

Complaint

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IN THE MATTER OF

FRIEDMAN'S-GEORGIA, INC.,** TRADING AS
A. A. FRIEDMAN COMPANY, ETC.

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

Docket 8744. Complaint, Sept. 13, 1967—Decision, Oct. 17, 1968

Order requiring a 30-store retail jewelry chain headquartered in Augusta, Ga., to cease using bait advertising, making misleading "Pay \$1 Weekly" claims, using false guarantee offers, misrepresenting that its house brand merchandise is nationally advertised, and using documents which simulate federal government forms.

COMPLAINT *

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Friedman's-Georgia, Inc., a corporation, trading and doing business as A. A. Friedman Company and Friedman's Jewelers, and Abraham A. Friedman, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Friedman's-Georgia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia with its principal office and place of business located at 309 8th Street, Augusta, Georgia.

Respondent Abraham A. Friedman 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 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, offering for sale, sale and distribution of diamonds, watches, jewelry, household appliances and other articles of general merchandise to the public.

In connection therewith, respondents own, operate and control twenty-five corporations, which operate thirty retail stores located

* Reported as amended by Hearing Examiner's order of Nov. 15, 1967, by striking subparagraphs numbered three (3) of paragraphs eight, nine and ten.

** The corporate name was later changed to A. A. Friedman Co., Inc. (CX 107-A).

in the States of North Carolina, South Carolina, Georgia and Florida. All of the stock of the said twenty-five corporations is owned by the corporate respondent. The individual respondent is president of the corporate respondent as well as of each of the twenty-five subsidiary corporations. All of the stock of the corporate respondent is either owned or controlled by the individual respondent.

In the course of doing business, the corporate respondent makes purchases at wholesale or merchandise to be sold at retail in the thirty stores previously mentioned. The said merchandise is stored in a warehouse in Augusta, Georgia. When merchandise is required by any of the subsidiary corporations, an order is placed by it with the corporate respondent, which then ships the merchandise to the subsidiary corporation, billing the latter for the cost to the corporate respondent plus a small handling charge, which amount is then remitted to the corporate respondent. All of the advertising is prepared by the corporate respondent, sent to the subsidiary corporations and by them placed for publication in the appropriate local media. The bills for this advertising are sent to the corporate respondent and paid by it. Hiring and discharging of all personnel is performed by the corporate respondent. All bookkeeping and accounting records are maintained in the office of the corporate respondent.

In the course of doing business, the corporate respondent uses the trade name of A. A. Friedman Company in making purchases of merchandise for sale and for other purposes. Each of the individual stores is operated under the trade name of "Friedman's Jewelers."

The individual respondent, through control of the corporate respondent, formulates, directs and controls the acts and practices of each of the subsidiary corporations in conjunction with the corporate respondent. Said subsidiary corporations are simply corporate agencies used by respondents in carrying on the business herein described.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, advertising material, supplies, equipment and business papers to be shipped to and from their warehouse or place of business in the State of Georgia, as aforesaid, to retail stores located in the four States previously mentioned and, at said locations, the said merchandise is sold to the public. In the course and conduct of said business, respondents maintain, and at all times mentioned herein have maintained, a

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substantial course of trade in said merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the advertising, offering for sale, sale or distribution of merchandise of the same general kind and nature as that sold by respondents.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents caused to be prepared and mailed to numerous persons in the State of Georgia and various States other than the State of Georgia, advertising material which consists, among other things, of a credit voucher in the sum of \$2 which could be used in the purchase of any merchandise in the stores operated by the corporate respondent. This credit voucher was printed in such a way as to have the appearance of a check issued by the United States Government, although it was only a credit voucher for credit on a purchase of merchandise in one of the respondents' retail stores. This credit voucher was enclosed in a window envelope in such a way that only the name and address of the person to whom it was addressed and the color of the paper on which the credit voucher was printed was visible before the envelope was opened. The envelope was of the size and had the appearance of the window envelopes used by the United States Government for the transmittal of Government checks. It was imprinted in a manner similar to envelopes used by the United States Government and included the following words as a return address:

OFFICE OF THE TREASURER
Accounting Division
P.O. Box 34
Augusta, Georgia. 30902

PAR. 6. Through the use, jointly and severally, of the words and terms set forth in Paragraph Five and the format and appearance of the envelope and the credit voucher, respondents represent and imply to those to whom the said credit vouchers are mailed, that the contents of the envelope is a check sent by a government agency and so cause the recipient to open the envelope and read the contents, which he might not otherwise have done.

PAR. 7. In truth and in fact, the content of the envelope is not a check or other document from a government agency but, on the contrary, the envelope contains a credit voucher and advertising

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

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

- * * * * *

- PAR. 9.* By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set forth herein, respondents represent, and have represented, directly or by implication:

- * Reported as amended by Hearing Examiner's order of Nov. 15, 1967, by striking subparagraph numbered three (3).

"name brand" or "famous name" watches.

2. That the total purchase price of respondents' merchandise is as set forth in the advertisements and may be paid at the rate per week as specified.

4. That said ticketed price of \$139.95 was the manufacturer's suggested list price for the Hamilton "Lord Lancaster B" watch, that said amount was the price regularly charged by principal outlets in the trade area where the representation was made and that the advertised price of \$88.88 afforded a savings to the purchaser equal to the difference between said ticketed price and the advertised price.

5. That Friedman watches carry an unconditional thirty-day money back guarantee and a double guarantee which will be honored both by the manufacturer and the respondents.

6. That respondents have an organization consisting of seventy retail stores.

7. That respondents were making a bona fide offer to sell said Hamilton watches, and other articles of merchandise not specified herein, at the prices and on the terms and conditions stated in the advertising.

PAR. 10.* In truth and in fact:

1. Respondents' "house brand" watches, such as "Holland, "Justin" and "Jacques Prevard" are not "nationally advertised," "famous name," or "name brand" watches.

2. The purchase price as advertised is not the total purchase price when paid for at the specified weekly payment but, on the contrary, interest, handling and other charges are added to the advertised purchase price.

4. Said ticketed price of \$139.95 was not the manufacturer's suggested list price for the Hamilton "Lord Lancaster B" watch, said amount was not the price regularly charged by principal outlets in the trade area where the representation was made and the advertised price of \$88.88 did not afford savings to the purchaser equal to the difference between said ticketed price and the advertised price. The manufacturer's suggested list price was substantially less than said ticketed amount.

5. Respondents' watches do not carry an unconditional thirty-day money back guarantee and a double guarantee which will be honored both by the manufacturer and the respondents. In fact, the respondents' guarantee will only be honored by the particular store in which the watch was purchased. The respondents also

* Reported as amended by Hearing Examiner's order of Nov. 15, 1967, by striking subparagraph numbered three (3).

fail to set forth the other terms, conditions and limitations applicable to their guarantees and the extent to which the guarantees apply and the manner in which the guarantor will perform thereunder.

6. Respondents are not an organization consisting of seventy stores, but, on the contrary, the respondents operate substantially less than the number of stores advertised.

7. Respondents were not making a bona fide offer to sell the Hamilton watches, and other advertised articles of merchandise not specified herein, at the price and on the terms and conditions stated in the advertisements but, on the contrary, the offer was made for the purpose of inducing the public to come to respondents' store in the expectation of purchasing the Hamilton watches, and other advertised merchandise not specified herein, at the advertised price and on the terms and conditions stated. Respondents, however, either maintained no stock of said Hamilton watches, and other advertised articles of merchandise not specified herein, or a supply insufficient to meet the ordinarily expected requests to purchase the Hamilton watches, and other advertised articles of merchandise not specified herein. At such time and under such circumstances, respondents then undertake to sell other and different merchandise to such purchasers.

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

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Roy B. Pope and Mr. J. Michael Frascati supporting the complaint.

Mr. Jonathan Golden, Arnall, Golden and Gregory, Atlanta, Georgia, for respondents.

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INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

MAY 15, 1968

I. PRELIMINARY STATEMENT

A. *Pleadings*

This proceeding brought by complaint issued September 13, 1967, under Section 5 of the Federal Trade Commission Act¹ charges respondents, a chain jewelry retailer and one of its officers, with false and misleading advertising and unfair acts and practices in commerce in connection with the sale of watches and other merchandise and the advertising thereof and of credit by a retail chain jewelry store.

Respondents, by answer filed October 16, 1967, admitted the corporate existence of the corporate respondent and official position of the individual respondent. But either one or the other of the respondents denied substantially all of the rest of the complaint. The answer asserted three defenses that 1) the Federal Trade Commission Act does not permit the Commission to regulate credit; 2) the advertisement referred to in the complaint "Pay \$1 weekly" is not misleading or deceptive; and 3) the acts committed were by independent entities not respondents.

B. *Prehearing*

The hearing examiner called a prehearing conference held November 15, 1967. The parties substantially simplified the issues by amendments to their pleadings. Respondents stipulated to the authenticity of proposed exhibits. Complaint counsel listed witnesses. Respondents agreed to the production of documents. And, both parties agreed to a date for the start of formal hearings in Atlanta, Georgia.²

C. *Conceded Allegations*

The effect of the amendments to the pleadings was that the allegations admitted by respondents about: the nature of their business, the fact that they were doing business in interstate commerce, their activity in connection with the issuance of credit vouchers, the advertisement of their watches as national brands,

¹ Section 5 of the Federal Trade Commission Act provides in part: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful." (15 U.S.C. § 45.)

² Prehearing Order dated November 15, 1967.

the character of their guarantee, and the size of their organization were false and misleading and had a tendency to deceive the public. Respondents also withdrew their claim that the actions engaged in were committed by independent entities.

Complaint counsel withdrew their charges concerning misleading advertisement of prices on Royal Keystone typewriters, Admiral clock radios and Remington shavers.

As to the charges admitted, findings are accordingly hereafter made in the language of the complaint, and an order is entered based upon such charges.

D. Factual Issues Remaining

The remaining factual issues are:

(1) Regarding Realtone miniature tape recorders, did respondents advertise the price as \$19.87 "Pay \$1 weekly"; thereby representing that the total price set forth might be paid for at \$1 per week; whereas the advertised price was not the total purchase price when paid for in weekly installments but interest, handling, and other charges were added.

(2) Regarding "Lord Lancaster B" Hamilton watches, did respondents tag these at \$139.95 with a tag similar to manufacturer's tags when an identical watch was advertised at \$88.88, thereby representing that \$139.95 was the manufacturer's list price, the price regularly charged by principal outlets in the trade area, and that the lower price afforded a saving of the difference between the two prices; whereas, the ticketed price was neither the price regularly charged nor the manufacturer's list price. The manufacturer's list and the price regularly charged were substantially less than the advertised price and did not afford a savings equal to the difference between the two prices.

(3) Regarding Hamilton, Elgin, Gruen and Holland watches, did respondents advertise them "your choice \$54.88" and regarding men's six diamond Hamilton and Ladies' twenty diamond Elgin watches did respondents advertise them "your choice \$88.88" thereby representing that respondents were making a bona fide offer to sell at the advertised prices; whereas in fact respondents used that advertisement as a lure to sell other merchandise.

(4) Regarding all the foregoing, were respondents' acts false, misleading and deceptive, did they have a tendency to mislead purchasers, were they injurious to the public and respondents' competitors, and did they constitute unfair methods of competition

and unfair and deceptive acts and practices in commerce.

E. The Hearings and the Proposals of the Parties

Hearings on the issues heretofore set forth commenced at Atlanta, Georgia, on February 28, 1968, and concluded February 29, 1968. Proposed findings, conclusions, and order were filed by complaint counsel on April 3, 1968, and by respondents April 9, 1968.³ Replies were filed April 17, 1968, and April 19, 1968, respectively.

At the conclusion of complaint counsel's case, counsel for respondents moved to dismiss the complaint for failure of proof. Decision on such motion was reserved. It is now denied.

F. Basis for Decision

The decision herein is based on the record as a whole, including the admissions contained in the answer, the testimony and demeanor of the witnesses, the exhibits received, and the proposed findings, conclusions, and order.

All findings and conclusions not incorporated in terms or in substance are rejected. References are made in compliance with Rule 3.51(b) to principal supporting items of evidence,⁴ but the failure to cite particular references does not mean that the examiner has failed to consider the evidence as a whole. The findings of fact are based on the impact of the entire proof.

On the basis of the foregoing, the following findings of fact, reasons for decision, conclusions, and order are made.

II. FINDINGS OF FACT

A. Findings of Facts Admitted By Answer

The following findings are made of facts set forth in the complaint and admitted by the answer, as amended:

PARAGRAPH 1. Respondent Friedman's-Georgia, Inc., is a corporation organized, existing and doing business under and by

³ Delay in the receipt of respondents' proposals is explicable because of the civil disturbance in Washington, D.C., at that time.

⁴ References are abbreviated as follows:

C. Complaint

A. Answer

CPF Complaint counsel's proposed findings.

RPF Respondents' proposed findings.

CX Complaint counsel's exhibit.

RX Respondents' exhibit.

Tr. Transcript page.

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virtue of the laws of the State of Georgia with its principal office and place of business located at 309 8th Street, Augusta, Georgia.

Respondent Abraham A. Friedman 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 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, offering for sale, sale and distribution of diamonds, watches, jewelry, household appliances and other articles of general merchandise to the public.

In connection therewith, respondents own, operate and control twenty-five corporations, which operate thirty retail stores located in the States of North Carolina, South Carolina, Georgia and Florida. All of the stock of the said twenty-five corporations is owned by the corporate respondent. The individual respondent is president of the corporate respondent as well as of each of the twenty-five subsidiary corporations. All of the stock of the corporate respondent is either owned or controlled by the individual respondent.

In the course of doing business, the corporate respondent makes purchases at wholesale of merchandise to be sold at retail in the thirty stores previously mentioned. The said merchandise is stored in a warehouse in Augusta, Georgia. When merchandise is required by any of the subsidiary corporations, an order is placed by it with the corporate respondent, which then ships the merchandise to the subsidiary corporation, billing the latter for the cost to the corporate respondent plus a small handling charge, which amount is then remitted to the corporate respondent. All of the advertising is prepared by the corporate respondent, sent to the subsidiary corporations and by them placed for publication in the appropriate local media. The bills for this advertising are sent to the corporate respondent and paid by it. Hiring and discharging of all personnel is performed by the corporate respondent. All bookkeeping and accounting records are maintained in the office of the corporate respondent.

In the course of doing business, the corporate respondent uses the trade name of A. A. Friedman Company in making purchases of merchandise for sale and for other purposes. Each of the individual stores is operated under the trade name of "Friedman's Jewelers."

The individual respondent, through control of the corporate re-

spondent, formulates, directs and controls the acts and practices of each of the subsidiary corporations in conjunction with the corporate respondent. Said subsidiary corporations are simply corporate agencies used by respondents in carrying on the business herein described.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, advertising material, supplies, equipment and business papers to be shipped to and from their warehouse or place of business in the State of Georgia, as aforesaid, to retail stores located in the four States previously mentioned and, at said locations, the said merchandise is sold to the public. In the course and conduct of said business, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the advertising, offering for sale, sale or distribution of merchandise of the same general kind and nature as that sold by respondents.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents caused to be prepared and mailed to numerous persons in the State of Georgia and various states other than the State of Georgia, advertising material which consists, among other things, of a credit voucher in the sum of \$2 which could be used in the purchase of any merchandise in the stores operated by the corporate respondent. This credit voucher was printed in such a way as to have the appearance of a check issued by the United States Government, although it was only a credit voucher for credit on a purchase of merchandise in one of the respondents' retail stores. This credit voucher was enclosed in a window envelope in such a way that only the name and address of the person to whom it was addressed and the color of the paper on which the credit voucher was printed was visible before the envelope was opened. The envelope was of the size and had the appearance of the window envelopes used by the United States Government for the transmittal of Government checks. It was imprinted in a manner similar to envelopes used by the United States Government and included the following words as a return address:

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Accounting Division

P.O. Box 34

Augusta, Georgia. 30902

PAR. 6. Through the use, jointly and severally, of the words and terms set forth in Paragraph Five and the format and appearance of the envelope and the credit voucher, respondents represent and imply to those to whom the said credit vouchers are mailed, that the contents of the envelope is a check sent by a government agency and so cause the recipient to open the envelope and read the contents, which he might not otherwise have done.

PAR. 7. In truth and in fact, the content of the envelope is not a check or other document from a government agency but, on the contrary, the envelope contains a credit voucher and advertising material announcing a special sale at one of the respondents' stores.

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

PAR. 8. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of their said products, respondents have made certain statements in advertisements inserted in newspapers and in brochures or flyers with respect to prices, classification, savings and guarantees of their product.

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

1. Nationally advertised 17 jewel men's and ladies' watches. * * * Why buy a no jewel watch when you can * * *.

Choose from
Caravella by Bulova
Elgin Holland
Justin Waltham.

Choose from many famous name watches Gruen Hamilton Elgin Holland

Bulova Elgin Holland

Plus many more famous name 17-jewel precision watches.

Many other famous name watches slashed during this great sale

Hamilton Gruen Elgin Holland.

2. [5.] * * * 30 day money back guarantee.

All watches carry double guarantee from Friedman's and the manufacturer.

3. [6.] Friedman's * * * 70 stores where your dollar buys more.

PAR. 9. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set forth herein, respondents represent, and have represented, directly or by implication:

1. That respondents' "house brand" watches, such as "Holland," "Justin" and "Jacques Prevard" are "nationally advertised," "name brands" or "famous name" watches.

2. [5.] That Friedman watches carry an unconditional thirty-day money back guarantee and a double guarantee which will be honored both by the manufacturer and the respondents.

3. [6.] That respondents have an organization consisting of seventy retail stores.

PAR. 10. In truth and in fact:

1. Respondents' "house brand" watches, such as "Holland," "Justin" and "Jacques Prevard" are not "nationally advertised," "famous name," or "name brand" watches.

2. [5.] Respondents' watches do not carry an unconditional thirty-day money back guarantee and a double guarantee which will be honored both by the manufacturer and the respondents. In fact, the respondents' guarantee will only be honored by the particular store in which the watch was purchased. The respondents also fail to set forth the other terms, conditions and limitations applicable to their guarantees and the extent to which the guarantees apply and the manner in which the guarantor will perform thereunder.

3. [6.] Respondents are not an organization consisting of seventy stores, but, on the contrary, the respondents operate substantially less than the number of stores advertised.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

B. Findings of Facts Subject to Proof

1. The Course of the Hearings

As a preliminary to the specific findings, we indicate the course

of the proof. Complaint counsel first offered a number of documents stipulated to be authentic (see Stipulation and Index to Exhibits CX 107-D and F). Complaint counsel's first witness was an attorney, William E. Mumford, (Tr. 29-130) who investigated respondents on behalf of the Federal Trade Commission. Mr. Mumford described how he had secured advertisements of the corporate respondent, how he had called on five of the stores operated by that respondent, and how he had in several cases been told that there were none of the advertised Hamilton watches available but was offered other brands of watches. Mr. Mumford also described how he had attempted to secure records from respondents to show the number of watches on hand and with the fragmentary material supplied attempted to construct a tabulation (CX 109-A-B) showing the number of Hamilton watches that might possibly have been available at the various stores at the time of a night sale held in November 1964.

On cross-examination Mr. Mumford conceded that his tabulation contained some errors, and he also stated that he could not say that the tags he saw on the Hamilton watches had the name Hamilton on them or looked like Hamilton tags (Tr. 100-101).

Complaint counsel's second witness was Joseph J. Freedman, the general manager of the corporate respondent. Mr. Freedman identified the documents supplied to complaint counsel and stated that neither the corporate respondent nor any of its stores kept a physical inventory by units of the stock of each store (Tr. 135). On cross-examination Mr. Freedman described how information was obtained in the event of a sale (Tr. 135-137). On redirect examination Mr. Freedman indicated that he knew there were about 37 Lord Lancaster B Hamilton watches (advertised at \$88.88 (CX 22) and carrying a retail tag of \$139.95 (Tr. 39; RX 9A) owned by the corporate respondent at the time of the March 1965 sale (Tr. 139-140).

Complaint counsel's third and last witness was Barbara Peurifoy, a bookkeeper for the Friedman store in Griffin, Georgia, who testified that the store in which she worked kept a window inventory (Tr. 143). She also stated that a quick inventory was taken when ordering and an annual inventory showing watches by class and price, dividing watches into two classes—foreign and domestic. She also identified a report (CX 73) made in preparation for the night sale in November 1964 entitled "Merchandise Bulletin No. 171." (Tr. 143-152.) Complaint counsel then closed their case and respondents moved to dismiss (Tr. 154-168).

Respondent called three witnesses. The first two, Mrs. Evelyn Carruth Kerpel (Tr. 168-201, 278-290) and Harry V. Adley (Tr. 202-278) testified concerning a survey designed to show that the average person would expect to pay more for a financed purchase than for a cash purchase. Mrs. Kerpel conducted the interviews and made a report of each (RX 6).

A summary (RX 7-A-E) was prepared from the interview reports under Mr. Adley's direction. He designed the questions and picked the localities for the interviews to take place. While Mrs. Kerpel did have one erroneous date, it appeared to the hearing examiner that despite her total lack of experience she had properly and fairly conducted the interviews. The places chosen for the interviews and the size of the sample taken, appeared to be adequate, but the result of the survey merely demonstrated a general impression that the public expects to pay more for financing than it does for cash payments. There was no reference to the particular advertisement charged to be misleading (CX 57). Respondent recalled Mr. J. J. Freedman (Tr. 291-340) as its last witness. He produced some records which were found subsequent to the original submission to Mr. Mumford. He testified that the corporate respondent removed the manufacturer's tickets from the Lord Lancaster B and other Hamilton watches and rebanded them (Tr. 302-305). He also testified that the stores were adequately stocked and that one watch for the smaller stores was an adequate amount (Tr. 325). He said he had no explanation why no watches were available in particular stores (Tr. 335). He further testified that use of the phrase "Pay \$1 weekly" was common practice (Tr. 337). Mr. Freedman also identified tabulations showing the watches shipped to stores (RX 13; Tr. 328) and a tabulation showing the watches purchased was received without objection (RX 15; Tr. 329).

We now consider the specific charges which were denied and the facts established concerning them. We first consider the installment charge.

2. The Pay \$1 Weekly Charge

It was stipulated (CX 107) that in the Florence Morning News for Thursday, September 17, 1964, Friedman's Jewelers advertised a "Realtone Miniature Portable Tape Recorded [sic]." The advertisement of this item is one of 14 items and under the price of each item is smaller all capital type are the words "Pay \$1 Weekly" or in two cases "Pay \$2 Weekly." The advertisement is

headed in 1/2 inch, all caps display type "DISCOUNT PRICES AND CREDIT TOO!" and in the center of the advertisement in slightly smaller type all caps "BONA FIDE BARGAINS ARE BOUNTIFUL AT FRIEDMAN'S JEWELERS CHOOSE YOUR OWN TERMS." (CX 57.) Hence, it was established that the identical advertisement charged in the complaint without the typographical error had been previously run (C. Par. Eight 2). In addition there were received a half dozen other advertisements all using the terms "Pay \$1 weekly" or "Pay as little as \$1.00 weekly," "Pay only \$1 weekly." (CX 47-51; 56; see also CXs 13-22.) Mr. J. J. Freedman claimed this was typical in the industry (Tr. 337).

In our opinion the use of the capitalized words in the heading "discount prices and credit too!" was reasonably capable of the construction that credit also was at a discount, particularly when the advertisement contained the statement "Choose your own terms!" (CX 57). Under these circumstances, the fact that 95 percent of the persons interviewed in a random poll who did not see the advertisement would expect to pay more for financing (RX 7-A-E) is not significant. This advertisement not only would deceive the 5 percent, but is capable of deceiving a much higher percentage of the public into believing that they would only be required to pay the total price stated without additional charges.

The contrary is the fact. Respondents' contracts added a "service charge" or "time price differential" to the purchase price (see CXs 24-43) so that the advertised price is not the total purchase price if paid for at the specified weekly payments, but handling and other charges are added.

We consider now the ticketing charge.

3. *The Price-Ticketing Charge*⁵

Respondent offered a watch for sale known as the Lord Lancaster B Hamilton watch with a price tag of \$139.95 at the Freedom Village Store in Charlotte, North Carolina (Tr. 99), and

⁵ Since respondents claim a fatal variance between pleading and proof, the charges in the complaint which were denied in the answer on this topic are set forth in this footnote:

Paragraph Eight: * * * respondents have made certain statements * * *.

4. To the watch identified as "Lord Lancaster B" was attached a ticket similar in appearance to that used by manufacturers showing a price of \$139.95. This identical watch was advertised at a selling price of \$88.88.

Paragraph Nine: * * * respondents represent * * *:

4. That said ticketed price of \$139.95 was the manufacturer's suggested list price for the Hamilton "Lord Lancaster B" watch, that said amount was the price regularly charged by

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also at the Lancaster, South Carolina, store (Tr. 39). The Lord Lancaster B Hamilton watch at the Lancaster, South Carolina, store had the price \$139.95 stricken through and the price \$88.88 put on it (Tr. 39). However, Mr. Mumford, the Commission attorney who investigated the matter, could not say that the tag purported to be a Hamilton watch tag (Tr. 100). The tags produced by respondents show that the tag affixed by Hamilton is wholly different from the tags affixed by respondents (RX 9).

Mr. Freedman testified that because the price was not the price suggested by Hamilton, the Hamilton tag was removed and a Friedman tag substituted (Tr. 332). Moreover, all the Lord Lancaster B Hamilton watches were returned to the warehouse after the night sale in 1964 and rebanded (RX 14-A-B) so they were regarded as different items from the Hamilton watches in the condition originally purchased (see Tr. 330-333 having to do with cheaper watches).

So although the sale price was fixed at \$88.88 the cost was listed at \$42.45 and the regular retail price retained at \$139.95 under the Friedman merchandising plan for the March 1965 sale (RX 14-A-B). The item was advertised at \$88.88 in The Augusta Chronicle of March 25, 1965, with a special note "Compare at \$150" (CX 50, CX 107). At that time the Lord Lancaster B Hamilton (without the Spiedel band) had a manufacturer's suggested retail price of \$89.50 (CX 52-B), and although Mr. Mumford could not find other stores which had the Lord Lancaster B Hamilton watch in stock, he ascertained that the catalogue price was \$89.50 (Tr. 34-35, 97-98).

Accordingly, we do not find that the ticket attached to the Lord Lancaster B Hamilton watch was similar in appearance to that used by manufacturers; in fact it was entirely different from the Hamilton tag, although a prospective purchaser might think the tag represented a price generally charged. We do not find that \$139.95 was not the price regularly charged by prin-

principal outlets in the trade area where the representation was made and that the advertised price of \$88.88 afforded a savings to the purchaser equal to the difference between said ticketed price and the advertised price.

* * * * *

Paragraph Ten: In truth and in fact:

* * * * *

4. Said ticketed price of \$139.95 was not the manufacturer's suggested list price for the Hamilton "Lord Lancaster B" watch, said amount was not the price regularly charged by principal outlets in the trade area where the representation was made and the advertised price of \$88.88 did not afford savings to the purchaser equal to the difference between said ticketed price and the advertised price. The manufacturer's suggested list price was substantially less than said ticketed amount.

* * * * *

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Initial Decision

cipal outlets in the trade area because there has been a complete failure of proof on that subject. Moreover, at the Freedom Village store, the clerk refused to sell the Lord Lancaster B Hamilton watch to Mr. Mumford for \$88.88 claiming that the "retail price of the watch was \$139.95, as marked." (Tr. 35-37.)

Hence, while we are of the opinion that there is a strong possibility that a prospective purchaser would be misled into believing that he was getting a great bargain when in fact he was securing a price very little lower than the manufacturer's suggested resale price, we do not find that the ticketing charge, as pleaded, has been sustained. We turn now to the bait and switch charge.

4. *The Bait and Switch Charge*

It was stipulated (CX 107) that the corporate respondent ran an advertisement in *The News and Courier*, March 17, 1965, which contained the words:

Hamilton Elgin Gruen Holland * * * Your Choice \$54.88
Men's 6 Diamond Hamilton Ladies' 20 Diamond Elgin Your Choice \$88.88

under a heading in display type

FOR THREE DAYS ONLY!
Hamilton Elgin Gruen Waltham
DISCOUNT WATCH RIOT!
GREATEST WATCH SALE IN OUR HISTORY! (CX 14.)^o

Hence the advertising conforms to the charge (Complaint Paragraph 8, subparagraph 7).

From the advertising we find that respondents purported to make a bona fide offer to sell Hamilton watches and other articles of merchandise at the prices and on the terms and conditions advertised.

After obtaining similar advertisements, Mr. Mumford called at a number of the corporate respondents' stores on or about the dates specified and with the following results:

On March 18, 1965, he secured an advertisement (CX 16) from the *Florence Morning News* and took it to the Friedman's

^o See also other similar advertisements:

CX 16, *Florence Morning News*, March 18, 1965.
CX 21, *Augusta Herald*, March 17, 1965.
CX 22, *The Augusta Chronicle Herald*, March 21, 1965.
CX 47, *The Charlotte News*, March 17, 1965.
CX 48, *Evening Herald*, Rock Hill, March 22, 1965.
CX 49, *The Lancaster News*, March 18, 1965.
CX 50, *The Augusta Chronicle*, March 25, 1965.
CX 51, *The Asheville Citizen*, March 26, 1965.

store in Florence, South Carolina (Tr. 30). There he examined the window to see if any Hamilton⁷ watches were on display. There were none. There were Holland, Jacques Prevard,⁸ Elgin, and Bulova watches on display. He then asked for a \$39.88 Hamilton watch and was told there were none (Tr. 31). He next asked for a \$54.88 Hamilton and the clerk told him there were none at that price. The clerk offered to sell a Holland watch that he claimed was regularly priced at \$49.95 for the advertised \$39.88 Hamilton watch. Mr. Mumford then asked for the Hamilton men's diamond watch priced at \$88.88 and the clerk said he had none in stock that he could order one but he did not know how long it would take (Tr. 31).

On March 18, 1965, Mr. Mumford called on the Friedman's store in Durham, North Carolina. The newspaper advertisement was posted in the window, but there were no Hamilton watches displayed in the window. There were principally Holland, Jacques Prevard, "possibly Elgin and possibly others." (Tr. 32) Mr. Mumford then entered the store and asked to see the \$39.88 men's Hamilton watch. The male clerk advised Mr. Mumford that he had none in stock. Mr. Mumford then asked to see the Hamilton watch advertised at \$54.88. The clerk showed Mr. Mumford a watch with a price tag of \$75.00 that he said he would sell at \$54.88 to comply with the advertisement. There was a stock number M-693 CL 35 on this watch.⁹ Mr. Mumford then asked to see the \$88.88 watch and was informed there were none in stock (Tr. 32-33).

On March 22, 1965, Mr. Mumford shopped a Friedman's store at the K-Mart Shopping Plaza in Charlotte, North Carolina. He had with him an advertisement identical to CX 47. The advertisement was posted in the window. The watches previously described were displayed there, but there were no Hamilton watches. The watches on display had sale prices marked on them in the form of placards (Tr. 33). At this store Mr. Mumford was told there were no \$39.88 Hamilton watches in stock and none of the \$54.88 Hamilton watches in stock. The clerk offered to sell an Elgin watch at \$54.88 in lieu of the Hamilton, but Mr. Mumford did not buy it. In this case, however, the clerk produced a watch that looked like the Hamilton watch advertised for \$88.88 with a

⁷ Mr. Mumford concentrated on Hamilton watches because of information he had received in the trade (Tr. 115-116).

⁸ The Holland and Jacques Prevard watches are house brands of Friedman's (Tr. 30, 31).

⁹ The numbers shown on RX 14-B for the Waltham watches to be sold for \$54.88 do not bear any resemblance to this stock number. This would indicate the watches to be used in the sale were not in stock. However, RX 14-A indicates the numbers were to be changed.

tag number CL530-525¹⁰ and a price of \$139.95 marked on it. The clerk offered to sell this watch at \$88.88 but Mr. Mumford did not buy it (Tr. 34).

On March 23, 1965, Mr. Mumford shopped at Friedman's store in Freedom Village in Charlotte, North Carolina. There was no advertisement in the window but the placards showing the prices of the watches read, "Three-day Watch Riot" (Tr. 35-36). The other familiar lines of watches previously listed were displayed but no Hamilton watches were in the window display. Inside, a salesgirl with blond hair waited on Mr. Mumford. She said she had no watches in stock that were advertised at \$39.88 or \$54.88 but she showed him a watch that he identified as a Lord Lancaster B. The salesgirl said she could not sell it at \$88.88 that the price was \$139.95. She persisted in that statement after she talked with someone in the rear of the store that she said was the manager. She offered to sell a Jacques Prevard¹¹ watch for \$125 which she said was "of equal value with the Hamilton watch * * *" (Tr. 36-37).

On March 24, 1965, Mr. Mumford called at Friedman's store in Lancaster, South Carolina. A copy of the advertisement (CX 49) was posted in the window and the same watches were displayed, but no Hamiltons (Tr. 38). The manager of this store waited on Mr. Mumford. The manager said they had no Hamilton watches at \$39.88 or \$54.88. He offered to sell an Elgin or Bulova at \$54.88 in lieu of the Hamilton. When asked about the Lancaster B Hamilton advertised at \$88.88 the manager produced such a watch marked at \$139.95 "with that entry struck through and sale priced eighty-eight eighty-eight." This was a sale placard, red and white Mr. Mumford believed, "and was a sale marked-down tag" (Tr. 39).

In addition to his visits to the stores where he had the results indicated, Mr. Mumford attempted to find out whether or not the Friedman stores had a stock of Hamilton watches. He accordingly requested an inventory. No inventory was available (and Mr. Friedman testified none was kept (Tr. 135)).

In connection with a so-called night sale in November 1964, however, it appeared that the various stores had been circularized with "Merchandise Bulletin #171." This bulletin sought information as to the stock of certain watches and other merchandise on hand and was sent to each store manager to complete and to recommend how many additional units should be ordered

¹⁰ This number also does not appear on RX 14-B.

¹¹ As heretofore pointed out, this was Friedman's house brand.

(CXs 61-89). In addition, the warehouse kept a carbon copy of shipments to the stores. These shipment books were bound and Mr. Mumford tabulated as many of these as were furnished to him. From these sources he prepared a tabulation (CX 109-A-B; Tr. 44-45). This tabulation was received without objection as a tabulation of exhibits in evidence (Tr. 44). It purported to show the stock on hand, the units requested by the store managers, and the possible stock on hand resulting from shipments. A number of the shipping records were not furnished to Mr. Mumford and this was also shown on the tabulation. On cross-examination and after being supplied with additional records that were not previously made available, Mr. Mumford stated that there should be certain adjustments (see, *e.g.*, Tr. 63).

Assuming, however, that counsel for respondents' proposed findings are correct (see RPF 4) there would be a difference of only seven watches in three stores on CX 109-A—none of which were stores that Mr. Mumford shopped (see RX 13). Mr. Mumford's tabulation (CX 109-A) indicates that at the time of the night sale four stores had no stock of men's 530-521 Hamilton watches, the possible stock for the 22 stores where information was originally available was 21 watches.

Respondents in its case showed that in 1965 before the date of the 3-day sale in March, there were 75 Hamilton watches with a retail price of \$49.95 ordered, and an additional 65 watches with a retail price of \$75 ordered, plus 25 watches with a Friedman's retail price of \$139.95 ordered, and that two \$49.95 watches were shipped to each of the stores Mr. Mumford shopped, and three \$75 watches to all but one of those stores, and that store received two \$75 watches and one \$139.95 watch, and each of the other four stores received two watches bearing that Friedman's price tag (RX 13).

Mr. Freedman testified that in his opinion one or two watches of each kind were an adequate stock, except in one large store where three would be required (Tr. 325-26). However, his opinion cannot be accepted in light of Mr. Mumford's uncontradicted testimony. Mr. Freedman could offer no explanation why there was no stock of particular advertised Hamilton watches in the several stores, even if we assume that there was no men's \$39.88 watch advertised and disregard the evidence regarding it. If we construe the advertisements as offering both men's and women's Hamilton watches at \$39.88, as we properly should (see CX 47), none of the stores had a \$39.88 sale-priced men's Hamilton watch in stock. The fact that Mr. Mumford was told by the clerks there

was none in stock rather than that none was advertised confirms our opinion that the advertisement is properly construed to mean that \$39.88 men's Hamilton watches were included.

The most significant evidence that there was not a bona fide effort to sell the lower-priced Hamilton watches comes from comparison of instructions given the store managers regarding gift certificates and the night sale "Sales Bulletin #90" (CX 59-A-B) with the technique adopted at the stores that Mr. Mumford shopped. Clearly, there was an effort there to prevent full use of the gift certificates. Similarly, in connection with the recommended technique regarding the "loss leader" 144-piece Home-maker Ensemble (CX 60) there were clear written instructions to avoid selling the articles offered.¹²

By reason of all of the evidence, we find that there was not a bona fide offer to sell the low-priced men's Hamilton watches; they were advertised as a lure, and the attempt was made to switch the buyer to house brand watches, to higher priced watches or to other brands of merchandise.

5. *The Implication of the Individual Respondent*

It was stipulated that respondent Abraham A. Friedman is president of the corporate respondent, that substantially all the stock of the corporate respondent is owned or controlled by him or his family, and that the corporate respondent owns all the stock of the thirty retail stores operated. It was stipulated that Abraham A. Friedman fixes his own salary and commissions and is the final authority on all policy decisions in addition to supervising, controlling, and formulating advertising material, promulgating sales policies and promotional activities, determining products to be marketed, negotiating contractual and financial arrangements, and setting employment policies (CX 108 A-B).

Thus, it is found that he was personally implicated in the activities charged.

6. *The Effects*

It has been admitted, so far as the deceptive practices not denied in the amended answer are concerned, that the practices had the tendency to lead the public into the erroneous belief that they were true and to buy substantial quantities of respondents'

¹² This clear evidence that respondents' store managers had been specifically instructed in techniques designed to discourage customers from taking advantage of concessions offered, differentiates this case from *Globe Readers Service, Inc., et al. v. Federal Trade Commission*, 285 F. 2d 692 (7 Cir. 1961), 7 S.&D. 1.

merchandise because of that erroneous belief and that such acts were prejudicial to the public interest and the interest of competition and constituted unfair acts and practices in commerce in violation of the Federal Trade Commission Act (C. A.).

Since the acts and practices with regard to the advertisement of installment credit (Section 2 hereof) and those relating to respondents' bait and switch techniques (Section 4 hereof) are also false, misleading, and deceptive and are in the same setting as the admitted acts, they must have had similar effects. Accordingly, we so find.

We now set forth as required by Section 8(b) of the Administrative Procedure Act,¹³ the reasons for our decision.

III. REASONS FOR DECISION

During the course of the findings of fact, we have given the factual reasons for our ultimate findings of fact. In this section we deal with the legal contentions of the parties.

In their "Brief"¹⁴ respondents make three main points: First, complaint counsel have failed to sustain their burden of proof that the ticketing of the Lord Lancaster B Hamilton watch was fictitious. Second, complaint counsel failed to establish that the stock of Hamilton watches was inadequate and that such watches were not bona fide offers for sale. And, third, the advertisement of a price accompanied by the words \$1 weekly is not misleading or deceptive and regulating credit is not within the jurisdiction of the Commission. We deal with each of these seriatim.

A. *The Fictitious Pricing Charge Was Not Established*

As heretofore pointed out there was no proof of the price at which the Lord Lancaster B Hamilton watch was generally sold.¹⁵ And, contrary to complaint counsel's claim, Mr. Freedman did not state that respondents never sold it at \$139.95. Actually Mr. Freedman testified (Tr. 305) that they had never sold it *with the Hamilton tag on it* for \$139.95. Complaint counsel had the burden of establishing the price at which the watch was ordinarily sold in the trade area. He did not do so, nor did he show that respondents did not sell ordinarily at that price. In fact, Mr. Mumford testified, as we have shown, that in one of the stores the blond salesgirl refused to sell the Lord Lancaster B Hamilton watch except at \$139.95, the ticketed price.

¹³ 5 U.S.C. 1001.

¹⁴ The "Brief" will be found at p. 7 of the proposals filed April 9, 1968.

¹⁵ See 16 C.F.R. Chapter 1, Part 233.

While we deprecate the practice of placing an exorbitant markup on a piece of merchandise then striking the price through and putting on a lower price to exaggerate the alleged savings, it must be established that the exorbitant price is fictitious—not that it gouges the public—before the charge in this complaint can be sustained. Accordingly, while the testimony with regard to the catalogue price and the evidence of the suggested resale price led us to refuse to dismiss on motion, at the conclusion of complaint counsel's case, we now, after weighing all the evidence, must dismiss the charge as not proved. We turn now to the bait and switch charge.

*B. The Bait and Switch Charge Was Established*¹⁶

Mr. Mumford's testimony was clear, unambiguous, and convincing. It established that he had inquired about purchasing certain advertised watches and was switched. It also established, prima facie at least, that the stores he shopped had an inadequate supply of watches because they had run out, and one salesperson said that he did not know how long it would take to order another watch of the kind inquired about. The Hamilton watches were not displayed and the respondents had previously given instructions in connection with other merchandise that clearly recommended switching customers away from that merchandise. Thus, a plan to switch was indicated. In these circumstances, the failure to call as witnesses the salespeople who waited on Mr. Mumford and the reliance on the generalizations made by Mr. Freedman are inadequate to meet complaint counsel's solid proof. We turn now to the advertising of the price and installments without showing the full installment price.

*C. The Advertisements Showing Pay \$1 Weekly
Were Misleading*

When critically analyzed as we have shown, the advertisements here do more than just place the price in juxtaposition to the words "Pay \$1 weekly." Taken as a whole they imply a sale and a discount not only of price but of financing. The hearing examiner and the Commission are quite capable of making that determination.¹⁷ That being so, the fact that financing or time

¹⁶ *Guides Against Bait Advertising*, (Title 16, C.F.R., Chapter I, Part 238); see *In the Matter of General Transmissions Corporation of Washington, et al.*, Docket 8713, Opinion dated February 23, 1963, pp. 7-8 of mimeograph [73 F.T.C. 424-425].

¹⁷ *In the Matter of Rodale Press, Inc., et al.*, Docket No. 8619, June 20, 1967 [71 F.T.C. 1184]; *Charles of the Ritz Dist. Co. v. Federal Trade Commission*, 143 F.2d 676 (2 Cir. 1944).

payments are involved is of no moment.¹⁸ The case cited by respondents is not to the contrary.¹⁹ Moreover, the express authority of the Federal Trade Commission to prevent unfair acts and practices is not limited to acts and practices existing at the time the Federal Trade Commission Act was passed. Great flexibility was given the Commission to prevent wrongdoing no matter how ingenious. The existence of a bill now before Congress to specifically regulate installment practices is not proof of the intent of Congress when it passed the Federal Trade Commission Act in 1914, or of the present interpretation that should be placed on the Act.

We turn now to the order.

* * * * *

The character and variety of the admitted unfair practices is enough to justify an order in the broadest terms. The corporate ownership of respondent Abraham A. Friedman and his responsibility for the unlawful acts, coupled with the attempt in the answer first filed to interpose the corporate fiction as a shield, commends the issuance of an order against respondent Abraham A. Friedman not only as an officer of the corporate respondent but also as an individual.

Accordingly, on the basis of all the foregoing, the following are our conclusions.

IV. CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the person of respondents and of the subject matter of this proceeding.
2. The acts and practices established took place in the course of commerce, as commerce is defined in the Federal Trade Commission Act, and constituted unfair acts and practices in such commerce in violation of said act.
3. Complaint counsel did not establish the charge of fictitious pricing of Hamilton Lord Lancaster B watches charged in Complaint, subparagraph 4 of Paragraphs Eight, Nine and Ten.
4. The public interest requires that the following order should issue.

ORDER

It is ordered, That respondents A. A. Friedman Co., Inc.

¹⁸ *Consolidated Mortgage Corporation*, Docket No. 8723, February 19, 1968 [73 F.T.C. 376].

¹⁹ *Leon A. Tashof*, Docket 8714, dealt with statements of finance charges in the contracts. This is a false advertising case.

(formerly known as Friedman's-Georgia, Inc.), a corporation, and its officers, trading and doing business as A. A. Friedman Company and Friedman's Jewelers or under any other trade name or names; and Abraham A. Friedman, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of diamonds, watches, jewelry, appliances, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any advertising material or other document which appears to be, or simulates, an official or governmental form or document; or misrepresenting in any manner the originator or source of advertising material or other documents.

2. Using in advertising the words "nationally advertised," "name brand," "famous name" or words of similar import or meaning in connection with respondents' "Holland," "Justin," "Jacques Prevard" watches or any other house or private brand watches or merchandise.

3. Setting out in any manner in advertising specified weekly, monthly, or other periodic credit payments or installment amounts with respect to an article of merchandise, in conjunction with a total price amount for such article when such total price amount does not include the total charges for the time payment; unless, in immediate conjunction with each such representation of periodic payment amounts, respondents clearly disclose (1) the total number of payments required for payment in full and (2) the total amount of the payments for which the purchaser will be indebted if he elects to pay for the article by the stated installments.

4. Representing, directly or by implication, that any of respondents' merchandise is guaranteed; unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed and unless any represented guarantee is in fact provided and fully and completely performed to the extent and in the manner represented.

5. Representing, directly or by implication, that respondents' organization consists of seventy or any other number

Order

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of stores or is of any other size or extent: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that they have actually in operation the number of stores stated or that their business is of the size or extent represented.

6. Advertising or offering any merchandise for sale for the purpose of obtaining leads or prospects for the sale of different merchandise unless the respondents maintain an adequate and readily available stock of said merchandise.

7. Using any advertising, sales plan, or procedure involving the use of false, deceptive, or misleading statements or representations that are designed to obtain leads or prospects for the sale of other merchandise.

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

ORDER WITHDRAWING RESPONDENTS' APPEAL FROM INITIAL
DECISION, CANCELING ORAL ARGUMENT, AND ADOPTING INITIAL
DECISION AS DECISION OF THE COMMISSION

Upon consideration of respondents' motion in the above-entitled matter, filed October 10, 1968, requesting withdrawal of their appeal from the hearing examiner's initial decision and further requesting cancellation of the oral argument presently scheduled to be heard October 29, 1968, and upon consideration of complaint counsel's answer, filed October 10, 1968, not opposing said motion:

It is ordered, That respondents' appeal from the hearing examiner's initial decision in this proceeding be, and it hereby is, withdrawn.

It is further ordered, That the oral argument presently scheduled to be heard October 29, 1968, be, and it hereby is, cancelled.

It is further ordered, That the initial decision of the hearing examiner, filed May 15, 1968, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained therein.

IN THE MATTER OF

CULLUM'S, INC.

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

Docket C-1438. Complaint, Oct. 17, 1968—Decision, Oct. 17, 1968

Consent order requiring an Augusta, Ga., retail clothing firm to cease misbranding and falsely advertising its fur products, and textile fiber products and failing to keep required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Cullum's, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Label Act and the Textile Fiber Products Identification 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 Cullum's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

Respondent is a retailer of fur products and textile fiber products with its office and principal place of business located at 710 Broad Street, Augusta, Georgia.

PAR. 2. Respondent is now and for some time last past has been engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated