Tr. 778-779:

Q. I ask you as a consumer, how do you define the term "overhaul"? What does it mean to you?

* * * * *

A. Well, if I took an automobile in for an overhaul, if I told them to overhaul it completely, I would expect them to examine every part and replace all worn parts, broken parts, etc.

Q. I notice that you used the term "completely." Just to make it straight, if you just saw the term "overhaul" without any explanation, no limitation on it, just the term "overhaul," what would you make of it?

HEARING EXAMINER SCHRUP: Mr. Freer, you are confining yourself to transmissions, are you?

MR. FREER: Yes, sir, I am.

THE WITNESS: I would imagine they would take the transmission out of the car, open it up, inspect it, and replace all used or worn parts to put it back in complete operating condition again.²²

²² See also the testimony of customer-witness Sollers at Tr. 725-726 and mechanic-witness Bair at Tr. 812. Respondents would argue that their advertising representations of "factory rebuilt" and "overhaul" are a correct usage of trade terminology. As noted in footnote 17, *supra*, respondents do not sell "factory rebuilt" transmissions and the record disputes the trade meaning of "overhaul" as contended for by respondents. See testimony of mechanic-witness Bair at Tr. 834-839. Further, the pertinent issue in this proceeding is the meaning to the prospective customer of the respondents' advertising representations. See Tr. 819, 827-839.

Findings

73 F.T.C.

9. The preceding customer-witness further testified at Tr. 777 and 779-780 as follows:

Q. I would like to direct your attention back to the advertisement again. I believe you mentioned that there was available a lifetime warranty and written guarantee on all work.

A. That's right.

Q. Did you expect to receive some sort of guarantee on the work done on your automobile?

A. On the reseal job, yes.

Q. I now show you a copy of what purports to be a contract between Mr. J. J. Schneider and the General Transmissions Corporation and ask you if you recognize that.

A. Yes, I do. It is a copy of my bill and a work sheet, a repair sheet.

Q. You say copy. What do you mean by copy? Is it a Xerox or a yellow carbon or—

A. It is a yellow carbon of the original. This is the copy they returned to me, stamped "Paid."

Q. What is this down here?

A. "Not guaranteed"?

Q. Yes.

A. Well, I discovered that the next day.

Q. You didn't see it at the time you paid?

A. No, I didn't. It was close to 5:30 in the evening and they were rushing around and I had to wait for them to put the transmission back in the car. I didn't notice it because it was stamped down at the bottom. When I got home, I found out that the job wasn't guaranteed, because the car wasn't functioning properly on the way home.

Q. Did you have any discussion with them about this?

A. When I got home, I called. The manager of the shop was out and I talked to one of the mechanics. He said, "I told the manager the transmission needed a new pump and he walked away from it, and that was it." I just got the car and left.

Q. Was the automobile still leaking?

A. It was still leaking, and when you would stop for a traffic light and go to start up, it wouldn't go. It would all of a sudden leap out.

HEARING EXAMINER SCHRUP: Did it have that trouble when you took it in?

THE WITNESS: No, it didn't. It was functioning perfectly when I took it in except for the little oil that was leaking.

The refusal of the respondents to give the customer-witness the expected advertised guarantee or warranty of the respondents' work requires a further word.²³ The testimony of other customer-witnesses

²³ The renewed motion of respondents' counsel to strike the testimony of this customer-witness is herein denied. See the testimony of this customer-witness at Tr. 775 and that of witness Dultz at Tr. 240. Also see the colloquy between the hearing examiner and counsel at Tr. 781-782, 784-787. Respondents' further contention that this particular transaction was purely an intrastate phase of respondents' business and not subject to the Commission's jurisdiction is without merit. See, *C. E. Niehoff & Co.*, 51 F.T.C. Decisions at 1143.

herein disclosed the refusal of the respondents to furnish an itemized statement²⁴ of the labor done and the parts installed²⁵ in the face of the respondents' guarantee or warranty limitations undisclosed in advance to prospective customers that they are for a limited time only and on a "50-50" basis, that is, the customer pays fifty percent of both the cost of the labor and the retail price of the parts installed.²⁶ This serves the purpose of not only facilitating the respondents' "lo-balling" techniques but also places the customer at an unexpected and unfair disadvantage in attempting to establish the validity of bills later tendered by the respondents for guarantee or warranty work.²⁷ the foregoing takes on added weight in the light of the record facts in this proceeding in that various of the customer-witnesses relying on respondents' ad-

²⁴ For example, the testimony of customer-witness Jacobs at Tr. 259 :

"So I went out to Langley Park in company with this fine young gentleman, and I went in and I got \$400 cash and he carried me back to the General Transmission Company and I gave the man the \$400. I says, 'Now, will you please give me an itemized statement of what work was done here.' I says, 'I would like to know what I'm paying for.' He says, 'We do not give itemized statements.' I says, 'I never heard of that.' He says, 'I'm sorry, but we don't give itemized statements.' I says, 'Why not?' 'Well,' he says, 'in the first place,' he says, 'we have secret methods of doing our work here and,' he says, 'we don't like to itemize them so other companies will know exactly the way we fix transmissions.' He says, 'This is our business.' He says, 'The only thing we can do,' he says, 'we can give you a receipt for your money, and we will give you our regular standard guarantee.' I says, 'What is this guarantee?' He says,—I think it was either four months or 90 days or 4,000 miles. Well, at that stage I was pretty disgusted, and I says, 'Well, all right.' I had no alternative. In other words, unless I complied with what he told me to do, no car."

²⁵ Compare testimony of mechanic-witness Bair as to his customary method of itemizing transmission repairs at Tr. 839 and see Comm. Ex. No. 46.

²⁶ See testimony of witness Dultz at Tr. 202-203. See also the testimony of customer-witness Johnson at Tr. 282; customer-witness Briscoe at Tr. 883-885.

²⁷ See the testimony of customer-witness Johnson at Tr. 283-285, 287-288, 291-295. This witness testified with relation to his knowledge of the respondents' repair bills on his automobile transmission :

"Q. I am asking you do you know what he did the second time?

"A. No, you never know. You don't know what they did the first time, actually."

Customer-witness Satterfield at Tr. 666 testified as to his experience with the respondents as follows :

"Q. How did you select the garage that you went to?

"A. This selection is made by the way that I do a lot of things. I got an accumulation of estimates and AAMCO, as previously mentioned—I am familiar with the outlet—gave me an estimate. Mr. Green, whom is in the courtroom right here, gave me an estimate after a road test of approximately \$75.00. The nomenclature of the repair, it was some type of an overhaul or repair kit.

"I am a layman in this sense and I do not recall the nomenclature.

"Q. You mentioned that you are familiar—well, strike that. You stated that Mr. Green gave you a quotation of—

"A. Verbally only.

"Q. This was on the telephone?

"A. No, this was not. This was at the location on Bladensburg Road, Northeast, Washington, D.C., after a test drive.

"Q. Do you recall the amount of that?

"A. As vaguely—it is vague in my mind, because the amount has gone into excess of \$400.00 at this time.

"But the original estimate—well, the original estimate was less than \$100.00. I believe it was \$75.00. I cannot say exactly \$75.00, but I will swear to God that it was less than \$100.00." See also this customer-witnesses' further testimony at Tr. 667-670, 683-685.

Findings

73 F.T.C.

vertising representations as being transmission specialists²⁸ have testified to both the uncorrected as well as the further automobile transmission troubles they encountered following the respondents' unsatisfactory work or servicing.²⁹

10. In the conduct of their business and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals in the sale of automotive parts and services of the same general kind and nature as those sold by respondents. Respondents herein would argue that the instituting of these proceedings was an abuse of discretion by the Commission and not in the public interest. This contention was rejected by the Commission in its order and opinion herein of December 28, 1966.

This statement in the foregoing Commission opinion of December 28, 1966 [70 F.T.C. 1848, 1850], is further noted by the hearing examiner:

Respondents rely upon the Commission's order of December 1, 1966 [70 F.T.C. 1833], as an invitation for them to produce direct evidence as to the practices of their competitors. They have misconstrued the Commission's order. If anything, the language relied upon indicates that the Commission intends to rely upon its own investigation of the matters alleged by respondents. The Commission's order of December 1 made it clear that it would take respondents' allegations under consideration and take whatever action is appropriate. This it intends to do.

11. Respondents would further argue that any cease and desist order to be issued in this proceeding should not include the individual respondent Dlutz. The Washington based corporate respondent herein is but the creature of the individual respondent Dlutz who in turn is engaged in various other automobile transmission sales, repair and service enterprises elsewhere.³⁰

Commission Exhibit No. 1, the annual report of General Transmissions Corporation of Washington, as received and filed April 7, 1966, in the Office of the Recorder of Deeds, Corporation Division, Washington, D.C., lists the following:

Director—Walter Dlutz, 5818 Torresdale Ave., Phila., Pa.
 Director—Virginia E. Dlutz, 5818 Torresdale Ave., Phila., Pa.
 Director—Stanton S. Oswald, 12th Floor Packard Bldg., Phila., Pa.
 President—Walter Dlutz, same as above
 Secretary—Virginia E. Dlutz, same as above
 Treasurer—Walter Dlutz, same as above

²⁸ See testimony of customer-witness Jacobs at Tr. 248; customer-witness Satterfield at Tr. 679-681; customer-witness Briscoe at Tr. 870-871.

²⁹ The testimony of customer-witness Johnson at Tr. 289 appears to sum up the prevailing situation:

"Q. Why didn't you take it back to the respondents?

"A. Well, because I figured they had two cracks at it and they couldn't fix it, so what's the use of going back and keep getting taken." See also testimony of customer-witness Montgomery at Tr. 589-591; customer-witness Satterfield at Tr. 685.

³⁰ See testimony of the witness Dlutz at Tr. 215-217, 227-228, 234, 240, and see also footnote 5, *supra*.

Walter Dlutz owns all the corporation's stock; Virginia E. Dlutz is his wife (Tr. 154). Stanton S. Oswald is a law partner of the respondents' counsel in this proceeding (Tr. 521). The corporation has but 10 shares of common stock of \$100 par value per share.

The individual respondent Green, one of a changing number of managers of the Washington based corporate respondent herein, formerly worked as a manager of a Dlutz automobile transmission sales, repair or service enterprise in Wilmington, Delaware, and is now the franchised operator of a Dlutz automobile transmission sales, repair or service enterprise in Milwaukee, Wisconsin.³¹

Any order to cease and desist herein not encompassing the respondent Dlutz both individually and as an officer of the corporate respondent would appear both improvident and futile. The record herein discloses many facts which contradict the self-serving testimony of the witness Dlutz as to claimed lack of knowledge and responsibility on his part for the advertising representations and accompanying acts and practices challenged in the complaint.

The self-serving denials of knowledge, responsibility or control by officer-owners of the acts and practices of a corporation has been held insufficient to reverse a finding that the officer should be named individually in an order. As recently as June 8, 1966, the Eighth Circuit affirmed the Commission in naming John A. Guziak individually in an order. *Guziak v. F.T.C.*, 361 F. 2d 700, 704 (1966). As in the instant proceeding Guziak was the owner of several corporations engaged in the same business. On the issue of personal liability the court said:

In attacking the findings, the petitioner has relied heavily upon his own testimony and the fact that many of the findings were based upon activities of the corporations rather than on his personal activities. These contentions are not convincing. As the motivating and controlling force behind the corporations, the petitioner was responsible for their activities.

The Commission was fully justified in finding the petitioner responsible for the corporate activities and in enjoining him from engaging in similar activities in the future. *Benrus Watch Co. v. F.T.C.*, 352 F. 2d 313 (8th Cir. 1963), 324-25; *F.T.C. v. Standard Education Society*, 302 U.S. 112, 119 (1937). Furthermore, the mere fact that some of the findings of fact were in conflict with petitioner's testimony does not render them erroneous. The findings of fact in this case were supported by substantial evidence. Such findings are therefore conclusive and binding upon this court.

³¹ See testimony of the witness Green at footnote 6, *supra*, and testimony of the customer-witness dealing with this individual respondent cited, *supra*.

Order

73 F.T.C.

CONCLUSIONS

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

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

3. The use by respondents of the false, misleading, and deceptive representations, statements and accompanying acts and practices as found herein has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said representations and statements were and are true, and into substantial purchases of the respondents' products and services by reason of such erroneous and mistaken belief.

4. The acts and practices of the respondents, as herein found, 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.

5. The following order to cease and desist should be and is herein issued.

ORDER TO CEASE AND DESIST

It is ordered. That respondents General Transmissions Corporation of Washington, a corporation, and its officers, and Walter Dlut, individually and as an officer of said corporation, and William J. Green, Jr., individually and as an agent of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale and sale, repair and servicing of automobile transmissions and related parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Falsely representing, in any manner, that the low prices, guarantees and warranties, one-day service, no down payment, free towing and easy credit terms advertised and set forth in the respondents' sales, repair and service offers to customers are available and obtained by all customers of the respondents.

2. Falsely representing, in any manner, the low prices advertised and set forth in the respondents' sale, repair and service offers to be the entire charge to customers, including all labor

and necessary parts, for which the respondents will remove, reseal or overhaul and reinstall a customer's transmission or remove and reinstall a factory or other rebuilt transmission.

3. Using in any manner the above representations to attract customers to the respondents' place of business for the purpose of inducting customers to enter into sale, repair or service transactions more extensive or at higher prices.

4. Failing to disclose to customers in advance that the respondents' guarantees and warranties contain conditions and limitations including a charge to customers of 50 percent of the price of the parts and the labor supplied by the respondents under the guarantees and warranties.

5. Failing to furnish customers itemized statements of the parts and labor paid for and subject to the respondents' guarantees and warranties and itemized statements of the parts and labor thereafter paid for by customers under the respondents' guarantees and warranties.

6. Falsely representing, in any manner, that transmissions rebuilt by the respondents are factory rebuilt; that transmissions rebuilt other than in a factory generally engaged in such rebuilding are factory rebuilt; that the respondents offer for sale factory rebuilt transmissions.

7. Failing to disclose to customers in advance that to remove, disassemble, reassemble and reinstall a transmission without repair by the respondents will result in an additional labor charge to customers.

8. Falsely representing, in any manner, the need by customers for a transmission adjustment, servicing, reseal, overhaul, rebuilding, or the replacement of any transmission or other part required to the operation of the transmission.

9. Falsely representing, in any manner, the type and number of parts and the amount of labor necessary to or supplied to customers to adjust, service, reseal, overhaul, rebuild, or make the transmission operable.

10. Falsely representing, in any manner, the nature, extent and quality of any offered or consummated transmission sale, repair or service by the respondents.

OPINION OF THE COMMISSION

FEBRUARY 23, 1968

By ELMAN, *Commissioner*:

I

The complaint in this proceeding, issued September 26, 1966, charged that the corporate and individual respondents have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by engaging in various unfair or deceptive acts and practices and unfair methods of competition in commerce in the sale and repair of automotive transmissions in the District of Columbia. By answers dated October 28, 1966, the respondents denied the allegations of the complaint and affirmatively alleged that their acts and practices are the same in all material respects as those used by their competitors, that if respondents' acts and practices are unlawful, those of their competitors are equally unlawful, and that entry of an order against respondents without simultaneously restricting the similar practices of their competitors would seriously injure respondents and might force them out of business.

Before any hearings were held, on November 14, 1966, respondents filed a motion requesting that proceedings be suspended until the Commission acted to proscribe the allegedly similar activities of their competitors. That motion was denied by the Commission on December 1, 1966 [70 F.T.C. 1833]. Respondents then applied to the hearing examiner for an order to take depositions and for the issuance of supporting subpoenas duces tecum directed to their competitors. The examiner denied the application on December 6, and the Commission, by order dated December 28, 1966 [70 F.T.C. 1848], denied respondents' request for permission to file an interlocutory appeal.

After full evidentiary hearings, at which respondents elected not to call any defense witnesses, instead resting their case after presentation of the case-in-chief, the examiner issued an initial decision in which he upheld most of the charges in the complaint but entered an order different from that proposed by complaint counsel. The case is before us on the cross-appeals of respondents and complaint counsel.

Respondents contend primarily that the examiner erred in not dismissing the complaint against the individual respondent, Walter Dlutzy; that the evidence is insufficient to support the charges of violation of Section 5; and that entry of an order against respondents without proceeding against their competitors would not be in the public interest. Complaint counsel argue that the order entered by the examiner is too narrow and would not effectively terminate the violations found to have occurred.

II

The facts are adequately set out in the initial decision and need not be repeated at length here. To the extent they are not inconsistent with findings made in this opinion, the examiner's findings are hereby adopted as those of the Commission.

General Transmissions Corporation of Washington is a corporation organized and doing business under the laws of Washington, D.C., with its principal place of business at 2912 Bladensburg Road in Washington. Respondent William J. Green, Jr., was at all relevant times the corporation's general manager, while respondent Walter Dlutiz is president of the corporation, one of its three directors, and its sole stockholder.¹ Respondents are engaged generally in the business of repairing, overhauling, rebuilding, and selling automotive transmissions.

The complaint alleges, and the examiner found, that respondents, through their advertising and by means of oral representations, had made a variety of false and misleading statements concerning the price and quality of their services and the conditions upon which those services would be performed. More important, respondents' whole method of operation was found to be unfair and deceptive, disclosing a common pattern by which a customer was induced to authorize respondents to repair his vehicle by representations as to the low cost of repairs, was later informed of the need for much more extensive repairs than those originally anticipated, and was told that to re-assemble and reinstall the transmission without repair would require an additional charge over the advertised price or would be impossible without the supposedly necessary additional work and parts.² This method of operation is described by the shorthand label "lo-balling" in the initial decision.

We have read the record and find that the evidence amply supports the examiner's findings in this regard. In addition to testimony cited in the initial decision, it is pertinent to note here the testimony of several witnesses, all of whom were credited by the examiner, indicating the flagrant nature of the violations here found. For example, the customer-witness James T. Smith testified that after test driving his car, respondent Green informed him that the transmission needed new clutches, new seals and a general overhaul and that the cost of these

¹ Respondent Dlutiz's wife is the only other officer of the corporation and is also a director.

² Cf. *Holland Furnace Co. v. Federal Trade Commission*, 295 F. 2d 302 (7th Cir. 1961), affirming, 55 F.T.C. 55 (1958); see also *Holland Furnace Co. v. Federal Trade Commission*, 269 F. 2d 203 (7th Cir. 1959), cert. denied, 361 U.S. 932 (1960).

repairs would be low. (R. 851.) Mr. Smith authorized the repairs. After the alleged overhaul, he encountered more difficulties with the transmission and brought the car back to respondents' place of business. However, he did not identify himself nor did he show his guarantee. After a test drive he was informed that the transmission needed an overhaul, "new clutches and seals, and new bands—the same identical thing he told me the first time. So that is when I sprung the guarantee on him. So, then, he wanted to know why, why I did not show him the guarantee, you know, the warranty, in the first place. * * *" (R. 852.)

Virtually all the other customer-witnesses testified to similar representations by respondents as to the minor nature of the repairs needed and the low cost of their services, designed to obtain the customer's authorization to work on the car, at which point the cost of repairs represented to be necessary would be sharply inflated, but this testimony of Mr. Smith makes clear the systematic nature of these practices. Seen in the context of the pattern established by the testimony of all these witnesses, respondents' dealings with Mr. Smith negate their protestations that all that has been shown is an occasional underestimate of the cost of their services and that there is insufficient evidence to support the examiner's findings that they systematically inveigled customers into authorizing repairs by deliberately misrepresenting the nature and extent of the required repairs and that they had no intention of providing the advertised services at the low advertised prices.³

In any event, seemingly conclusive evidence of the fraud here involved is to be found in the testimony of Mr. Smith, and other witnesses familiar with transmissions, who disassembled transmissions on which extensive repairs had allegedly been made by respondents and found that no such repairs had been made. On Mr. Smith's second trip to respondents' establishment, they represented to him that the transmission would have to be rebuilt. After they had allegedly performed these services, the transmission, while operable, continued to perform inadequately. He and a friend who works as a repairman, taking apart and rebuilding transmissions (R. 855, 861), disassembled

³ In this connection it is worth noting, in addition to the evidence cited in the initial decision, that many of the customer-witnesses experiencing minor difficulty with their automobiles were told an identical story by respondents, that after the transmission had been disassembled it was discovered to contain metal filings which had ruined important parts of the transmission necessitating extensive, and expensive, additional repairs. See, e.g., R. 492 (customer-witness Klein); 776 (customer-witness Schneider); 878, 896 (customer-witness Briscoe); cf. R. 588, where the witness Montgomery, who was familiar with transmissions, testified that "an automatic transmission will not operate with any dirt at all on it."

Mr. Smith's transmission⁴ and found that repairs alleged to have been made by respondents had not been made and discovered in particular that a major part alleged to have been put in the transmission, a new reverse cone, had not been put in. (R. 855-58.)

Similarly, another customer, William E. Shanklin, testified that respondents had allegedly replaced his torque converter, but that in fact the old converter was never taken off his car and a washer that he had placed on the converter two years before when doing some work on it had not been touched. (R. 897-98.) He went on to explain that he later went to court and obtained a decree requiring respondents to place a new factory rebuilt transmission in his car. Respondents purported to perform their obligation under the decree but apparently did not replace the old transmission—a fact that became evident since the supposedly new transmission had the same unpainted, generally dirty appearance of the old one, contained an unusual clamp, not ordinarily found on a transmission, that had been installed by respondents on the old transmission to hold the emergency brake cable in place after respondents had damaged the old cable,⁵ and exhibited the same defects in performance as did the former transmission. R. 897-904.

We note also the testimony of the expert witness, Eugene Bair, who repaired the transmission of the witness George E. Sollers less than two months after respondents had allegedly installed a rebuilt transmission. (R. 719, CX 35.) He testified that in his opinion the transmission had not been rebuilt in any recent time and that certain of the "hard" parts⁶ were worn and torn up in a way that would have taken "a considerable amount of time to do." He stated that "some cars can run 50,000 miles and never bother" the part of the transmission that he found to be worn and that it would take "quite a bit longer" than 30 days to do the kind of damage that he found. (R. 794-97.)

Without belaboring the point and without burdening this opinion with further examples of respondents' practices, some of which are also set out in the initial decision, we think it clear from the record

⁴ Mr. Smith had himself taken apart several transmissions and was well qualified to testify to what he observed when he and his friend worked on the transmission previously "rebuilt" (CX 57) by respondents. R. 856-60.

⁵ That respondents damaged the car in working on it was not unusual. Several witnesses testified to the generally sloppy work done by respondents. See, *e.g.*, R. 444-45 (grease all over car, speedometer unhooked), R. 315-16 (car returned without dip stick for testing transmission fluid level); R. 285-87 (car left on the street in a snow storm, respondents later unable to find it after snow stopped).

⁶ In the trade the words "soft," "service," or "friction" parts are used to describe parts such as clutches and seals, while the term "hard" parts refers to items like the pump, pump cover, valve body and gears. (R. 813-14.)

that respondents' entire method of operation is tainted by deception and illegality. This is not merely a case of fake or bait advertising, inadequate disclosure of the terms of a guarantee and deceptive use of trade terms, although those elements are indeed present. The record discloses a systematic method of luring customers into authorizing respondents to repair their cars, the transmissions of which, for the most part, exhibited minor defects in performance, by giving low estimates of the cost of the work to be done, followed by the supposed discovery after disassembling the transmission of unexpected defects necessitating much more costly repairs, and a refusal, based on the alleged impossibility of reassembling the transmission, to reinstall the transmission in its original condition. The customer was then confronted with the Hobson's choice of paying a much higher price than had been anticipated, or losing his automobile. Almost invariably the result was that respondents were authorized to do the additional work—which was usually unnecessary and was often not performed—and any repairs made were usually unsatisfactory. In short, the evidence supports the conclusion that respondents engaged in the worst kind of fraud, taking advantage of their own apparent expertise which their customers lacked,⁷ and that in many cases they did not make the expensive repairs that they claimed to have made.

In these circumstances respondents' contention that the evidence in the record is insufficient, since there is no evidence as to the volume of their business and the transactions here involved may arguably represent only a small percentage of their sales, is unpersuasive. The present record discloses several cases of willful fraud, embodied in the deliberate nonperformance of services for which payment was received. Even in the unlikely event that these instances represent a small fraction of the total sales made by respondents or even if the bilked customers represent only a small part of the total number of their customers, an order to cease and desist would be justified.⁸

Moreover, the testimony of all the customer-witnesses establishes a clear pattern and reveals a method of doing business so permeated by deception as to negate respondents' contention that there are plausible innocent explanations for the dissatisfaction of their customers and that what is involved here is an occasional mistaken analysis of the

⁷ In this connection we note that there is evidence indicating that when respondents showed their customers mangled parts of transmissions alleged to have come from their automobiles, at least in some cases, the worn parts shown to customers did not come from the customer's own car. See, e.g., R. 587-88, 606-08 (customer-witness Montgomery); R. 874-76, 890-91 (customer-witness Eriscoe).

⁸ Cf. *Coro, Inc. v. Federal Trade Commission*, 338 F. 2d 149, 154-55 (1st Cir. 1964), cert. denied, 380 U.S. 954 (1965).

defects in a customer's transmission with a resulting underestimate of the cost of the parts and services necessary to make the required repairs.⁹ Respondents cite *Globe Readers Service, Inc. v. Federal Trade Commission*, 285 F. 2d 692 (7th Cir. 1961), to support their position. While the proposition of law for which that case is cited is far from settled,¹⁰ it does not, in any event, control the instant proceeding. The record in that case was barren of any evidence that respondents had encouraged or tacitly approved the action of their solicitors found to be unlawful by the Commission—in fact the only available evidence was to the contrary—and there was no evidence of deliberate fraud. It was in that context that failure to introduce evidence as to the percentage of respondents' sales tainted by the deceptive practice was held to render the Commission's finding that respondents had engaged in "bait and switch" practices defective. In the instant case, however, there is both direct evidence of fraud and ample testimony making clear that the deceptions charged are a basic part of respondents' way of doing business.¹¹

For similar reasons we reject respondents' contention that this proceeding should be suspended until an investigation of respondents' competitors is completed and proceedings are brought against them. In declining to hear an appeal from the denial of a discovery motion by respondents made on the same ground, we stated:

An unfair trade practice does not cease to be so because competitors engage in identical practices. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U.S. 483, 493-94 (1922). The widespread prevalence of an unfair trade practice neither constitutes a legal defense on the merits to the allegations of a complaint nor provides any reason for the Commission to withhold remedial or corrective action. As previously indicated, the extent to which the allegedly illegal practices are also followed by competitors will be considered by the Commission in exercising its discretionary powers to fashion appropriate relief.¹²

Consideration of respondents' unfair and deceptive business practices, the facts of which are now before us in an adjudicative record

⁹ See initial decision pp. 409-411 and evidence there cited. In particular compare the fluctuating, but consistently low prices advertised by respondents for particular services with the actual prices paid by the customer-witnesses. Initial decision p. 411.

¹⁰ See *National Trade Publications Serv., Inc. v. Federal Trade Commission*, 300 F. 2d 790 (8th Cir. 1962), reaching a contrary result on virtually identical facts; cf. *Standard Distributors, Inc. v. Federal Trade Commission*, 211 F. 2d 7, 12 (2nd Cir. 1954).

¹¹ See, e.g., *Standard Distributors, Inc. v. Federal Trade Commission*, 211 F. 2d 7 (2nd Cir. 1954); *Consumer Sales Corp. v. Federal Trade Commission*, 198 F. 2d 404, 407 (2nd Cir. 1952), cert. denied, 344 U.S. 912 (1953); *Steelco Stainless Steel, Inc. v. Federal Trade Commission*, 187 F. 2d 693, 696-97 (7th Cir. 1951).

¹² In addition to the *Winsted Hosiery* case, see, e.g., *Federal Trade Commission v. R. F. Keppel & Bro., Inc.*, 291 U.S. 804, 312-13 (1934); *Independent Directory Corp. v. Federal Trade Commission*, 188 F. 2d 468, 471 (2nd Cir. 1951); *Permanente Cement Co.*, Docket No. 7939 (April 24, 1964) [65 F.T.C. 410].

made after a full and fair hearing, compels the conclusion that to delay the issuance of a cease and desist order against these practices would be harmful to the public interest.¹³ Respondents' plea that their competitors are engaged in similar practices is based entirely on newspaper advertisements of their competitors that are somewhat similar in content to respondents' advertisements. But, as we have noted, deceptive advertising constitutes only one element of the charges against respondents and the present record discloses an unfair method of operation, and a number of violations of law, the illegality of which does not depend on advertising. The bare citation of similar advertising claims made by respondents' competitors does not show that their competitors fail to perform in accordance with those claims and certainly does not establish that the fraudulent course of conduct shown in this record reflects a broader industrywide pattern. Nor has there been any showing that requiring respondents to advertise and perform their services honestly, fairly and in accordance with the law will adversely affect their business or place them at a competitive disadvantage. Especially where an industry is rife with fraud, an honest seller should have no trouble attracting—and keeping—customers. In view of the injury to the consuming public that would occur were respondents permitted to continue their illegal activities, we think that the sooner an appropriate order is issued, the better it will be for the public.¹⁴

III

The order entered by the examiner is not completely adequate to eliminate many of respondents' illegal practices and therefore it must be modified in certain respects. More specifically, the examiner limited his order to prohibit deceptive practices only "in connection with the advertising, offering for sale and sale, repair and servicing of automobile transmissions and related parts. * * *" No reason is given for so limiting the order. It is true that the practices giving rise to this proceeding concern the sale and repair of transmissions but it would be relatively easy for respondents to utilize their present illegal tactics in

¹³ In this regard we note that among respondents' customers are the poor and the uneducated on whom the burden of paying respondents' inflated charges weighs most heavily and who are least equipped to seek redress from respondents either informally or by resort to the courts.

¹⁴ See, e.g., *Federal Trade Commission v. Universal-Rundle Corp.*, 387 U.S. 244 (1967); *Moog Industries v. Federal Trade Commission*, 355 U.S. 411 (1958), *affirming inter alia*, *C. E. Niehoff & Co.*, 51 F.T.C. 1114, 1153 (1955); *Benrus Watch Co. v. Federal Trade Commission*, 352 F. 2d 313, 321 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966); *Clinton Watch Co. v. Federal Trade Commission*, 291 F. 2d 838, 840-41 (7th Cir. 1961), *cert. denied*, 368 U.S. 952 (1962); see also authorities cited, *supra*, note 12.

connection with the sale and repair of other automobile parts—for example, mufflers, brakes, or even engine tune ups and overhauls¹⁵—or in connection with the sale and repair of radios, television sets, home appliances and a number of other products. Nor is it unrealistic to fear that respondents might switch to one of these related fields in an effort to evade the Commission's order. In view of the ease with which respondents' deceptive practices could be adapted to other fields and in view of the magnitude of the deceptive practices here found and their effect on consumers, we think respondents should be prevented from engaging in their deceptive and fraudulent practices in connection with the sale of any other product or services.¹⁶ We are therefore modifying the order to give it broader applicability thus preventing evasion of the order or recurrence in any other guise of the fraudulent activities revealed in this record. Should respondents in fact discontinue their transmission business at some future time to enter a wholly different form of business as to which the operation of the Commission's order may prove unduly burdensome, Section 3.72(b)(2) of the Commission's Rules provides a procedure by which respondents can move to reopen and to modify the order in light of such changed conditions.¹⁷

Our order is intended to eliminate each of the deceptive activities disclosed in this record, and to require respondents to perform their services honestly and fairly without misrepresenting the cost to their customers. It proscribes the practice of attracting customers by advertising low prices for services or giving low estimates of the cost of necessary repairs when in fact respondents do not intend to perform the advertised service at the advertised price or when the estimate is either deliberately understated or is inaccurate because of the impossibility of analyzing the defect without disassembling the transmission. Also prohibited is respondents' practice, once having obtained authori-

¹⁵ See, e.g., CX 50, an advertisement of respondents which indicates that they repair "transmissions and motors."

¹⁶ See, e.g., *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 394-95 (1965); *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419, 428-31 (1957); *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473-75 (1952); *Benrus Watch Co. v. Federal Trade Commission*, 352 F. 2d 313, 324 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966); *Niresk Industries, Inc. v. Federal Trade Commission*, 278 F. 2d 337, 342-43 (7th Cir.), *cert. denied*, 364 U.S. 883 (1960); *P. Lorillard Co. v. Federal Trade Commission*, 186 F. 2d 52, 58-59 (4th Cir. 1950); cf. *Gulf Coast Aluminum Supply, Inc.*, Docket No. 8662 (March 25, 1967) [71 F.T.C. 339]; *The Empeco Corp.*, Docket No. 8702 (February 14, 1967) [71 F.T.C. 158]; *Panat Jewelry Co., Inc.*, Docket No. 8660 (February 8, 1967) [71 F.T.C. 99].

¹⁷ Cf. *Consumer Sales Corp. v. Federal Trade Commission*, 198 F. 2d 404, 408-09 (2nd Cir. 1952), *cert. denied*, 344 U.S. 912 (1953); see also Section 3.61(c) of the Rules, which provides an expeditious method for a respondent to secure advice from the Commission as to whether a proposed course of action complies with an outstanding order.

zation to repair an automobile, of inflating the cost of repairs and refusing to replace the transmission in its original condition, leaving the customer no real choice but to authorize the more expensive repairs. The evidence establishes that another integral element in respondents' illegal course of dealing is their refusal to provide their customers with itemized statements of the parts and labor required to repair the transmissions.¹⁸ Since others in this trade routinely provide such statements,¹⁹ requiring respondents to do so will not put them at any competitive disadvantage.

These provisions of the order, together with a provision obligating respondents not to misrepresent the services actually performed and permitting them to charge only for services that have in fact been performed, strike at the heart of respondents' deceptive practices. They are not intended to put respondents out of business or to make it impossible for them to compete, nor should they have this effect. All that is required is that respondents carry on their business honestly, free of fraud and deception. Our order will not prevent respondents from giving potential customers an estimate as to the cost of repairs in cases where external observation and/or a test drive permit a reasonably accurate diagnosis of the defects in a car. However, in cases where an accurate estimate is impossible, none may be given, and, if the original analysis, although bona fide, proves faulty, respondents must promptly²⁰ inform the customer and must stand ready in every case to replace the transmission in its original condition at a specific price clearly stated to the customer *before* his transmission is disassembled.²¹ We recognize that our order may create problems of proof in any penalty proceeding that might arise which an order containing absolute proscriptions on the giving of estimates or price advertising would not, but we are reluctant at this stage to restrict respondents in the conduct of their business any more than appears necessary to terminate the fraud here found.²² On the other hand, any less stringent order than that here entered would create too many possibilities of evasion, thus jeopardizing the public interest and rendering the proceeding a nullity. While the order may limit respondents' freedom of action, they

¹⁸ See initial decision pp. 414-415.

¹⁹ See R. 839; CX 46; *cf.* R. 259.

²⁰ The record contains numerous examples of extended delays by respondents in making repairs or in contacting customers to tell them of the need for further repairs. See *e.g.*, R. 250-51 (customer-witness Jacobs); R. 312-13 (customer-witness Stiles).

²¹ See, *e.g.*, R. 441-42.

²² In view of the difficulty of drafting orders in language so explicit that it cannot be evaded by a wily or cunning respondent who wants to do so, and in view of the Commission's limited resources devoted to enforcement of orders, we must rely, to a certain extent, on the good faith of a respondent under almost any cease and desist order.

"must remember that those caught violating the Act must expect some fencing in." ²³

Similarly, advertising the price of particular services such as a resale job or an inspection is not forbidden, although an absolute ban would be easier to enforce, but is permitted on condition that the advertisement also disclose that there are many defects in transmissions which require additional parts and labor to repair and that such repairs cost substantially more than the advertised price.²⁴ There is, of course, a possibility that advertising permitted by this provision might be used by respondents as a subterfuge to conceal their continuation of practices found to be illegal, but related provisions of the order barring the use of a scheme or device by which misleading statements are used to obtain leads and barring the use of representations purporting to offer particular merchandise or services for sale when the offer is not bona fide are intended to obviate the risk that advertising which seemingly complies with this provision in fact conceals conduct that the order is intended to stop. Since we think the order will be effective as drawn, we reject complaint counsel's contention that a more stringent order is necessary.

The remaining paragraphs of the order are directed to the other deceptive practices here found. Use of the term "factory rebuilt" is forbidden except where used to describe a transmission rebuilt in a factory engaged in such rebuilding.²⁵ Similarly, we find substantial support in the record for the examiner's finding that respondents' advertised representations as to free towing, one day service, easy credit terms and no down payment are illusory,²⁶ and our order proscribes any such representations. We also find that the evidence establishes that customers were misled or under a misapprehension as to the meaning of the term "overhaul" used in respondents' advertisements, and as to what services would be performed as part of the advertised "overhaul" and what parts would be replaced.²⁷ We do not find that respondents have established a trade use of the term limiting it to replacement of soft parts,²⁸ and in any event, such trade use would not

²³ *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419, 431 (1957), citing *United States v. Crescent Amusement Co.*, 323 U.S. 173, 187 (1944).

²⁴ See footnote 9, *supra*.

²⁵ Respondent Dlutiz testified that respondents do not sell factory rebuilt transmissions in their Washington operation (R. 208) although the evidence establishes that they purported to sell and install such transmissions. See, *e.g.*, CX 11; R. 257-58, 263-64 (customer-witness Jacobs).

²⁶ Initial decision p. 411.

²⁷ See, *e.g.*, R. 593, 637-40 (customer-witness Montgomery), R. 725-26 (customer-witness Sollers), R. 778-79 (customer-witness Schneider), R. 858, 865-66 (customer-witness Smith).

²⁸ See RX 1; R. 194-95 (respondent Dlutiz), R. 810-12, 818, 834-39 (mechanic-witness Bair).

require us to permit respondents to continue to use the term in a way that deceived consumers.²⁹ The order therefore permits the use of this term only if in conjunction therewith full disclosure is made of the parts that will be replaced in connection with the overhaul, and their price if purchased separately, and disclosure is also made either of the parts that will not be replaced, as well as their price or of the fact that in many cases substantial additional costs will be incurred if parts other than those regularly included in the overhaul are needed to repair the transmission.

Finally, the order requires respondents to reveal all the terms and conditions of any guarantee given, the manner in which it will be performed, and the identity of the guarantor. Respondents' failure to make clear to their customers the nature and duration of the guarantee, and their apparently willful attempts to avoid fulfilling the guarantee are set out at length in the record.³⁰ Our order will prevent respondents from again engaging in these practices or otherwise using their guarantee to deceive their customers. It imposes no greater obligation than elementary principles of fair dealing require.³¹

IV

Respondent Walter Dultz contends that the examiner erred in applying the proscriptions of the order to him in his individual capacity. There is overwhelming support in the record for the exam-

²⁹ See, e.g., *DeGorter v. Federal Trade Commission*, 244 F. 2d 270, 282 (9th Cir. 1957); see also cases cited, *supra*, note 12.

³⁰ See, e.g., R. 391-92 (customer-witness E. L. Holt); R. 589-90 (customer-witness Montgomery); R. 681-82 (customer-witness Satterfield); R. 777, 779-80 (customer-witness Schneider); R. 852 (customer-witness Smith). We note that respondents have renewed their motion to have the testimony of the witness, Mr. Schneider, stricken on grounds of relevancy and on the ground that his dealings were with respondents' short-lived Maryland operation, not the Washington, D.C., outlet, and he is a Maryland resident. Respondents argue that this transaction was intrastate and thus not subject to the Commission's jurisdiction. The evidence clearly establishes the connection of the individual respondents with the Maryland operation which respondent Dultz testified that he owned (R. 240; see also R. 775), and respondents advertised both outlets in newspapers that crossed State lines. See, e.g., CX 5a-f. While the complaint names only the Washington, D.C., outlet in describing respondents' deceptive practices, it does name both respondent Dultz and respondent Green individually. Evidence as to their related activities in Maryland was therefore plainly admissible. See, e.g., *Holland Furnace Co. v. Federal Trade Commission*, 269 F. 2d 203 (7th Cir. 1959), *cert. denied*, 361 U.S. 932 (1960); *Consumers Home Equipment Co. v. Federal Trade Commission*, 164 F. 2d 972, 973 (6th Cir. 1947); *C. E. Niehoff & Co.*, 51 F.T.C. 1114, 1143 (1955).

Moreover, the fact that this outlet was advertised in interstate commerce negates respondents' jurisdictional objection quite apart from the fact that the Maryland outlet was in competition with a number of businesses in interstate commerce (see, e.g., CX 48, 49; cf. R. 861) and probably drew customers across State lines. See *S. Klein, Inc.*, 57 F.T.C. 1543, 1544 (1960), complaint dismissed on other grounds, 60 F.T.C. 388 (1962).

³¹ See, e.g., *Montgomery Ward & Co. v. Federal Trade Commission*, 379 F. 2d 666 (7th Cir. 1967); see generally Guides Against Deceptive Advertising of Guarantees.

iner's finding and we adopt it. It is perhaps true that respondent Dlutz did not work regularly at the Washington, D.C., outlet repairing transmissions, although it seems clear from the testimony of customer-witness Alan Hayes (R. 438-40, 457-61) that Mr. Dlutz worked on his car in the spring of 1966 and made representations to him similar to those made to the other witnesses and fitting perfectly the pattern of deception here established. Mr. Dlutz himself testified that he worked at the Washington outlet for two weeks in July of 1966.

However, we need not rely on these indicia of respondent's involvement, important though they be. Respondent Dlutz is the sole stockholder of the corporate respondent, its president and one of its three directors. It is he who hired the manager and ordered the equipment for the Washington, D.C., place of business; he signed the lease for the corporation, and he ordered merchandise for it;³² all records were kept in his Philadelphia office, transmitted there daily from Washington, and all bookkeeping was done there;³³ most bills were paid from that office, and only respondent Dlutz, his wife, and, for the past year, Mr. Green, had the authority to sign corporate checks.³⁴

Despite respondents' contrary protestations, we think it is also clear that he had full knowledge of the way in which the Washington operation was being run, quite apart from his own participation in those activities noted above. The testimony of the witness Samuel Klein (R. 490, 502) and the letter he wrote to respondent Dlutz (CX 39), negate respondent's contention that he never received any complaints from customers of the Washington operation (R. 211) that he was only vaguely aware of what went on in Washington (R. 213), and that, apart from signing the checks, he was not involved in the settlement of claims against the Washington corporation.³⁵ His denials are also contradicted by the credited testimony of customer-witnesses who were informed by respondents in Washington that settlements had to be approved by the Philadelphia office or by the president who was in Philadelphia.³⁶ The examiner was not required to accept respondents' rather flimsy denials of his complicity.³⁷ We hold that on all the facts

³² See, e.g., CX 16, 40, 41, 52a-54b, 63B, par. 3; R. 152-56, 230-31.

³³ R. 159-61; 767.

³⁴ R. 215.

³⁵ Respondent did admit, however, that he had been informed:

"[N]ot only by management in Washington but also by various attorneys in Washington that the Washington district seems to be one of the areas that is more prone for lawsuits, and I accepted this as such. This was brought to my attention by attorneys in Washington and by management in Washington."

³⁶ See R. 320 (customer-witness Stiles); R. 543 (customer-witness McDonald); R. 887, 890 (customer-witness Briscoe).

³⁷ See, e.g., *Guziak v. Federal Trade Commission*, 361 F. 2d 700, 704 (8th Cir. 1966), cert. denied, 385 U.S. 1007 (1967).

in this record, the examiner's conclusion that respondent Dultz formulates, directs, and controls the policies, acts, and practices of the corporate respondent is clearly correct.³⁸

Respondent Dultz cites *Coro, Inc. v. Federal Trade Commission*, 338 F. 2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965), and *Bankers Securities Corp. v. Federal Trade Commission*, 297 F. 2d 403 (3rd Cir. 1961), as indicating that it would be error to join him in his individual capacity. We do not agree. In both of those cases the reviewing court recognized that the proper scope of a cease and desist order depends on the facts of each case. The *Coro* case involved a large widely held public corporation, control of which was not vested in a single man; the violation of law there charged did not involve the kind of blatant fraud found in this case, and the possibility that the individual respondent might attempt to evade the Commission's order, making it a nullity, was far more remote than it is here.³⁹ In that situation, the failure of complaint counsel to adduce evidence of some personal involvement by the individual respondent in the unlawful activity charged, evidence that is not lacking in the present case, was held to require dismissal of the complaint as to that individual.⁴⁰

Similarly, in the *Bankers Securities* case the corporate respondent was engaged primarily in the real estate business, but operated as a single separate and distinct division, a retail department store known as Snellenbergs. It also was a stockholder in various corporations that owned and operated retail stores, but there was no showing that respondent's stock ownership gave it any control over the activities of those corporations or that it exercised or even attempted to exercise any "authority over management functions, particularly advertising practices and policies, of any such operating corporation." The order would have subjected respondent to the risk of "a contempt citation if at any time in the future another corporation, in which it owns a substantial stock interest, does what Snellenbergs has done," a risk that the court thought unjustifiable in view of the absence of any

³⁸ See, e.g., *Guziak v. Federal Trade Commission*, 361 F. 2d 700, 704 (8th Cir. 1966), *cert. denied*, 385 U.S. 1007 (1967); *Benrus Watch Co. v. Federal Trade Commission*, 352 F. 2d 313, 324-25 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966); *Fred Meyer, Inc. v. Federal Trade Commission*, 359 F. 2d 351, 367-68 (9th Cir. 1966), appeal argued November 6, 1967, 36 U.S. L. Week 3201; *Consumer Sales Corp. v. Federal Trade Commission*, 198 F. 2d 404, 407-409 (2d Cir. 1952), *cert. denied*, 344 U.S. 912 (1953); *Stedco Stainless Steel, Inc. v. Federal Trade Commission*, 187 F. 2d 693, 697 (7th Cir. 1951); *Sebrone Co. v. Federal Trade Commission*, 135 F. 2d 676, 678 (7th Cir. 1943).

³⁹ See, e.g., *Federal Trade Commission v. Standard Educ. Soc'y*, 302 U.S. 112, 119-20 (1937); cf. *Goodman v. Federal Trade Commission*, 244 F. 2d 584, 593-94 (9th Cir. 1957).

⁴⁰ Cf. *Benrus Watch Co. v. Federal Trade Commission*, 352 F. 2d 313, 324-25 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966), and *Clinton Watch Co. v. Federal Trade Commission*, 291 F. 2d 838, 841 (7th Cir. 1961), *cert. denied*, 368 U.S. 952 (1962), reaching an opposite result to that reached in the *Coro* case on somewhat similar facts.

willful wrongdoing by respondent and the generally insubstantial nature of the violation charged. In the present case, respondent Dlutiz is not a mere passive investor in the Washington operation, oblivious of the practices being followed by his agents, although even in such circumstances he could be subjected to a cease and desist order;⁴¹ on the contrary, his control of the corporation, its policies and practices, his responsibility for the violations charged, as well as their fraudulent nature, have all been shown. Failure to subject either the respondent Dlutiz or the respondent Green to our order would eviscerate it and insure its ineffectiveness. We hold that the order was properly directed against respondent Dlutiz in his individual capacity.

We have considered the other objections raised by respondents and find them to be without merit. The findings and conclusions of the hearing examiner, except to the extent they are inconsistent with this opinion, are adopted as the findings and conclusions of the Commission. The examiner's order is modified and an appropriate order will be entered in accordance with this opinion.

Commissioner Nicholson did not participate for the reason oral argument was heard prior to his appointment to the Commission.

FINAL ORDER

This matter has been heard by the Commission on the cross-appeals of complaint counsel and respondents from the initial decision of the hearing examiner filed on March 16, 1967. The Commission has rendered its decision denying respondents' appeals in all respects, granting complaint counsel's in part, and adopting the findings of the hearing examiner to the extent they are consistent with the opinion accompanying this order. Other findings of fact and conclusions of law made by the Commission are contained in that opinion. For the reasons therein stated, the Commission has determined that the order entered by the hearing examiner should be modified and, as modified, adopted and issued by the Commission as its final order. Accordingly,

It is ordered, That respondents, General Transmissions Corporation of Washington, a corporation, and its officers, and Walter Dlutiz, individually and as an officer of said corporation, and William J. Green, Jr., individually and as an agent of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, repair, overhauling, rebuilding, offering for sale, sale or distribution of any transmission,

⁴¹ Cf. *Fred Meyer, Inc. v. Federal Trade Commission*, 359 F. 2d 351, 368 (9th Cir. 1966), appeal argued November 6, 1967, 36 U.S. L. Week 3201; *Consumers Home Equipment Co.*, 164 F. 2d 972, 973 (6th Cir. 1947).

Final Order

73 F.T.C.

motor, or other automotive component, or any other product or service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, in any matter, the nature, extent or quality of any mechanical adjustment, replacement of parts or components, or any other repairs performed on any automobile transmission, other automotive component, or any other product;

2. Misrepresenting, in any manner, the nature, cost or extent of any services rendered or parts used in repairing any automobile transmission, other automotive component, or any other product, or charging for any services not in fact performed or parts not in fact used;

3. Representing, in any manner, that removal, dismantling, inspection, or any similar service will be performed on an automobile transmission, other automotive component, or any other product or component thereof, when the estimate quoted or price advertised for such service does not include reassembly and replacement of the component in the car, or other product, in its former condition;

4. Quoting or estimating a price for repairing an automobile transmission, other automotive component, or any other product, before determining by inspection, or by some other reasonable method, the nature and extent of the repairs needed so that the quoted or estimated price accurately reflects the actual price of the needed repairs;

5. Advertising the price of particular services such as an overhaul, inspection, or reseal job, unless in conjunction therewith disclosure is made, in a prominent place and in a type size that is easily legible, that there are many possible defects in an automobile transmission, other automotive component, or other product, for which the advertised services are ineffective and which require additional parts and labor to repair and that such repairs will cost substantially more than the advertised price;

6. Representing, directly or by implication, that any merchandise or service is offered for sale when such offer is not a bona fide offer to sell said merchandise or service;

7. Representing, directly or by implication, that any merchandise or service is offered for sale when the purpose of the representation is to sell the offered merchandise or service only in connection with the sale of other merchandise or services;

8. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive representations are made in order

to obtain leads or prospects for the sale of merchandise or services or to induce sales of any merchandise or services;

9. Obtaining any agreement or authorization from any customer to repair or otherwise service any automobile or other product without:

(a) Specifically listing in such agreement or authorization the extent, nature, and actual cost of the repairs to be performed;

(b) Promptly disclosing to the customer the precise extent, nature and cost of such repairs prior to performance thereof, if, despite respondents' best efforts accurately to estimate the cost of repairs in advance, the extent, nature, or cost of the needed repairs differs in any degree from what was set out in such agreement or authorization;

(c) Performing according to such agreement or authorization or returning said vehicle in its original condition at a specific price agreed to in advance and fully set out in said authorization;

10. Failing to provide all customers, at the time they are billed, with an itemized list of parts and labor including in the repair, overhaul, reseal, rebuilding or other service performed on an automobile transmission, other automotive component, or other product, repaired or serviced by respondents or any one of them;

11. Falsely representing, in any manner, that transmissions rebuilt by the respondents are factory rebuilt; that transmissions rebuilt other than in a factory generally engaged in such rebuilding are factory rebuilt; that the respondents offer for sale factory rebuilt transmissions;

12. Using the term "overhaul" to refer to any transmission service which does not include the removal, disassembly, and replacement of all worn parts, hard or soft, and the reassembly in reinstallation of the transmission in the vehicle, unless in conjunction with the use of the term "overhaul," in a prominent place and in type that is easily legible, disclosure is made of:

(a) The parts that will be replaced in connection with the "overhaul" and are included in the overhaul price, as well as their price if purchased separately, and

(b) The parts that will not be replaced as part of the overhaul and their price, and/or

(c) The fact that in many cases substantial additional costs will be incurred if parts other than those regularly in-

Complaint

73 F.T.C.

cluded in the overhaul must be replaced in order to repair the transmission;

13. Representing that any article of merchandise or service is guaranteed, unless all of the terms and conditions of the guarantee, the identity of the guarantor, and the manner in which the guarantor will in good faith perform thereunder are clearly and conspicuously disclosed, and, further, unless all such guarantees are in fact fully honored and all the terms thereof fulfilled;

14. Using the word "free" or any other word or words of similar import, as descriptive of an article of merchandise or service: *Provided, however*, That it shall be a defense in any enforcement proceeding hereunder for respondents to establish that in fact no charge of any kind, directly or indirectly, is made for such article of merchandise or service;

15. Using the terms "no money down," "E-Z Credit" or "easy credit," or any word or words of similar import, in connection with respondents' offer to sell any merchandise or services.

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 of their compliance with this order.

Commissioner Nicholson not participating for the reason oral argument was heard prior to his appointment to the Commission.

IN THE MATTER OF

DIRECTIONAL CONTRACT FURNITURE CORP.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECTION 2(a) OF THE CLAYTON ACT

*Docket 87-41. Complaint, July 21, 1967—Decision, Feb. 23, 1968**

Consent order requiring a New York City wholesaler of furniture to cease discriminating in price among competing resellers of its furniture in violation of Section 2(a) of the Clayton Act, withholding date of compliance.

COMPLAINT

The Federal Trade Commission, having reason to believe that Directional Contract Furniture Corp., the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection

*Order setting date of compliance dated Dec. 8, 1969.

Complaint

73 F.T.C.

cluded in the overhaul must be replaced in order to repair the transmission;

13. Representing that any article of merchandise or service is guaranteed, unless all of the terms and conditions of the guarantee, the identity of the guarantor, and the manner in which the guarantor will in good faith perform thereunder are clearly and conspicuously disclosed, and, further, unless all such guarantees are in fact fully honored and all the terms thereof fulfilled;

14. Using the word "free" or any other word or words of similar import, as descriptive of an article of merchandise or service: *Provided, however,* That it shall be a defense in any enforcement proceeding hereunder for respondents to establish that in fact no charge of any kind, directly or indirectly, is made for such article of merchandise or service;

15. Using the terms "no money down," "E-Z Credit" or "easy credit," or any word or words of similar import, in connection with respondents' offer to sell any merchandise or services.

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 of their compliance with this order.

Commissioner Nicholson not participating for the reason oral argument was heard prior to his appointment to the Commission.