

representation that such publications are endorsed by, affiliated with, or are official publications of a labor or trade union or unions.

SKYLARK ORIGINALS, INC., ET AL.

Docket 8771. Order, Dec. 18, 1969

Order denying request of respondent that case be withdrawn from adjudication for the purpose of negotiating a consent order.

ORDER DENYING REQUEST TO WITHDRAW PROCEEDING FROM
ADJUDICATION

This matter is before the Commission upon the certification of the hearing examiner on November 28, 1969, of respondents' "Motion for Consideration and Acceptance of Consent Settlement," which is, in effect, a motion to withdraw the proceeding from adjudication for settlement purposes, with the recommendation of the hearing examiner that the proposed consent order agreement be approved. Complaint counsel filed an answer to the motion on November 5, 1969, and a supplement to such answer on November 21, 1969, and therein has recommended that the consent order agreement be approved.

Under Section 2.34(d) of the Commission's Rules of Practice the Commission may, upon request, in exceptional and unusual circumstances and for good cause shown withdraw a matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order. In their justification for the requested withdrawal respondents assert that they believe the differences between the proposed order served with the complaint and the order they propose is one of language and not of substance. They contend in effect that their proposed order will be adequate to protect the public and that its approval will save the time and expense of a trial. These considerations do not amount to exceptional and unusual circumstances and, so, respondents have not met the requirements of the applicable rule.

Moreover, the order proposed by respondents differs from that served with the complaint in substantial respects and the Commission cannot determine without a record of the facts whether such revised order would be adequate to protect the public or not. Respondents, under Section 2.34(d), are not precluded from a settlement of the case by regular adjudicatory process through the

filing of an admission answer or submission of the case to the hearing examiner on a stipulation of facts and an agreed order. Accordingly,

It is ordered, That the request to withdraw this proceeding from adjudication be, and it hereby is, denied.

Commissioner Elman not concurring.

ADVISORY OPINION DIGESTS*

No. 349. Disclosure of Origin of Imported Components Used in Fork Lift Trucks.

In response to a request for an advisory opinion, the Commission advised a company that one of its statements would not be proper but that it would not object to its other proposed statement. The company had requested an opinion in regard to the proper marking and advertising of fork lift trucks made partly of imported components with specific reference to the following two statements:

(1) "Assembled in U.S.A."

(2) "Assembled in U.S.A. of components of USA & Imports".

The trucks will be sold to industrial users through various sales agencies throughout the United States, and the agencies will have on display at least one or two models to show to prospective purchasers. It is anticipated that parts imported from Bulgaria will represent approximately 40 percent of total production costs, parts, and labor assembly costs in the United States will represent 30 percent and the remaining 30 percent will represent parts imported from one of the following five countries: West Germany, France, England, Denmark, and Japan. Thus approximately 70 percent of total production costs will consist of imported components.

In the opinion which was rendered, the Commission concluded that it could not accept the first proposed statement as being in conformity with Section 5 of the FTC Act. However, the Commission said, it would interpose no objection to the use of the second proposed disclosure—"Assembled in U.S.A. of components of USA & Imports." (File No. 693 7129 Released July 2, 1969)

No. 350. Accreditation program for producers of concrete and concrete products.

The Commission rendered an advisory opinion involving a proposed accreditation program in the construction industry, includ-

* In conformity with policy of the Commission, advisory opinions are confidential and are not available to the public, only digests of advisory opinions are of public record. Digests of advisory opinions are published in the Federal Register.

ing the award of a certificate of accreditation. The program is designed to upgrade and maintain the quality of a building material.

Under the proposed program, the sole criterion for accreditation and the award of a certificate of accreditation of established firms will be provable ability to function effectively in the field of concrete construction, and any applicant who has a satisfactory record of accomplishment as certified by the architect or engineer for whom concrete work was done will be accredited. Certificates will be renewed annually solely on the basis of satisfactory performance during the preceding year. The failure to maintain satisfactory performance standards could result in deaccreditation and withdrawal of the right to use the certificate. General supervision of the proposed program of accreditations will be vested in a Board of Directors, no member of which will have any financial interest in the product as might affect his impartiality under the program. The Board will have the responsibility, among other matters, for insuring nondiscriminatory administration of and free access to the program.

There will be no requirement for any applicant as to the length of time in business, his capital, or size of operation. Applicant firms with no previous experience in the industry but having personnel of sufficient background and experience in concrete construction or related fields and which express a desire to engage in quality concrete constructions will be accredited. All present and future applicants will have free, unrestricted and nondiscriminatory access to the program, whether or not they are a member of any sponsoring organization. All nonmember applicants will be accorded an equal opportunity for accreditation at a cost no greater than and under conditions no more onerous than those imposed upon comparably situated organization members for whom comparable services may be rendered. A uniform certificate of accreditation will be awarded to all who qualify.

The Commission advised that it would not proceed against the practices so long as they are implemented in the manner described. The requesting party was advised further that in giving its approval to this request the Commission is expressing no opinion with respect to product standards which may be or are now established and that the approval will be of no force and effect should the proposed program of accreditation be implemented in contravention of Commission-administered law. The Commission added that should the proposed program be adopted the Commis-

sion may, from time to time, wish to assure itself that it is being used for the limited purposes intended. (File No. 693 7120 Released July 2, 1969)

No. 351. Use of symbols and names having fur-bearing animal connotations in labeling textile fiber products.

The Commission was requested to render an opinion with respect to the labeling of textile fiber products manufactured so as to simulate a fur or fur product.

The requesting party proposed to use a word closely resembling the name of a fur-bearing animal, the fur from which is commonly used in the manufacture of garments, in association with a fabric simulating that fur.

In the Commission's view, the use of the proposed term to describe such a fabric would probably violate the Textile Fiber Products Identification Act and/or that part of Section 5 of the Federal Trade Commission Act which makes deceptive acts or practices in commerce unlawful. (File No. 693 7123 Released July 3, 1969)

No. 352. Stereo Tape Cartridge Club; consumer credit regulations will apply.

The Commission issued an advisory opinion in response to an application from a businessman who proposed to organize a stereo tape cartridge club.

The Commission wrote the applicant:

You state that the idea of the club is to allow club members to exchange ten tape cartridges per month. A membership will cost \$480, to be paid in 30 monthly installments of \$16 each. That meets the definition of consumer credit which is credit offered or extended to a person primarily for personal, family, household, or agricultural purposes and for which a finance charge is imposed or which is repayable in more than four installments.

Enclosed for your guidance is a copy of the Federal Reserve press release of February 7, 1969, containing Regulation Z issued under the Truth In Lending Act. With some exceptions, the Federal Trade Commission has the principal enforcement duties. The Commission points out that all relevant provisions must be complied with by any one extending or arranging for consumer credit. A potential club member in your program is entitled to full disclosure of all financial arrangements, including the fact that a third party may hold the promissory note for collection.

In addition to your straight retail memberships, you contemplate a 'cooperative' membership to be offered in return for certain promotional cooperation. The Commission invites your attention to the enclosed copy of the Commission's Guides Against Deceptive Pricing, effective since January 8, 1964. You will note that it might be an actionable deceptive practice prohibited by law to identify a commodity as having a certain retail value unless that is a

price at which identical commodities have in fact been sold in substantial quantities. No conclusion of legality or illegality is possible in the instant matter on the basis of the brief information you have submitted.

Further, you are advised that it might also be an actionable deceptive practice prohibited by law to fail to fully inform a potential club member not only about all financial arrangements and the accurate retail value of the cartridge player but also about the nature and function of the player; *e.g.*, is the player a self-contained playing machine or does it need an amplifier and speakers to render performance?

For postal regulations, you should consult your local postmaster.

(File No. 693 7124 Released July 3, 1969)

No. 353. Use of the term "hand carved" to describe furniture.

The Commission issued an advisory opinion with respect to the use of the term "hand carved" to describe certain furniture.

The manufacturing procedure for the furniture calls for a prototype to be completely constructed and carved by hand. Then, the prototype becomes a pattern for an intricate machine which "rough cuts" the carvings on subsequent pieces for assembly production. Each piece so manufactured then has intricate hand detailing, carving and finishing to the extent that each piece is, in fact, different in artistic detail from the one which follows it. Each piece is numbered and signed by the craftsman who completes it.

The Commission expressed the view that using the term "hand carved" to describe furniture manufactured in the manner described would probably violate the Federal Trade Commission Act, Section 5. (File No. 693 7131 Released July 10, 1969)

No. 354. Tripartite promotional plan in the grocery field.

The Commission issued an advisory opinion with respect to a proposed tripartite promotional plan in the grocery field.

The applicant proposed to lease space at a fixed fee in each of all competing food stores in the top 50 markets in the country. On this leased space the applicant will install a display of 15 still-color illustrations of special food dishes. The applicant would sell advertising space to food packagers. The applicant would advertise the availability of his plan in the trade press and notify each store in a direct-mail program. Real estate brokers would also be used in an effort to secure participation by all competing retailers. Retailers with no floor space available for applicant's proposed display could participate by permitting the applicant to install 15 single modular units on shelves for which the retailers would receive the same compensation as retailers having applicant's displays.

The Commission advised the applicant that were the plan implemented as proposed, the Commission would have no objection to it. The Commission pointed out that were the plan implemented in a different manner, the promoter, the supplier, and the retailer might be acting in violation of Section 2 (d) or (e) of the Clayton Act, as amended, and/or Section 5 of the Federal Trade Commission Act. The Commission also told the applicant: "The promoter must make it clear to each supplier and each retailer that even though an intermediary is employed in this plan, it remains the supplier's responsibility to take all reasonable steps so that each of the supplier's customers, including those who do not purchase directly from the supplier, who compete with one another in reselling his products is offered an opportunity to participate in the promotional assistance plan on proportionally equal terms, which plan should include suitable alternatives if there are customers who may be unable as a practical matter to participate in the primary program; if not, the supplier, the retailer and the promoter participating in the plan may be acting in violation of Section 2 (d) or (e) of the Clayton Act and/or Section 5 of the Federal Trade Commission Act." (File No. 693 7122 Released July 10, 1969)

No. 355. Disclosure of origin of partly foreign-made textile products.

The Commission advised a manufacturer of men's and boys' slacks that it would not be necessary to disclose the fact that certain assembly and sewing operations are performed in a specified foreign country.

Under the facts presented to the Commission, the slacks consist of cotton and synthetic woven fabrics and threads, and steel hooks and eye enclosures, all of which are made in the United States. Said materials are inspected and cut to pattern in the United States and certain assembly steps, such as the sewing of belt loops and the attachment of zipper chains, are also performed domestically. Thereafter, they are shipped to the company's plant in a foreign country where they are further assembled and sewn. Finally, they are returned to the United States where the buttonholes are sewn, the buttons attached, and the pants are pressed, inspected, cured, and prepared for shipment to customers.

The cost of the foreign assembly and sewing operations is approximately 13.5 percent of total production costs, and the company wanted to know whether it would be necessary to disclose

the nature and extent of the foreign operations either under Section 5 of the FTC Act or Section 4(b)(4) of the Textile Fiber Products Identification Act. It was further understood that the company does not intend to label the slacks as "Made in U.S.A." or use any other words of similar import. (File No. 693 7127 Released July 10, 1969)

No. 356. Tripartite promotional plan in the grocery industry.

The Commission issued an advisory opinion with respect to a tripartite promotional plan in the grocery field.

The applicant proposed to rent space to advertisers on a mechanical device containing a moving message, the purpose of which is to advertise products at the shelf level in retail grocery stores. The applicant would offer retail stores having weekly gross sales of \$30,000 or more \$3 per 2-week period per device for at least five devices (with an option to install up to 20 devices) as rent for the area necessary for the installation of the advertising devices. Stores having weekly gross sales of less than \$30,000 would be furnished signs for them to attach to their shelves or other suitable point-of-sale area of similar size to the mechanical device offered to the larger stores. Stores with weekly gross sales of less than \$30,000 would also be furnished display materials such as aisle indicators and generic product ads. Stores with weekly gross sales of \$20,000 to \$30,000 would be paid \$1.50 per 2-week period per sign; stores with weekly gross sales of less than \$20,000 would be paid 19 cents per 2-week period per sign.

The Commission expressed the view that were the proposed promotional assistance plan implemented, the Clayton Act, Section 2 (d) and/or (e), as amended, and/or the Federal Trade Commission Act, Section 5 would probably be violated because neither the payments nor the services under the plan are offered on proportionally equal terms and the "alternatives" are not all made available to each competing customer. (File No. 693 7077 Released July 11, 1969)

No. 357. Supplier services furnished through third party.

The Commission advised a requesting party that his proposed plan would be governed by the provisions of Section 2(e) of the amended Clayton Act, as interpreted by the Commission's recently issued Guides for Advertising Allowances and Other Merchandising Payments and Services.

In return for chain officials' time in considering supplier proposals, a third party intermediary proposed to provide mer-

chandising advice of a perhaps general nature. The requesting party considered his proposed action to be outside the scope of Section 2(e).

The Commission concluded that implementation of the plan would be likely to result in a violation of Section 2(e) if the plan were to be offered only to chains and if usable and suitable alternatives were not offered to those competing customers who could not use the basic plan. (File No. 693 7116 Released July 11, 1969)

No. 358. Disclosure of foreign country where textile products are assembled.

The Commission advised two manufacturers of textile fiber products that it would not be necessary to disclose the name of the foreign country where certain finishing operations are performed.

In both cases, the fabric is of domestic origin. In one case, the company will ship its American-made fabric and findings to the Dominican Republic where the fabric will be cut, sewn, finished, and returned for resale to the industrial rental laundry industry. Labor services performed in the foreign country will represent approximately 30 percent of total production costs.

The other company, which is engaged in the manufacture and sale of ladies' undergarments, will cut the material in the United States and then ship it to Haiti where it will be sewn and finished. The company's foreign labor costs will represent approximately 20 percent of total production costs.

Both companies were advised by the Commission that it would not be necessary to disclose in the labeling the nature and extent of the foreign operations performed on the textile products either under Section 5 of the FTC Act or Section 4(b) (4) of the Textile Fiber Products Identification Act.

No. 359. Trade associations proposed compilation and publication of certain financial data.

The Commission issued an advisory opinion in response to a request from a trade association concerning a proposed survey to be conducted among its members.

The proposed survey seeks industry data for 1966, 1967, and 1968 confined solely to the following items:

- (1) Percent return on total investment;
- (2) Percent net profits (after taxes) to total sales;
- (3) Percent advertising cost to gross sales;
- (4) Percent direct labor cost to gross sales;

- (5) Ratio current assets to current liabilities;
- (6) Ratio net sales to inventory; and
- (7) Ratio net sales to net working capital.

The association proposes to obtain the information from its members on a confidential basis, to tabulate the data without identifying any company, and then to publish the results.

The Commission advised the applicant that it does not object to the proposed survey, compilation and publication of industry financial data as outlined above and on the basis stated *i.e.*, that there will be no disclosure of the name of any company participating. It is to be understood that this advisory opinion is necessarily limited to this particular program. However, the Commission invites submittal of any other proposed financial surveys in definite form for Commission advisory opinions. (File No. 693 7128 Released July 11, 1969)

No. 360. Use of descriptive phrase to describe furniture.

The Commission issued an advisory opinion with respect to the use of a descriptive phrase such as "[Trade Name] furniture combines modern production methods with hand-carving and finishing" to refer to certain furniture.

The manufacturing procedure for the furniture calls for a prototype to be completely constructed and carved by hand. Then, the prototype becomes a pattern for an intricate machine which "rough cuts" the carvings on subsequent pieces for assembly production. Each piece so manufactured then has intricate hand detailing, carving, and finishing, to the extent that each piece is, in fact, different in artistic detail from the one which follows it. Each piece is numbered and signed by the craftsman who completes it.

The Commission expressed the view that using a descriptive phrase such as "[Trade Name] furniture combines modern production methods with hand-carving and finishing" to refer to furniture manufactured in the manner described, probably would not violate the Federal Trade Commission Act, Section 5. (File No. 693 7141 Released August 14, 1969)

No. 361. Credit reporting plan by trade association.

In response to a request for an advisory opinion, the Commission ruled that it would interpose no objection to a credit reporting plan by a trade association, as long as five conditions are met.

The proposed plan would cover only past due accounts in three

categories: (1) Where legal suit has been filed, (2) those accounts which have been turned over to a bona fide collection agency, and (3) where the debtor has gone into bankruptcy. The secretary of the association would keep a list of such accounts reported to her by the active members. In response to an inquiry from an active member concerning a particular customer, the secretary would, without disclosing the name of the reporting member, advise the inquiring member whether or not any one of the three aforementioned adverse credit actions had been reported. Available only upon the specific request of an active member, the credit information would not be for broad publication to all members of the association.

In addition, a reporting member would have to submit evidence in support of any one of the three adverse credit actions being reported. Absent such evidence, the reporting member would have to refer the secretary of the association of a reliable source where this information could be confirmed. The purpose of this requirement is to prevent the reporting of any rumors with respect to a customer's credit rating.

The Commission advised that the exchange of credit information concerning delinquent debtors through a trade association is not unlawful under Section 5 of the FTC Act provided:

(1) The members of the association are left free to determine on the basis of their individual judgment whether or not to sell to delinquent debtors and on what terms;

(2) There is no agreement among members in regard to credit terms, prices, or any other joint action which illegally restrains trade;

(3) That the reporting member indicates that a debt turned over to a collection agency was treated by the debtor as offset or was otherwise disputed, where that is the case;

(4) The association furnishes to the debtor the same credit information reported by a member at the time the request is answered; and

(5) In order for the debtor to have the opportunity to correct this credit record, if he believes it needs correcting, the association must pass on to the inquiring member any explanatory statements which the debtor may submit; the identity of the inquiring member need not be revealed to the debtor. As long as the proposed plan meets these five requirements in actual operation, the Commission would interpose no objection with respect thereto. (File No. 693 7115 Released August 14, 1969)

No. 362. Full disclosure of facts necessary when seller of one product makes gift of another product to purchaser in exchange for names of prospective purchasers.

In response to a request for an advisory opinion, the Commission advised a manufacturer under an order prohibiting it from representing, directly or indirectly, that its products can be had at no cost to the purchaser or that such products can be had in exchange for the names of a given number of prospective purchasers, unless a full and complete disclosure is made of the facts and circumstances surrounding the offer, that it considered the following to constitute sufficient disclosure:

Purchaser to furnish, at time of purchase, the names and addresses of six prospective purchasers.

Prospects must reside in the sales area of manufacturer's distributor making the original sale.

For voluntarily furnishing such names and addresses purchaser will receive, without charge, another specifically designated product of the manufacturer.

The additional product will be presented immediately upon completion by the purchaser of the names and addresses of the six prospective purchasers requested.

Any representation or arrangement not contained in this disclosure shall not be binding upon the manufacturer or its distributor.

No purchaser is required to participate in the program. Participation is strictly voluntary on the part of the purchaser. (File No. C-514 Released August 14, 1969)

No. 363. Pricing of replacement glass for automobiles.

The Commission issued an advisory opinion with respect to the pricing system of a dealer in replacement glass for automobiles.

The dealer would grant discounts from the list price of automobile window glass to all customers. If an individual purchases a window, he would receive a discount of 20 percent from list price. If an insurance company sends the individual in, the discount would be 30 percent. (In this case, the bill would be sent to the insurance company and the individual.) If an automobile garage purchases the glass, the discount would be 50 percent. All sales are made within one State.

The Commission expressed the view that implementation of the proposal in the manner described and under the circumstances

stated probably would not violate any law administered by the Commission. (File No. 693 7141 Released August 14, 1969)

No. 364. Origin disclosure of imported thread guides.

The Commission issued an advisory opinion relative to the disclosure of the foreign origin of imported ceramic textile and thread guides.

The Commission understood that the guides are the size of a dime and that it is difficult, if not impossible to mark the country of origin on each guide during production. Markings after production is completed would be very difficult and very expensive. The guides are not sold to the general public, but are used in industry for the manufacture of other products.

The Commission expressed the view that conspicuously marking on the package or container in which the guides would be shipped to their ultimate user the words "Made in [name of country] exclusively for [name of importer]" would be an adequate disclosure of the country of origin provided the guides were made exclusively for the applicant. (File No. 693 7148 Released September 24, 1969)

No. 365. Request denied for approval to sell dairy company under Commission order.

The Commission rendered an advisory opinion denying a request of a medium-sized dairy company for blanket approval to sell to any company under a Commission order.

The company was the largest independent dairy company in its large marketing area, had the largest sales volume of dairy products in the area, had sales in excess of \$5 million, was profitable, no other hardships were demonstrated, and efforts to sell to companies not under order had not been adequately explored.

The Commission advised that it cannot give blanket approval to sell the company in question to any company under Commission order. It further advised that the denial of such request is without prejudice to the submission to the Commission by any company under order of a request to purchase such dairy. In such event, any such submission will be duly considered by the Commission, and it will then decide upon the basis of the facts then presented. Released September 24, 1969)

No. 366. Labeling of imported magnetic recording tape.

The Commission issued an advisory opinion with respect to the labeling of imported magnetic recording tape.

In commenting upon the proposed labels as submitted, the Commission expressed the view that (1) the words indicating the foreign country of origin should appear on the front or principal display panel; (2) the term "recording tape" should be used as the specification of the identity of the commodity and that it should comprise a principal feature of the principal display panel; (3) in view of its understanding that recording tape is of uniform width, the length of the tape should be expressed in terms of feet followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder in terms of feet and inches; and (4) the place of business of the manufacturer, packer, or distributor should include the street address, city, State, and Zip Code; however the street address may be omitted if it is shown in a current city directory or telephone directory.

The Commission invited the applicant's attention to its regulations under Section 4 of the Fair Packaging and Labeling Act for additional information. (File No. 693 7146 Released September 24, 1969)

No. 367. Tripartite promotional assistance plan.

The Commission advised a requesting party that the Commission would not proceed against it or its customers, or suppliers if the following described promotional assistance plan were implemented under the following circumstances:

The requesting party has two plans for displaying advertising signs to be attached to grocery store shelves. Suppliers of grocery store products will pay the requesting party for the advertising of their products on these signs. Signs will be of two kinds. One sign will be a back-lighted moving color transparency; the other will be a fixed sign of approximately the same dimensions. The moving sign will be used as part of the requesting party's Plan A; the fixed sign as part of the requesting party's Plan B. Both fixed and moving signs will advertise one product and the same product during any given 2-week period.

All customers competing in the resale of the advertised product may elect to adopt Plan A, if they will. All such customers having an outlet doing in excess of \$25,000 per week average gross business may have Plan A and Plan A only. Smaller customers may elect Plan B.

Outlets will be paid for the use of their space in one of two ways as they initially elect: (1) A percentage of the dollar value of the advertised product purchased during the 2 weeks in which the advertisement runs; (2) a fixed sum per 2-week period determined as a percentage of average weekly gross sales during the preceding fiscal year.

Those customers electing to have the moving display will be charged a service charge for each 2-week period. This will be computed at 2 dollars

per display per period. There will be no service charge for those electing to have the fixed display.

The requesting party will, as third party intermediary, enter into written agreement with suppliers, if suppliers so desire, to undertake supplier obligations under Sections 2 (d) and (e) of the amended Clayton Act as provided in Guide 13 of the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services. If there is a supplier-third party agreement that the requesting party will undertake supplier obligations, suppliers will perform as set forth in paragraph (b) of Guide 13. (File No. 693 7077 Released October 9, 1969)

No. 368. Disclosure of origin of imported plastic vinegar bottles.

The Commission had rendered an advisory opinion to a manufacturer of domestically-made vinegar that it would not be necessary to disclose the origin of its imported plastic vinegar bottles.

In the absence of any affirmative representation that the imported plastic bottles are made in the United States, the Commission said that it will not be necessary to disclose the Canadian origin of the containers. (File No. 703 7016 Released October 9, 1969)

No. 369. Disclosure of foreign origin required in mail order advertising.

The Commission rendered an advisory opinion to an importer of women's panty hose that it would be necessary to make a clear and conspicuous disclosure of the foreign origin of the hose in all mail order promotional material.

Under the factual situation presented to the Commission, the importer proposes to purchase the wearing apparel in West Germany for resale in the United States through the mail. The hose will be plainly marked with a "Made in Free West Germany" tab sewn into the back of the garment, and the same disclosure will also be made on a paper sticker attached to the front of each cellophane bag containing the hose.

Concluding that a disclosure would be required, the Commission said: "The underlying reason for the disclosure requirement is that mail order purchasers do not have the opportunity to inspect the merchandise prior to the purchase thereof and be apprised of a material fact bearing upon their selection." (File No. 703 7017 Released October 9, 1969)

No. 370. Origin of cashmere sweaters.

The Commission advised an importer of cashmere sweaters that it would not be necessary, under Section 5 of the FTC Act, to disclose they were knitted in Hong Kong or that the yarn was

spun in Japan, in the absence of an affirmative representation that the sweaters are entirely of domestic origin.

Under the factual situation presented to it, the sweaters will be knitted in Hong Kong from yarn which is spun in Japan. Thereafter, the sweaters will be shipped to a plant in the United States where they will be scoured, dyed, zippers added, steamed, and pressed. (File No. 693 7144 Released October 9, 1969)

No. 371. Use of "12 karat gold filled" to describe earrings.

The Commission issued an advisory opinion to a company, denying permission to apply the designation "12 karat gold filled" unqualifiedly to an earring where all the metallic parts, except the steel spring base, are composed of $\frac{1}{20}$ 12-karat-gold-filled precious metal.

It was alleged by the company seeking the opinion that the spring base performed a "spring" or tension function and is a spring within the meaning of that word in trade practice rules for the Jewelry Industry. Being a spring, it was further contended, exempts it in any assay for quality and permits unqualified use of the designation "12 karat gold filled."

In rejecting the company's position, the Commission said:

Even if we assume that the allegation of performing a spring or tension function is correct, this is not the primary purpose or function of the spring base. As we view the situation, the spring base serves primarily as a connecting link or arm between the clip, which is attached to the top, and the ornament which is attached to the bottom. Thus, simply because the spring base may perform a tension function, this does not mean that the component is a spring within the meaning of that word in Rule 22D of trade practice rules for the Jewelry Industry. Stated differently, performing a dual function does not necessarily make the component a spring. Accordingly, the Commission is of the opinion that the spring base is not a spring as that term is contemplated within the meaning of the rules and the component therefore is not exempt in assay for quality. Since the component is not a spring, it would therefore be improper under Rule 22B(4) and Rule 25 (a) of the trade practice rules to unqualifiedly designate the earring as '12 karat gold filled.' As you know, these two rule provisions prohibit the use of a quality mark, such as the one contemplated, in a manner which would misrepresent the metallic composition of the product or any part thereof. Since the spring base is composed of steel rather than the quality indicated in the proposed designation, it would therefore be deceptive to use such a quality mark unqualifiedly.

(File No. 703 7027 Released October 9, 1969)

No. 372. Use of "Made in U.S.A." label.

The Commission rendered an advisory opinion to a manufacturer of optical lens systems in regard to the labeling of its products as "Made in U.S.A."

Specifically, the company wanted to know what percentage of imported components a product could contain and still be properly labeled as "Made in U.S.A."

In the advisory opinion which was rendered, the Commission stated that it would construe a "Made in U.S.A." mark as an affirmative representation that the product is entirely of domestic origin. Concluding its opinion, the Commission said that it would be improper to use such a mark where the finished product contains imported components without clearly disclosing the foreign country of origin of the imported parts. (File No. 703 7013 Released October 9, 1969)

No. 373. Trade association code of conduct found unobjectionable.

The Commission advised a trade association of shippers' agents that the aims of its proposed Code of Conduct appear unobjectionable and that adherence by members to its provisions should not operate to effect any unreasonable restraints of trade so long as it is implemented in a fair and nondiscriminatory manner.

A "shippers' agent," as defined in the Interstate Commerce Act (49 U.S.C.A. 1002(c) (2)) and the proposed Code, is one whose operation consists solely of "consolidating or distributing pool cars, [and] whose services and responsibilities to shippers in connection with such operations are confined to the terminal area in which such operations are performed." Under this provision of law a shipper's agent's responsibility is confined to the consolidation of freight for proper shipment. He does not "break bulk" nor is he responsible for the ultimate distribution of freight. Were he to engage in this latter activity he would, by definition, no longer be a shippers' agent eligible for association membership. According to the requesting party the Code is intended primarily as a preventive measure to assure that members will conduct their business operations within the Act's limitations.

One provision of the Code requires that members indicate, in advertising and elsewhere, that their services and responsibilities to shippers are confined to the terminal area in which they operate. This follows the limitation of the Act and if adhered to by members, will serve to truthfully inform shipper-customers concerning this status.

Another provision requires that a member shall avoid any action or statement which could be construed as imputing to him a common carrier status or a status other than that embodied in the Act. This assures that members do not falsely imply to ship-

pers that they take a greater responsibility for the shipment and distribution of freight than is permitted by their status under the Act.

Other provisions provide in general terms that the members' conduct shall be characterized by "candor and fairness" in their relationships among themselves and with the public, and that they shall properly discharge their obligations and duties to the shippers who employ them.

It is a condition to membership in the Association that a shippers' agent agrees to subscribe to and abide by the Code. Repeated failure to discharge his obligations thereunder will, upon notice and a probationary period, constitute cause for expulsion of an offending member by the Board of Directors of the Association. Such expelled member may, however, exercise his right of appeal before the full membership.

While the Code contains provisions restricting the business operations of members, it appears from the materials submitted that the purpose of these restrictions is to insure that members remain within the Act's limitations and respect the confidential agency status created in their dealings with shipper-customers. The purpose is also to encourage Association members voluntarily to refrain from unfair or deceptive practices. In this context there is a greater public interest in protecting shippers from dishonest shippers' agents than there is in condemning the minimal restraints that might result from application of the Code.

Undoubtedly, unreasonable and therefore unlawful restraints might result if an Association member is arbitrarily or improperly expelled from membership, but the Commission believes that there is ample public interest in effectively encouraging Association members to refrain from the clearly pernicious practices condemned by the Code. On the assumption that the Code will be administered in such a way as to promote this end, and not so as to place unreasonable restraint on the ability of members to do business, the provision permitting the Association to expel non-conforming members is approved.

The Commission also noted that it had confined itself in its opinion to so much of the request as falls within its jurisdiction. The extent, if any, to which another governmental agency may be concerned with the Association's activity is a matter to be determined by reference to that agency. (File No. 703 7030 Released October 9, 1969)

No. 374. Tripartite promotional plan for larger supermarkets.

The Commission issued an advisory opinion concerning a proposed tripartite promotional plan for larger supermarkets.

The applicant proposed to solicit advertising from packagers of goods which are normally stocked in grocery stores. The applicant would arrange for the display of such advertising in its projector using a color sound film cartridge which would be installed in supermarkets that record an average of 7,500 transactions per week or have an annual sales volume in excess of \$1 million. Consideration to participating retailers for the permission to install the projector units would be one of the three commercial spots on each film cartridge provided while the units are in their stores.

The Commission expressed the view that implementation of the proposed course of action in the manner described probably would violate the Clayton Act, Section 2(d) or 2(e), as amended, and/or the Federal Trade Commission Act, Section 5 for the reason that the proposed payment or services would be made available only to the larger supermarkets. See Guide 7 of the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services (May 29, 1969). The proposed plan makes no provision for retailers for whom the basic plan is not usable and suitable. (See Guide 9.) The plan makes inadequate provision for informing competing customers of the availability of the program. (See Guide 8.) (File No. 703 7030 October 9, 1969)

No. 375. "Made in U.S.A." label on clock-radios containing an imported component.

The Commission rendered an advisory opinion to a manufacturer of clock-radios which are partly domestic and partly of Japanese origin, and which the manufacturer wishes to label as "Made in U.S.A."

The finished product, except for the radio chassis which is of Japanese origin, will be manufactured and assembled in the United States. Although the imported chassis will be marked with the country of origin at the time of importation, the mark will not be visible to prospective purchasers after the imported part is assembled into the finished product. The imported chassis will cost approximately \$2 or 29 percent of total production cost, with the remaining 71 percent being of domestic parts and labor.

Concluding that such a product could not be unqualifiedly marked as "Made" in U.S.A., the Commission said: "* * * it

would be improper to use the 'Made in U.S.A.' mark on the clock-radios without clearly disclosing the foreign country of origin of the imported radio chassis." (File No. 703 7024 Released October 9, 1969)

No. 376. Disclosure of foreign labor services performed on domestically produced textile fiber products.

The Commission advised a manufacturer of textile fiber products it would not be necessary to disclose that certain stitching and assembly operations were performed in Tijuana, Mexico, on domestically produced sportswear.

The manufacturer will cut and otherwise prepare American-made fabrics together with such findings as buttons, zippers, and threads which will be sent to a contract factory in Mexico for stitching and other assembly operations. The units will be then returned to the manufacturer's production facilities where final manufacturing procedures will occur. The manufacturer's foreign labor costs will represent between 15 percent and 20 percent of total production costs.

The manufacturer was advised by the Commission that it would not be necessary to disclose in the labeling the nature and extent of the foreign operations performed on the garments in Mexico under the laws it is empowered to enforce. (File No. 703 7020 Released October 9, 1969)

No. 377. Device for creasing cigarettes.

The Commission rendered an advisory opinion in regard to the advertising claims to be made for a device which allegedly provides the "answer to safer smoking."

Specifically, the manufacturer requested an advisory opinion in regard to the legality of the following proposed advertising:

The (name of device) is a revolutionary invention that provides the answer to safer smoking. It reduces gases as well as tar and nicotine. The device prevents formation of high temperature gases in cigarettes, thereby reducing the hazards of smoking. You can use the (name of device) on any popular brand of cigarette, including filter cigarettes. Independent laboratory tests substantiate the claim that the (name of device) significantly reduces tar, nicotine, and gases in the popular brands of cigarettes. The (name of device) re-engineers your cigarette to give a less harmful smoke. In addition, unsolicited testimonials state that the smoker enjoys a cooler and more flavorful cigarette, reduces smoker's cough and avoids harsh bite found in many brands of cigarettes.

In the advisory opinion which was rendered to the requesting party, the Commission said:

The Commission has carefully considered your request along with the laboratory reports and other material submitted in connection therewith and has concluded that the data do not support the claims made in the proposed advertising. The conclusions offered on the basis of the laboratory tests cannot be accepted because such tests do not provide statistically valid data from which tar and nicotine reduction claims may be justifiably made. Nor do the tests otherwise conform to the Commission's standards for cigarette testing described in the Commission's press release issued August 1, 1967. Moreover, tests by the Commission's Cigarette Testing Laboratory indicated that there are no statistically significant reductions in the tar or nicotine content of cigarettes decreased by means of the device.

In addition to the methodological infirmities of the submitted data, the Commission also notes that none of the reports submitted shows that the alleged reductions of tar, nicotine, and benzopyrene content result in a decrease in the incidence of cancer, coronary heart disease, bronchitis, pulmonary emphysema, or other diseases associated with cigarette smoking. Nor do the tests otherwise establish that the claimed reductions of tar, nicotine, or benzopyrene content obtained by means of your device significantly reduce the health hazards of smoking. In short, there appears to be no substantial scientific evidence in support of the claim that the device "provides the answer to safer smoking."

(File No. 703 7001 Released October 9, 1969)

No. 378. Savings claims based upon comparison with comparable merchandise.

A manufacturer of combination color television, radio, and phonograph sets requested an opinion from the Commission in regard to the legality of savings claims based upon the sale of comparable merchandise.

Specifically, the manufacturer wanted an opinion in regard to the legality of the alleged savings claim of \$300. The manufacturer also wanted to know whether he should identify the three specific competitive manufacturers with which the comparison was being made, or should they be identified merely by referring to them as brand A, B, and C.

In response to the first question the Commission said that because it did not have the facts upon which to base a judgment, it cannot pass upon the legality of the alleged savings claim of \$300. The Commission noted that it has laid down rather definitive guidelines for those who wish to utilize savings claims in their advertising which are based upon the sale of comparable merchandise. The Commission directed the manufacturer's attention to Guide 2 of the Guides Against Deceptive Pricing and noted

that advertising meeting the requirements outlined in Guide 2 would not be objected to by the Commission. Commenting further upon this question, the Commission said:

Basically, Guide 2 outlines two fundamental requirements for determining the validity of savings claims based upon the sale of comparable merchandise. First, the other merchandise must be of essentially similar quality in all material respects to the advertiser's product. Second, the advertiser should be reasonably certain that the price advertised as being the price of comparable merchandise does not exceed the price at which such merchandise is being offered by representative retail outlets in the area.

In regard to the second question, the Commission said that it could express no opinion as to whether the manufacturer should identify the three specific competing manufacturers by name or merely identify them by referring to Brand A, B, and C. Its primary concern here, the Commission added, is to make certain that the advertising clearly discloses the basis for the comparison and that the statement is factually true. (File No. 703 7033 Released October 9, 1969)

No. 379. Refusal of alternatives in tripartite promotional assistance plan.

The Commission advised the requesting party herein that it would not object if a proposed tripartite promotional assistance plan were to be implemented as described.

The requesting party proposes to enter into agreements with grocery stores for use of the space immediately above store gondolas (oblong fixtures in a row, on the shelves of which products are displayed for sale). The space is to be used for display fixtures which will hold, back to back, 20" x 24" placards advertising supplier goods.

Smaller stores not possessing space to display these large placards will be given the option of obtaining smaller placards of shelf talkers (small signs suitable for being affixed to shelf edges).

Stores will be reimbursed for use of the space by being given a fixed percentage of the dollar value of purchases of the advertised products from suppliers during a specified period.

Notice to entitled customers and checking of customer performance will be as set forth in the Commission's Advertising Allowances Guides promulgated May 29, 1969. The requesting party will offer to perform seller obligations as provided by Guide 13.

In question was the requesting party's right to refuse an alternate plan to those outlets functionally able to use the larger sign.

To this the Commission had no objection. (File No. 703 7020 Released October 9, 1969)

No. 380. Use of order cards in packages of merchandise or in direct mailing material.

The Commission issued an advisory opinion with respect to the insertion of order cards in packages of merchandise or in direct mailings of advertising material.

The applicant, a distributor of various office supplies and general merchandise proposed to enclose an order card in the packages prepared for shipment of merchandise to customers, suggesting that they place these cards in the Key-Operator's manual. Also occasionally the cards would be included with some direct-mail literature sent to prospective customers.

The Commission expressed the view that it would not initiate action against the applicant were the proposed course of action implemented in the manner described. (File No. 703 7029 Released October 9, 1969)

No. 381. Disclosure of origin of imported ignition coil parts.

Manufacturers of automotive ignition coils sold as replacement parts were advised it would not be necessary to disclose the Japanese origin of the coil windings used in the production of such products.

In the factual situation involved, the imported coil windings will cost about 84 cents each which represents approximately 45 percent of total production costs. The remaining parts, such as the voltage terminal, insulating tower, etc., and labor will be of domestic origin and will cost about \$1.04, representing approximately 55 percent of total production costs.

Advising that the country of origin disclosure would not be required under these circumstances, the Commission said: "In the absence of any affirmative representation that the automotive ignition coils are made in their entirety in the United States, or any other representation that might mislead purchasers as to the country of origin, the Commission is of the opinion that, under the facts as presented, the failure to mark the origin of the imported coil windings will not be regarded by the Commission as deceptive." (File No. 703 7023 Released October 29, 1969)

No. 382. Franchise agreement with fair trade price schedule.

The Commission issued an advisory opinion with respect to a franchise agreement in the recreational equipment industry.

A significant provision of the proposed agreement related to fair trade prices. A Schedule of Fair Trade Prices was to be attached to and made a part of the agreement and the dealer must agree that he will not advertise, offer for sale, or sell any products at less than the fair trade prices, nor make any refunds, discounts, allowances, or concessions which will have the effect of decreasing those prices, nor offer any of the fair traded items in combination with other merchandise at a single, combination or joint price. The agreement further provided that this provision should be applicable only in those States where agreements of this character are lawful.

The Commission advised that in view of the McGuire Act amendment to Section 5 of the Federal Trade Commission Act it could see no objection to inclusion of the provision in the agreement as long as the seller does not fix dealer prices outside of fair trade States.

The Commission further advised that, subject to the caveat above stated, it would not initiate action were the proposed course of action implemented in the manner described. (File No. 693 7151 Released October 29, 1969)

No. 383. Labeling of leather gloves partly domestic and partly of foreign origin.

The Commission advised a manufacturer of industrial work gloves, which are partly domestic and partly of foreign origin, that it could not use representations which implied that the gloves were entirely of domestic origin. Specifically, permission was requested to use one of the following three representations on the plastic containers of the gloves:

Made from American Split Cowhide
Made from American Split Leather
American Leather Exclusively Used

According to the Commission's understanding of the facts, the company purchases semiprocessed split cowhide leather in America which is shipped to Taiwan where it is further processed, cut, and sewn into industrial work gloves. Foreign production costs represent approximately 37½ percent of the finished gloves, with the remaining 62½ percent representing the cost of the American-made leather. One dozen gloves will be packaged in each plastic container and each pair of gloves will be labeled as having been "Made in Taiwan." However, this label will appear on the inside wrist of the gloves and will not be seen through the plastic

container. Moreover, the container will not be opened until the sale has been consummated.

The Commission said that it would not object to the use of the first two representations, provided they were qualified by a disclosure of equal prominence indicating the gloves were made in Taiwan. As qualified, the two representations would read:

Made in Taiwan from American Split Cowhide
Made in Taiwan from American Split Leather

Without the qualification, the Commission believes that a substantial number of prospective purchasers would misinterpret the two proposed statements to mean that the gloves were made in America from American-made split cowhide.

Similar qualification would be required to the third proposed representation. In addition, it would also be necessary to qualify the word "leather" because that word standing alone means top grain leather. Since the leather in question is not top grain but split, it would be deceptive to make unqualified use of the word "leather" under these circumstances. Therefore, the Commission concluded that it would not object to the use of the third representation if it were revised to read as follows:

Made in Taiwan—American Split Leather Exclusively Used
(File No. 703 7035 Released October 29, 1969)

No. 384. Special discount package price to new dealers.

The Commission issued an advisory opinion with respect to a proposed special discount package price to new dealers in the building materials industry.

The applicant proposed to offer to new retail dealers a special discount package on certain building materials plus an in-store display. In addition to the in-store display facility the new dealer would be offered a price approximately one-third below the price at which the merchandise is offered to existing dealers. The proposal would be a one-time promotion.

The Commission expressed the opinion that "it is unlikely that injury could result from this one shot offer in view of its nature and the start up costs which new dealers are apt to experience." Therefore, the Commission would not object to the plan if implemented as described in the preceding paragraph.

(File No. 703 7005 Released October 29, 1969)

No. 385. Disclosure of origin of imported locks.

The Commission advised concerning locks imported from England and Italy that it would be necessary to make a clear and conspicuous disclosure of the foreign country of origin on the locks. If the locks are displayed at the point of sale in a container so that the disclosure of origin is not likely to be seen, it would also be necessary to make the same disclosure of foreign origin on the containers in which they are packaged.

Under the facts involved in the ruling, the locks will be used for both residential and commercial purposes and some of them could be marketed under the trade name of a domestic company, which contains the name of a well-known American city. (File No. 703 7036 Released October 29, 1969)

No. 386. Origin of imported brush for hair roller.

The Commission issued an advisory opinion with regard to the question of whether it is necessary to disclose the origin of the imported brush which is assembled with American made components to form a brush hair roller.

It is proposed to produce a hair roller in the United States. The roller consists of three components: spiral spring, netting, and brush insert. The brush insert is manufactured in a foreign country. The spiral spring and netting are manufactured in the United States. All assembling is done in the United States. The cost of the brush accounts for less than 25 percent of the total cost of the hair roller as marketed. The question involved is whether the foreign origin of the brush must be marked on the printed card which will be used in packaging the roller.

The Commission expressed the opinion that, in the absence of any affirmative representation that the product is made in the United States, or any other representation that might mislead the public as to the country of origin, and in the absence of other facts indicating actual deception, the failure to mark the origin of the imported component would not be regarded by the Commission as deceptive. (File No. 703 7028 Released October 29, 1969)

No. 387. Tripartite promotional plan in the grocery field.

The Commission issued an advisory opinion with respect to a proposed tripartite promotional plan which proposed to secure advertising from packagers of food and grocery products and place ads in retail stores. The display ad will measure 22" x

21" and can be located in the middle of the store with or without aisle directory information or it can be divided in half and placed on the wall of the store. Payments to stores would be calculated in terms of the number of ads installed, the rate per ad to vary with the monthly traffic in the store, the minimum payment to be \$4.25 per month per ad, and the smaller grocery stores will be paid more proportionally than larger stores. Competing retailers would be informed of the opportunity to participate in the plan through personal solicitations, advertisements in trade journals, and direct mailings to every grocery retailer in the country which has been in business for a period of at least 6 months.

The Commission stated that the proposed method of calculating payments to stores, if implemented as stated, would not violate the requirements of proportionally equal terms in Guide 7 of the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services (May 29, 1969). The proposed method of informing competing retailers of the opportunity to participate in the plan, if implemented in good faith, seems to satisfy the requirements of Guide 13(a)(1). As long as non-food items and food items likely to be sold in stores other than supermarkets are not advertised, a plan to provide availability to all grocery stores of all sizes would meet the requirements of availability to all competing customers as required by Guide 9. The proposed ad which can be used in an aisle or on the wall of a store would appear to be "usable in a practical business sense" in a store of any size. Thus the plan satisfies the requirements of Guide 9 that the plan " * * * should in its terms be usable in a practical business sense by all competing customers." Therefore, no alternative plan seems to be required in the absence of proof that some customers cannot in fact make use of the proposed ads.

The Commission advised that were the plan implemented as proposed, the Commission would have no objection to it. The Commission pointed out that were the plan implemented in a different manner, the promoter, the supplier, and the retailer might be acting in violation of Section 2(d) or (e) of the Clayton Act, as amended, and/or Section 5 of the Federal Trade Commission Act. (File No. 703 7031 Released October 29, 1969)

No. 388. "Bonus" portable typewriter offer.

The Commission issued an advisory opinion relative to proposed advertising of "bonus" typewriters. The proposed advertisement would offer a portable typewriter as a "bonus" to any one accepted for enrollment in a correspondence course. Readers

were invited "to write for information," but the prerequisites to the receipt of the "bonus" typewriter were not disclosed.

The Commission advised that it

*** is of the view that the advertisement in the circumstances described would be misleading and deceptive and in possible violation of Section 5 of the Federal Trade Commission Act in several respects. For one thing, the "bonus" offer is to be a continuing offer, which means that the regular price for the training course of \$595 includes the typewriter; the typewriter would not, therefore, be a "bonus." Also, the proposed advertisement does not make clear that what is being sold for a fee is a training course in motel management and that the so-called "bonus" typewriter is offered only in connection with such course.

Moreover, even were the typewriter to be given as a true bonus, as, for example, if a time-limited offer was made without a change in tuition, the proposed advertisement would still be deceptive and misleading because the terms and conditions for the receipt of the typewriter are not disclosed, including, it appears, an advance payment of \$595 tuition for a motel training course.

Furthermore, the proposed advertisement is deceptive because, taken as a whole, it tends to convey the impression that service is not being sold but, rather, that a gift is to be given to specially qualified persons who are willing to consider a career in motel management.

(File No. 693 7147 Released October 29, 1969)

No. 389. Disclosure of foreign assembly operations on ladies' blouses.

The Commission advised that it would not be necessary to disclose the foreign country of origin where certain assembly operations are performed on ladies' blouses.

Under the factual situation involved in the ruling, the synthetic fabric, buttons and thread will all be of domestic origin. The fabric will be cut in the United States and thereafter shipped to Trinidad where it will be assembled. Assembly operations in Trinidad will consist of sewing, pressing and trimming. Approximately 26.4 percent of total production costs will be of foreign origin, with the remaining 73.6 percent representing domestic costs.

Concluding that a disclosure would not be required under Section 4(b) (4) of the Textile Fiber Products Identification Act or Section 5 of the FTC Act, the Commission said: "In the absence of any affirmative representation that the finished product is made entirely in the United States, the Commission has concluded that it will not be necessary to disclose the nature and extent of the foreign operations performed on the ladies' blouses." (File No. 703 7039 Released November 18, 1969)

No. 390. Offer of incentive bonus to customers.

The Commission advised that to offer an incentive bonus to open credit account customers to encourage the payment of invoices within established terms and conditions of sale would not be objectionable.

Most sales are made to open credit account purchasers of plumbing supplies and it was proposed to offer all such customers, as well as all new accounts, a bonus of 1 percent based on the aggregate total of monthly purchases to be given in the form of a credit certificate. This certificate will be honored by a selected local travel agency to apply toward vacation travel, and to be issued to those who adhere to established credit terms. Customers will present their certificates to the travel agency as partial or complete payment of their vacation expenses within 18 months from date of issuance.

The Commission expressed the view that the proposed program, as stated, should be considered as a proposal to increase established credit terms and conditions of sale by 1 percent and as such the program probably would not be unlawful except to the extent, if any, the additional discount may effect unlawful price discriminations within the meaning of Section 2(a), amended Clayton Act. However, because the program will be offered and made available to all open credit account customers and because the single qualifying requirement is adherence to established credit terms and conditions of sale it is not likely that implementation of proposed program would result in any adverse competitive effects.

The Commission advised it would initiate no proceedings so long as the proposed program is implemented in the manner and for the purpose intended.

(File No. 703 7040 Released November 18, 1969)

No. 391. Labeling of products composed of ground leather and fabric.

The Commission is of the opinion that a product which consists of reconstituted leather applied to a fabric base may not be described as "leather" without proper qualification and may not be described as "genuine milled leather."

This product may not be described as "leather" unless the word is accompanied by a clear statement as to the product's true composition. The term "leather" used alone means top grain leather and the product referred to, composed of ground leather on a fab-

ric backing, does not come within such a definition. The use of the unqualified term "leather" to describe such product would tend to deceive prospective customers and possibly violate Section 5 of the Federal Trade Commission Act.

The product may not be described as "genuine milled leather" with or without qualification. It is not clear what is intended by the word "milled" but the phrase as a whole suggests top grain leather in a manner which would make any attempted qualification a contradiction in terms. Use of this phrase would tend to mislead and deceive prospective customers as to the true composition of the product and might violate the Federal Trade Commission Act.

The close resemblance of the product to leather may tend to mislead prospective purchasers into the belief that the product is top grain leather. Accordingly, the product should be labeled to indicate its true composition or, optionally, that it is imitation or simulated leather or nonleather.

Finally, the backing of the product appears to be a textile fiber product subject to the Textile Fiber Products Identification Act, and, accordingly, certain information must be disclosed as to the composition of such fabric.

The product may be described appropriately in a number of ways, among which are the following:

Ground leather laminated to fabric (60 percent polyester, 40 percent rayon).
Shredded leather laminated to fabric (60 percent polyester, 40 percent rayon).

Pulverized leather laminated to fabric (60 percent polyester, 40 percent rayon).

Imitation leather laminated to fabric (60 percent polyester, 40 percent rayon).

Simulated leather laminated to fabric (60 percent polyester, 40 percent rayon).

Nonleather fabric backing (60 percent polyester, 40 percent rayon).

(File No. 703 7019 Released November 18, 1969)

No. 392. Disclosure of origin of partly foreign-made foundation garments.

The Commission expressed an opinion that it would not be necessary to disclose the name of the foreign country where certain finishing operations are performed on ladies' foundation garments.

The fabric, which is of domestic origin, will be cut to shape in the United States and shipped to Mexico where it will be sewn

and finished. The foreign labor costs of producing the finished garment will represent approximately 20 percent of total production costs.

The Commission is of the opinion that it will not be necessary to disclose in the labeling the nature and extent of the foreign operations performed on the foundation garments, either under Section 5 of the Federal Trade Commission Act or Section 4(b) (4) of the Textile Fiber Products Identification Act. The Commission noted, however, that inquiry should be made of the Bureau of Customs as to any marking requirements under Section 304 of the Tariff Act of 1930. (File No. 703 7022 Released November 18, 1969)

No. 393. Request for reconsideration of Advisory Opinion 333 (§ 15.333) pertaining to wholesaler-manufacturer relationship; Freight saving as cost justification.

The Commission was requested to reconsider the advice given in Advisory Opinion Digest No. 333 (Section 15.333) concerning manufacturers' selling relationships with wholesalers. The Commission also considered the question of passing along freight savings to customers.

After concluding that it would adhere to the advice given in the earlier Advisory Opinion the Commission noted that the issue of potential price discrimination between competing wholesalers, some receiving 40 percent and others 25 percent discounts off list prices, no longer existed since only one discount rate is now involved.

Negative advice was given in connection with the following three factual situations because, in the Commission's opinion, applicable antitrust law prohibits suppliers from taking certain punitive action against wholesalers with whom they have been dealing:

(1) A manufacturer refuses to deal further with a wholesaler who has changed his method of doing business and has undertaken to franchise subjobbers whom he prohibits from buying directly from the manufacturer and requires that they purchase all the manufacturer's products through the wholesaler.

(2) A manufacturer discontinues sales to a wholesaler who ceases to maintain salesmen at all times who regularly call upon beauty salons and advise licensed professional hairdressers "on the safe and proper methods of applying the manufacturer's products and who keep sufficient supplies" on hand for current needs of their beauty salon customers.

(3) A manufacturer refuses to deal further with a wholesaler who, without the manufacturer's authorization, resells to independent subjobbers and other wholesalers.

With respect to the problem of cost justification the Commission advised that applicable provisions to Section 2(a) of the amended Clayton Act permit a supplier to pass along freight savings to customers but only to the extent of such savings and only if available to all customers competing in the resale of his products. (File No. 693 7059 Released December 16, 1969)

No. 394. Approval for merger of privately owned carpet tufting machinery and equipment manufacturers.

The Federal Trade Commission granted clearance to privately owned manufacturers of carpet tufting machinery and related equipment to merge their operations into one corporation whose voting stock will be offered for sale to the general public.

The merging companies manufacture machinery and related equipment used by textile mill operators in the production of rugs, carpets, and other textiles. Some of the companies have a common ownership and are competitors; another is not a competitor but manufactures machinery used by customers of the others. Some have about the same market shares in an industry of five manufacturers, about one-fifth of the market share of the dominant company, a substantial national conglomerate enterprise. One firm to be merged competes with ten others in its related industry.

After having considered all available information the Commission concluded that the effect of the proposed merger is not likely to result in any lessening of competition nor the creation of a monopoly in the manufacturing of tufting machinery and equipment. The Commission is of the opinion that the beneficial competitive effects flowing from the amalgam of the privately owned enterprises into a publicly owned corporation will be to give greater competition to its giant rival. (File, Tuftco-processed by McMahill December 16, 1969)

No. 395. Retailer price reporting plan.

The Commission issued an advisory opinion governing a proposed price checking service designed to publicize various current retail prices for grocery store products. Underlying data would be obtained in part by direct observation of posted prices and in part by reference to information supplied by wholesalers and re-

tailers. The service would be available, for a fee, to anyone interested.

In the Commission's view, exchange of price data may lend itself to price fixing and may result in the elimination of price competition and the legality of the proposed course of action would depend on its implementation. (File No. 693 7140 Released December 16, 1969)

No. 396. Use of term "Peat Moss-Pifine and Sedge."

The Commission rendered an advisory opinion concerning a proposal to describe peat with the following terminology:

..... Peat Moss Pifine and Sedge

The product is composed of at least 75 percent peat by weight, with the remaining 25 percent comprised of such soil substances as are commonly intermixed with peat as found in its natural state. It is derived from three non-moss substances; namely, Pifine (Paille Finne), or commonly referred to as maiden cane grass, cut grass, and saw grass. Pfine comprises the bulk of the plant residue present in the product.

Three provisions of the Commission's Trade Practice Rules for the Peat Industry govern the use of the term "Peat Moss" in this particular situation. First, there is the definition of the word "peat," which is as follows:

"*Peat.*" Any partly decomposed vegetable matter "which is accumulated under water or in a water-saturated environment through decomposition of mosses, sedges, reeds, tule, trees, or other plants."

The second pertinent provision is Rule 2, which prohibits use of the word "Peat" to describe any product "which is not in fact composed predominantly of peat to the extent that at least 75 percent (by weight) of the product is composed of peat, with such other materials as may be present in the content, and constituting the remaining percentage, being comprised of such soil substances as are customarily intermixed with peat as found in its natural state."

Third, Rule 3 covers use of the terms "Moss Peat" and "Peat Moss," and has been codified under Section 185.3 of this Title 16.

On the basis of the foregoing facts, the Commission expressed the opinion that the proposed terminology complies with the requirements of Rule 3(b) of the Trade Practice Rules for the "Peat Industry." However, the opinion also noted that some of the art work used the words "Peat Moss" without qualification or

without conspicuous qualification. Such a representation, the Commission said, would not be in compliance with Rule 3(b). Concluding its opinion, the Commission said: "It is necessary under the pertinent rule * * * to disclose the kinds of peat of which (the) product is composed, *i.e.*, Pifine and Sedge, and that such disclosure be of equal size and conspicuousness and be placed in immediate conjunction with the words 'Peat Moss' whenever they are used in labeling or advertising. If the proposed terminology is used in such manner, the Commission would interpose no objection thereto." (File No. 703 7043 Released December 16, 1969)

No. 397. Origin of dresses partly made in United States and Haiti.

The Commission rendered an advisory opinion in regard to the proper marking of dresses partly made in the United States, Puerto Rico, and Haiti.

The fabric will be of American origin representing 73 percent of total production costs; cutting and sorting in Puerto Rico—8 percent of production costs; sewing in Haiti—8 percent of production costs; hem sewing, ironing, final checking and sorting, packing and attaching hand tags in the United States—11 percent of production costs.

The question considered involved which of the following three labels must be applied to the dresses:

- (1) "Made in U.S.A."
- (2) "Made in Haiti"
- (3) "Made in Haiti with U.S. component parts."

The first claim constitutes an affirmative representation that the product is made in its entirety in the United States. Since a substantial portion of the manufacturing process on the dresses is performed in Haiti, it would be improper to use the "Made in U.S.A." claim without clearly disclosing that the dresses are sewn in Haiti.

Similarly, a "Made in Haiti" claim would be misleading because the dresses are not made in their entirety in that particular country.

Except for the word "made," the third proposed claim would be unobjectionable. There are two principal steps in the manufacturing process of dresses; namely, cutting and sewing. Since approximately one-half of the manufacturing process (the cutting) takes place in another country, a more accurate description of

what is being done in Haiti would be to substitute the word "sewn" for the word "made." Thus, the claim as revised would read: "Sewn in Haiti with U.S. component parts."

Although not specifically asked, the Commission further advised that in the absence of any affirmative representation that the dresses are entirely of United States' origin, it will not be necessary to disclose the fact that the dresses are sewn in Haiti. Finally, that this opinion does not relieve anyone from complying with all applicable rules and regulations of the Bureau of Customs. (File No. 703 7047 Released December 16, 1969)

No. 398. Advertising of hamburgers made of chuck and plate.

The Commission issued an advisory opinion relative to advertising of hamburger patties consisting of 85 percent chuck and 15 percent plate. The Commission advised that the use of the phrase "***s Hamburgers are made with ground chuck" in advertising would be violative of Section 12, Federal Trade Commission Act. (File No. 703 7046 Released December 16, 1969)