repossessed,[4] or because the witnesses were permitted to "trade-in" their old machines in exchange for the newer models. However, the record is devoid of other evidence showing the usual and customary price of the newer machines, and there is no persuasive evidence from which we may make a finding that the discounts granted were greatly inflated or were fictitious. Under these circumstances, the examiner's conclusion that respondent misrepresented the usual sales price of its products cannot be affirmed.

For the aforementioned reasons, an order will issue vacating the initial decision of the examiner and dismissing the complaint.

ORDER VACATING INITIAL DECISION AND DISMISSING COMPLAINT

This matter having been heard by the Commission upon the appeal of the respondent from the initial decision of the hearing examiner, dated April 16, 1964, and upon briefs in support thereof and in opposition thereto, and the Commission having concluded for the reasons stated in the accompanying opinion that the evidence of record is insufficient to prove the allegations of the complaint:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, vacated.

It is further ordered, That the complaint be, and it hereby is, dismissed.

IN THE MATTER OF

FALSTAFF BREWING CORPORATION ET AL.

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

Docket 8618. Complaint, Feb. 20, 1964—Decision, Dec. 3, 1964

Order requiring three brewers and their trade association to cease carrying out any planned common course of action to fix and maintain the price of beer, including keg beer, and that said trade association be dissolved.

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

[4] It appears that the White machines which the witnesses purchased had not been repossessed. In most cases, the attachments had not been unwrapped. In addition, the conditional sales contracts indicated that these machines were new, and the purchasers received a manufacturer's guarantee. However, there is some indication that the machines had been used for demonstration purposes by respondent's salesmen and thus in this sense were not completely unused.

Trade Commission having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45) and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Falstaff Brewing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 5050 Oakland Avenue, St. Louis 10, Missouri. Respondent owns and operates a total of eight breweries in the cities of St. Louis, Missouri, Omaha, Nebraska, New Orleans, Louisiana, San Jose, California, Fort Wayne, Indiana, Galveston, Texas, and El Paso, Texas. Under the trade name "Falstaff," it markets the products of these breweries in approximately twenty-five States. In 1960, respondent achieved gross sales of approximately $160,000,000, and ranked as the third largest brewer in the nation.

Respondent Jackson Brewing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business located at 620 Decatur Street, New Orleans, Louisiana. Under the trade name "Jax," respondent sells its beer manufactured in New Orleans throughout a nine State area in the nation's South and Southwest. In 1962, respondent's gross dollar volume of sales exceeded $35,000,000.

Respondent Dixie Brewing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana. Respondent owns and operates a brewery located at 2401 Tulane Avenue, New Orleans, Louisiana. Under the trade name "Dixie," it sells its beer in the States of Louisiana, Mississippi and Alabama. In 1962, respondent's gross dollar volume of sales exceeded $4,300,000.

Respondent New Orleans Brewers Association, hereinafter referred to as respondent NOBA, is an unincorporated trade association maintaining an office at 2401 Tulane Avenue, New Orleans, Louisiana. Organized in the late thirties, respondent NOBA is financed by assessments made on the monthly sales of its brewery members. Respondent NOBA's membership, once numbering seven brewers, is presently limited to the aforementioned respondent manufacturers. During the period from 1939 to 1962, the American Brewing Company, a corporation that maintained offices at 717 Bienville Street, New Orleans,

Louisiana, was a member of respondent NOBA. The sole officer of respondent NOBA is respondent Elitha Kelly.

Respondent Elitha Kelly is a resident of the State of Louisiana with a residence at 884 Pontalba Street, New Orleans, Louisiana, and as Secretary of respondent NOBA is named herein as a respondent.

All of the respondents named herein, other than respondent NOBA, are collectively referred to hereinafter as "respondent manufacturers." Each of said respondent manufacturers is a member of respondent NOBA, and has for a number of years, through such membership and otherwise, directly or indirectly, participated in the cooperative and collective action of all those named herein as respondents in formulating, engaging in and making effective the methods, acts, practices and policies which are alleged herein to be unlawful.

PAR. 2. Respondent manufacturers are engaged in the manufacture, sale and distribution of beer. Each of the respondent manufacturers maintain, and at all times mentioned herein have maintained, a substantial and continuous course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States.

Respondent NOBA has been and now is engaged in aiding respondent manufacturers in carrying out the unlawful methods, acts and practices as alleged herein, which directly and substantially have affected and now affect competition between and among said respondent manufacturers.

PAR. 3. Respondent manufacturers have been and now are in competition with each other, and with others, in the manufacture, sale and distribution of beer to purchasers thereof, except insofar as actual and potential competition has been hindered, lessened, restrained, suppressed or eliminated by the unlawful and unfair methods, acts and practices hereinafter alleged.

PAR. 4. Respondent manufacturers, acting between and among themselves, and with American Brewing Company, a recently liquidated corporation, and others, and through and by means of respondent NOBA, for many years last past, and particularly since approximately 1941, and continuing to the present time, have maintained, and now maintain and have in effect, an understanding, agreement, combination and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to hinder, lessen, restrict, restrain, suppress and eliminate competition in the manufacture, sale and distribution of beer in the course of the aforesaid commerce.

PAR. 5. Pursuant to and in furtherance of said understanding, agree-

ment, combination, conspiracy and planned common course of action, respondent manufacturers, acting between and among themselves and with others, and through and by means of respondent NOBA, for many years last past, and continuing to the present time, in connection with the sale and distribution of beer, have done and performed, *inter alia*, the following:

(1) Fixed and maintained prices, terms and conditions of sale.

(2) Agreed to adopt, and have adopted, maintained and continued in effect, a common plan or policy concerning rebates, refunds, discounts and exchanges.

(3) Agreed to adopt, and have adopted, maintained and continued in effect, common policies concerning the provision of services to customers.

(4) Agreed to refrain, and have refrained from soliciting the keg beer trade of each other's customers.

PAR. 6. The acts and practices of the respondents, as herein alleged, have had and do have the effect of hindering, lessening, restricting, restraining and eliminating competition among the respondents in the manufacture, sale and distribution of beer; are all to the prejudice of customers of respondents and to the public; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Eugene Kaplan, *Mr. Robert E. Liedquist* and *Mr. Anthony J. DePhillips* supporting the complaint.

Mr. James S. McClellan of *Willson, Cunningham & McClellan*, St. Louis, Mo., counsel for respondent Falstaff Brewing Corporation.

Mr. M. Truman Woodward, Jr., of *Milling, Saal, Saunders, Benson & Woodward*, New Orleans, La., counsel for respondent Jackson Brewing Company.

Mr. Arthur A. de la Houssaye, New Orleans, La., counsel for respondents Dixie Brewing Company, Inc., New Orleans Brewers Association, and its members, and Elitha Kelly, as secretary of the New Orleans Brewers Association.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

OCTOBER 23, 1964

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on February 20, 1964, issued its complaint charging the above-named respondents with violation of

Section 5 of the Federal Trade Commission Act in the sale and distribution of beer in the course of interstate commerce. The alleged competitive respondent manufacturers are charged in the complaint to have acted with each other and through and by means of the respondent brewers association pursuant to an understanding, agreement, combination, conspiracy and planned common course of action which, *inter alia*, effected the following:

(1) Fixed and maintained prices, terms and conditions of sale.

(2) Agreed to adopt, and have adopted, maintained and continued in effect, a common plan or policy concerning rebates, refunds, discounts and exchanges.

(3) Agreed to adopt, and have adopted, maintained and continued in effect, common policies concerning the provision of services to customers.

(4) Agreed to refrain, and have refrained from soliciting the keg beer trade of each other's customers.

The complaint charges the said acts and practices of the respondents to have had and now have the effect of hindering, lessening, restricting, restraining and eliminating competition among the respondents in the manufacture, sale and distribution of beer; to be to the prejudice of customers of the respondents and to the public; and to constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Pursuant to Section 3.8 of the Federal Trade Commission Rules of Practice for Adjudicative Proceedings, a prehearing conference was held herein on June 25, 1964, following the filing of respondents' answers to the complaint. During the course of this conference, respondents proposed the filing with the Commission of a motion to reopen consent procedure, and with the assent of complaint counsel the prehearing conference was adjourned pending Commission action on such motion. Respondents' motion and an answer by complaint counsel joining in respondents' motion were filed July 6, 1964. Order by the Commission denying respondents' motion to reopen consent procedure issued July 20, 1964. The Commission order, in denying respondents' proposed disposition, added that respondents had further failed to show wherein the filing of an amended admission answer or submission of the case to the hearing examiner on a stipulation of facts and agreed order, as expressly provided by Section 2.4(d) of the Rules of Practice, would not constitute an appropriate disposition of this proceeding.

Under date of September 15, 1964, respondents and complaint coun-

sel entered into an "Agreement Containing Stipulation of Facts and Agreed Order" and subsequently submitted the same to the hearing examiner as provided by Section 2.4(d) of the Rules of Practice. The stipulated facts corresponded with the factual allegations of the complaint served on the respondents, and the agreed order to be entered herein followed in substance the form of order proposed as appropriate in the attached notice to the complaint. The agreement between the parties provided that the record on which the decisions of the hearing examiner and the Federal Trade Commission were to be based shall consist solely of the complaint and said agreement, and respondents waived:

(a) any further procedural steps before the hearing examiner and the Commission;

(b) the making of findings of fact and conclusions of law; and

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

Order directing the filing of record herein of the foregoing "Agreement Containing Stipulation of Facts and Agreed Order" and closing the record in this proceeding issued October 9, 1964. Based on the foregoing agreed record, the following Findings of Fact and Conclusions therefrom are made, and the following Order is issued.

FINDINGS OF FACT

1. Respondent Falstaff Brewing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 5050 Oakland Avenue, St. Louis 10, Missouri. Respondent owns and operates a total of eight breweries in the cities of St. Louis, Missouri, Omaha, Nebraska, New Orleans, Louisiana, San Jose, California, Fort Wayne, Indiana, Galveston, Texas, and El Paso, Texas. Under the trade name "Falstaff," it markets the products of these breweries in approximately twenty-five States. In 1960, respondent achieved gross sales of approximately $160,000,000, and ranked as the third largest brewer in the nation.[1]

2. Respondent Jackson Brewing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business located at 620 Decatur Street, New Orleans, Louisiana. Under the trade name "Jax," respondent sells its beer manufactured in New

[1] Paragraph A of Stipulation of Facts, page 2 of Agreement Containing Stipulation of Facts and Agreed Order.

Orleans throughout a nine State area in the nation's South and Southwest. In 1962, respondent's gross dollar volume of sales exceeded $35,000,000.[2]

3. Respondent Dixie Brewing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana. Respondent owns and operates a brewery located at 2401 Tulane Avenue, New Orleans, Louisiana. Under the trade name "Dixie," it sells its beer in the States of Louisiana, Mississippi and Alabama. In 1962, respondent's gross dollar volume of sales exceeded $4,300,000.[3]

4. Respondent New Orleans Brewers Association, hereinafter sometimes referred to as respondent NOBA, is an unincorporated trade association maintaining an office at 2401 Tulane Avenue, New Orleans, Louisiana. Organized in the late thirties, respondent NOBA is financed by assessments made on the monthly sales of its brewery members. For many years last past, respondent NOBA has held and now holds meetings on a regular basis, usually once each month, at which each member brewery has been and is now represented by one of its corporate officers.

Respondent NOBA's membership, once numbering seven brewers, is presently limited to the aforementioned respondent manufacturers.[4]

5. Respondent Elitha Kelly, who maintains a residence at 884 Pontalba Street, New Orleans, Louisiana, holds the position of Secretary of respondent New Orleans Brewers Association and is presently the sole officer of said Association.[5]

6. Each of the aforementioned respondent manufacturers maintains, and has maintained for many years last past, a substantial and continuous course of trade in the manufacture, sale and distribution of beer in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States.[6]

7. For many years last past and particularly since 1941, respondent manufacturers have been and are now in substantial competition with each other, and with others in the course of their aforesaid trade in commerce.[7]

8. Each of the aforementioned respondent manufacturers is a member of respondent NOBA, and has for many years last past and par-

[2] Paragraph B of Stipulation, page 2 of Agreement, *supra*.
[3] Paragraph C of Stipulation, page 2 of Agreement, *supra*.
[4] Paragraph D of Stipulation, page 2 of Agreement, *supra*.
[5] Paragraph E of Stipulation, page 3 of Agreement, *supra*.
[6] Paragraph F of Stipulation, page 3 of Agreement, *supra*.
[7] Paragraph G of Stipulation, page 3 of Agreement, *supra*.

ticularly since 1941, through such membership and otherwise, directly or indirectly, participated in the cooperative and collective action of all those named as respondents in the Commission's complaint in formulating, engaging in and making effective the acts, practices and policies set forth in said complaint and which are alleged therein to be unlawful.[8]

9. For many years last past and particularly since 1941, respondent New Orleans Brewers Association and its officers have been and are now engaged in aiding the respondent manufacturers in carrying out the acts and practices set forth in the Commission's complaint, which acts and practices substantially affected and now affect competition in the manufacture, sale and distribution of beer in commerce between and among the respondent manufacturers and other manufacturers of beer.[9]

10. As a means, *inter alia*, of effectuating the acts and practices which are set forth in the Commission's complaint and which are alleged therein to be unlawful, the respondent manufacturers, in conjunction with respondent NOBA, agreed to, adopted and carried into effect the New Orleans Brewers Association Code. This code, which for many years last past has governed the selling practices of the respondent manufacturers, is as follows:

Code—New Orleans Brewers Association

That all members of this association will work in harmony and cooperation in adherence to the following rules; for the betterment of the INDUSTRY, and that each individual company representative will hold himself accountable for the infraction of any of these rules by any of the personnel of his member company:

(1) That the personnel of all member companies refrain from speaking derogatorily of any company or its product.

(2) That there be no concessions, rebates, refunds, or discounts to any licensed dealers or anyone directly or indirectly connected with a licensed dealer.

(3) That there be no accommodation of licensed dealers as far as cashing of checks is concerned, or lending of money to licensed dealers for the purpose of cashing checks.

(4) That no partitions, lunch counters or oyster counters shall be furnished nor shall any plumbing, carpentering or electrical work be done in the establishment of licensed dealers, except such as is incident to the installation of Brewery Advertising or Brewery furnished equipment.

(5) That there be no painting inside or outside of customer's premises, other than the space actually covered by such advertising as may be done by the Brewery.

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[8] Paragraph H of Stipulation, page 3 of Agreement, *supra*.

[9] Paragraph I of Stipulation, page 3 of Agreement, *supra*.

(6) That there shall be no mechanically refrigerated equipment of any kind furnished to licensed dealers.

(7) That there shall be an interchange of credit information on customers.

(8) That outside or regular routes, truck deliveries will be made only to

Licensed Dealers
Company Organizations
Religious Institutions
Fraternal Organizations

(9) That all private orders for either keg or bottle beer shall be channeled through selected Beverage Services to Homes.

(10) That no outside privilege electric signs shall be furnished.

(11) That no payment or rental shall be made for sign privilege of any kind at dealer point of distribution.

(12) That no payment shall be made for electric current to operate signs at dealer point of distribution except those as are presently installed.

(13) That the current policy of recognition accorded draft beer customers be continued.

"Under the current policy applying to Keg Beer Customers, no member shall solicit Keg Beer trade of any establishment while such establishment is using the Keg Beer of another member. Should any dealer discontinue the use of Keg Beer, but still retain any Keg Beer equipment such as counter, back bar, sink, or any other equipment incident to the sale and dispensing of Keg Beer such establishment as long as it keeps such equipment is to be recognized as the customer of the member by whom such equipment is owned. Where a current loan is being made within the limitation of these rules the customer, as far as Keg Beer is concerned, to whom the loan is being made, is considered to be the customer of the member making the loan."

(14) That our current policy of not furnishing music, flowers, except in case of deaths, paint, co-operative advertisements, etc., incident to openings and special occasions shall be continued.

(15) No loans of any kind shall be made to licensed dealers.

(16) That nothing in these rules shall be construed to mean that any member has the right to exclusive sign privileges or on any dealer's place of business, but that all signs of any member on such places shall be strictly within the limitation prescribed by these rules.

(17) Replacement of a brewery's outdoor Neon sign by another brewer will not be permitted until approved by the brewery whose sign is to be taken down.

(18) In the event any of the foregoing rules are found to be impractical through operation after the effective date, no Member will undertake to initiate any changes without first submitting proposed change or changes to all other Members.[10]

11. Each of the aforenamed manufacturers and other respondents herein are and have been mutually engaged in the foregoing stipulated acts and practices [11] in the sale and distribution of beer in the course of commerce,[12] and through and by means of such acts and prac-

[10] Paragraph J of Stipulation, pages 3, 4, 5 and 6 of Agreement, *supra*.
[11] Findings Nos. 4, 5, 8, 9, 10, *supra*.
[12] Findings Nos. 6, 7, *supra*.

tices as is alleged by the complaint in this proceeding,[13] the said respondents have done and performed,[14] *inter alia*, the following:

(1) Fixed and maintained prices, terms and conditions of sale.

(2) Agreed to adopt, and have adopted, maintained and continued in effect, a common plan or policy concerning rebates, refunds, discounts and exchanges.

(3) Agreed to adopt, and have adopted, maintained and continued in effect, common policies concerning the provision of services to customers.

(4) Agreed to refrain, and have refrained from soliciting the keg beer trade of each other's customers.

12. The aforesaid acts and practices of the respondents, as charged by the complaint in this proceeding,[15] have had and do have the effect of hindering, lessening, restricting, restraining and eliminating competition among the respondents in the manufacture, sale and distribution of beer;[16] are all to the prejudice of customers of the respondents and to the public;[17] and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

CONCLUSIONS

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

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

3. The acts and practices of the respondents, as found in the foregoing Findings of Fact, have been and are unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and the following agreed order to cease and desist[18] is appropriate in substance and form and should issue in this proceeding.

ORDER

It is ordered, That respondents, Falstaff Brewing Corporation, Jackson Brewing Company, Dixie Brewing Company, Inc., and the New Orleans Brewers Association and its members, their respective of-

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[13] Paragraph Five of the complaint.
[14] Findings Nos. 8, 10, *supra*.
[15] Paragraph Six of the complaint.
[16] Finding No. 9, *supra*.
[17] Finding No. 10, *supra*.
[18] Agreed Order, pages 6, 7, 8 of Agreement Containing Stipulation of Facts and Agreed Order, *supra*.

ficers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in or in connection with the manufacture, offering for sale, sale or distribution of beer in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of the said respondents, or between any one or more of the said respondents and any others not parties hereto, to do or perform any of the following acts and practices:

A. Establish or fix prices or adopt and place in effect or carry out any policy, plan or program for the purpose or with the effect of establishing or fixing prices.

B. Establish or fix or adopt and place in effect or carry out any policy concerning the provisions of services, or the granting of concessions, to customers, consumers or distributors.

C. Allocate or designate the business of customers to or for a particular respondent or competitor.

D. Refrain from soliciting or refuse to solicit the keg beer trade of establishments or outlets purveying or dispensing keg beer manufactured by any respondent manufacturer or any competitor.

E. Exchange, distribute or circulate with, between or among respondents any information concerning prices, discounts, allowances, terms or conditions of sale, rebate, refund and exchange policies, or any other pricing policies.

F. Exchange, distribute or circulate with, between or among respondents, any information concerning the provision of services to customers, the granting of concessions to customers, and the solicitation of customers.

It is further ordered, That each manufacturing respondent, and subsidiary thereof, shall forthwith, individually and independently, review its prices, price lists, discounts, allowances, rebate, refund and exchange policies, and other pricing policies, on the basis of its own costs, the margin of profit individually desired, and other lawful considerations. Thereafter, within ninety (90) days after the service of this order, each of said manufacturing respondents shall file in these proceedings its verified statement that its prices, price lists, discounts, allowances, rebate, refund and exchange policies, and other pricing policies in effect as of the date of said verified statement were individually and independently arrived at and established in full compliance with this order.

It is further ordered, That each of the manufacturing respondents,

their officers, representatives, agents, employees, subsidiaries, successors and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of beer in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating any information or data as to prices, discounts, allowances, terms or conditions of sale, rebate, refund and exchange policies, or any other pricing policies to any other of the respondents, or to any other competitor, before announcement thereof to respondent's customers or to the public.

B. Attending any meeting with another respondent or respondents, or another competitor or competitors, at which prices, discounts, allowances, terms or conditions of sale, rebate, refund and exchange policies, or any other pricing policies are discussed or considered.

C. Attending any meeting with another respondent or respondents, or another competitor or competitors, at which customer services and concessions are discussed or considered.

D. Allocating or designating the business of customers to or for a particular respondent or competitor.

E. Refraining from, or abstaining from, soliciting the keg beer trade of establishments or outlets purveying or dispensing keg beer manufactured by any respondent or any competitor.

It is further ordered, That respondent New Orleans Brewers Association be forthwith discontinued, liquidated, and dissolved, and that any successor or assign or any new entity, corporate or otherwise formed by the manufacturing respondents do permanently refrain from planning or performing any of the following things:

A. Obtaining or disseminating any information as to prices, discounts, allowances, terms or conditions of sale, rebate, refund and exchange policies, or any other pricing policies or customer services and concessions.

B. Acting as an instrument or medium for promoting, aiding or rendering more effective any cooperative or concerted effort to suppress or eliminate competition, or to cooperate with any of the other respondents herein in carrying out any of the acts prohibited by this order.

Final Order

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1,

1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 3d day of December, 1964, become the decision of the Commission.

It is further ordered, That Falstaff Brewing Corporation, a corporation, and Jackson Brewing Company, a corporation, and Dixie Brewing Company, Inc., a corporation, by their appropriate corporate officers, and New Orleans Brewers Association, an association, and its members, by Elitha Kelly as Secretary of the New Orleans Brewers Association, shall, within ninety (90) days after service of this order upon them, file with the Commission a report in writing, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

KLEIN & STERN FURS, INC., ET AL.

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

Docket C-862. Complaint, Dec. 8, 1964—Decision, Dec. 8, 1964

Consent order requiring a manufacturing furrier in New York City to cease violating the Fur Products Labeling Act by falsely invoicing certain of its fur products as "natural" when they were bleached, dyed or artificially colored; misrepresenting in writing that they had a continuing guaranty on file with the Federal Trade Commission; and failing to comply in other respects with invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commision Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Klein & Stern Furs, Inc., a corporation, and Sol Klein and Nicholas Stern, individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Klein & Stern Furs, Inc., is a corporation,

organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Sol Klein and Nicholas Stern are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 214 West 29th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which failed to disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Natural" was not used on invoices to describe fur

products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

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

PAR. 6. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guarantied would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said Rules and Regulations under the Fur Products Labeling Act and Section 10(b) of said Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Klein & Stern Furs, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 214 West 29th Street, New York, New York.

Respondents Sol Klein and Nicholas Stern are officers of the corporate respondent and their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Klein & Stern Furs, Inc., a corporation and its officers and Sol Klein and Nicholas Stern, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from falsely or deceptively invoicing fur products by:

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

2. Representing directly or by implication on invoices that the fur contained in fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

4. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

5. Failing to set forth on invoices the item number or mark assigned to fur products.

It is further ordered, That Klein & Stern Furs, Inc., a corporation and its officers and Sol Klein and Nicholas Stern, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any

fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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

IN THE MATTER OF

ADF WAREHOUSE, INC., ET AL.

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

Docket 8645. Complaint, Aug. 28, 1964—Decision, Dec. 12, 1964

Order requiring a furniture dealer in College Park, Md., to cease representing falsely in advertising that their furniture was obtained from model homes or apartments and afforded purchasers substantial savings, that their furniture described as "Danish" and "Danish Modern" was manufactured in Denmark, and that their merchandise was fully guaranteed.

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 ADF Warehouse, Inc., a corporation, and Maxwell Auslander and Elena Auslander, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent ADF Warehouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 8503 Baltimore Boulevard in the city of College Park, the State of Maryland.

Respondent Maxwell Auslander and Elena Auslander are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their 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 furniture, home furnishings and other merchandise to the public. Respondents operate furniture outlets in the States of Maryland and Virginia and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise when sold, to be shipped from their places of business in the District of Columbia and the States of Virginia and Maryland to purchasers thereof located in various States of the United States and in the District of Columbia, and 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 aforesaid business, and for the purpose of inducing the purchase of their furniture, home furnishings and merchandise, respondents have made numerous statements with respect to price, source, savings, guarantees and limited supply, in advertisements inserted in newspapers having a wide circulation in the District of Columbia, the States of Maryland and Virginia, and the various other States of the United States and in advertising materials disseminated and distributed by and through the United States mail.

Among and typical, but not all inclusive of said statements are the following:

MODEL HOME FURNITURE SALE!
BUY THE GROUP OF YOUR CHOICE
BUY ONLY THE ITEMS YOU NEED AND SAVE
30% to 60%.
EVERYTHING IS BRAND NEW AND FULLY
GUARANTEED
A.D.F. AUSLANDER'S DECORATOR FURNITURE WAREHOUSE
Interior Decorators
Maryland-Washington, Virginia.

I have on hand several rooms of furniture which you may have seen displayed in a number of model homes and apartments. The luxurious furnishings, can now be bought at *substantial reductions* from the price you would normally have to pay in stores.

* * * * * * *

I want you to come in and see this furniture now. I have only nine groups and they must be disposed of by next week. If you will come in now you will have first choice of the largest selection. * * * Don't miss this chance to buy beautiful furniture at tremendous savings.

Very truly yours,

MACK AUSLANDER.

DANISH MODERN MODEL HOME FURNITURE

PAR. 5. Through the use of the aforesaid statements and representations and others similar thereto but not specifically set out herein, respondents represent and have represented, directly or by implication, that:

(a) Furniture and home furnishings offered for sale by respondents have been withdrawn or obtained from model homes or apartments.

(b) By virtue of having been withdrawn from or obtained from a model home or apartment, purchasers of said merchandise are afforded substantial savings.

(c) The furniture and home furnishings described as "Danish" and "Danish Modern" was manufactured in the Country of Denmark.

(d) Merchandise offered for sale was unconditionally guaranteed for an unlimited period of time.

(e) The quantity of certain merchandise was limited and that purchasers must order immediately to obtain said merchandise.

PAR. 6. In truth and in fact:

(a) Furniture and home furnishings offered for sale by respondents have not been withdrawn or obtained from model homes or apartments.

(b) Purchasers of said merchandise are not afforded substantial savings by virtue of said furniture having been withdrawn or obtained from a model home or apartment.

(c) The furniture and home furnishings described in said advertisements as "Danish" and "Danish Modern" was not manufactured in the Country of Denmark.

(d) The merchandise advertised as "completely guaranteed" was not so guaranteed, and the advertisements failed to set forth the nature and extent of the guarantee and the manner in which the guarantor will perform.

(e) The quantity of merchandise for sale was not limited and the offers of said merchandise did not have to be accepted within a limited time as adequate quantities were available.

Therefore, the statements and representations set forth in paragraphs four and five hereof were and are false, misleading and deceptive.

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

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

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

Mr. Samuel J. Rozel supporting the complaint.

Mr. John S. Yodice, 5151 Wisconsin Avenue, NW., Washington, D.C., for the respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

NOVEMBER 3, 1964

1. On August 22, 1964, the Federal Trade Commission issued its complaint in this proceeding charging the respondents named above with the dissemination of false and misleading advertisements concerning prices, savings, supply, sources of material, and guarantee claims for furniture sold in the greater Washington area of Washington, D.C., Virginia and Maryland, in violation of Section 5 of the Federal Trade Commission Act.

2. At the hearing held in this proceeding in Washington, D.C., on November 2, 1964, counsel for the respondents appeared in behalf of the corporate respondent and the two individual respondents, and orally moved for permission to withdraw his answer previously filed herein on behalf of all respondents. His motion for the withdrawal of respondents' answer was granted. Counsel for the respondents then stated that he had nothing further to present.

3. Counsel supporting the complaint thereupon moved that the respondents be held in default; whereupon the hearing examiner, in accordance with Rule 3.5(c) of the Commission's Rules of Practice for Adjudicative Proceedings, ruled that the respondents were in default. He then offered counsel an opportunity to submit proposed findings as to the facts and conclusions which opportunity they declined. Counsel then indicated that they desired to make no further statements. The hearing examiner announced that he would in due course issue an initial decision based upon the allegations of the complaint; and the hearing was thereupon adjourned.

4. Because of the allegations of facts and conclusions set forth in

the complaint, and the default of the respondents, the hearing examiner finds the facts and conclusions in this proceeding to be as follows:

5. Respondent ADF Warehouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 8503 Baltimore Avenue in the city of College Park, the State of Maryland.

6. Respondents Maxwell Auslander and Elena Auslander are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

7. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of furniture, home furnishings and other merchandise to the public. Respondents operate furniture outlets in the States of Maryland and Virginia and in the District of Columbia.

8. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise when sold, to be shipped from their places of business in the District of Columbia and the States of Virginia and Maryland to purchasers thereof located in various States of the United States and in the District of Columbia, and 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.

9. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their furniture, home furnishings and merchandise, respondents have made numerous statements with respect to price, source, savings, guarantees and limited supply, in advertisements inserted in newspapers having a wide circulation in the District of Columbia, the States of Maryland and Virginia, and the various other States of the United States and in advertising materials disseminated and distributed by and through the United States mail.

10. Among and typical, but not all inclusive of said statements, are the following:

MODEL HOME FURNITURE SALE!
BUY THE GROUP OF YOUR CHOICE
BUY ONLY THE ITEMS YOU NEED AND SAVE 30% to 60%.

EVERYTHING IS BRAND NEW AND FULLY GUARANTEED

A.D.F. AUSLANDER'S DECORATOR FURNITURE WAREHOUSE

Interior Decorators
Maryland-Washington, Virginia.

I have on hand several rooms of furniture which you may have seen displayed in a number of model homes and apartments. The luxurious furnishings can now be bought at *substantial reductions* from the price you would normally have to pay in stores.

* * * * * * *

I want you to come in and see this furniture now. I have only nine groups and they must be disposed of by next week. If you will come in now you will have first choice of the largest selection. * * * Don't miss this chance to buy beautiful furniture at tremendous savings.

Very truly yours,

MACK AUSLANDER.

DANISH MODERN MODEL HOME FURNITURE

11. Through the use of the aforesaid statements and representations and others similar thereto but not specifically set out herein, respondents represent and have represented, directly or by implication, that:

(a) Furniture and home furnishings offered for sale by respondents have been withdrawn or obtained from model homes or apartments.

(b) By virtue of having been withdrawn from or obtained from a model home or apartment, purchasers of said merchandise are afforded substantial savings.

(c) The furniture and home furnishings described as "Danish" and "Danish Modern" were manufactured in the country of Denmark.

(d) Merchandise offered for sale was unconditionally guaranteed for an unlimited period of time.

(e) The quantity of certain merchandise was limited and that purchasers must order immediately to obtain said merchandise.

12. In truth and in fact:

(a) Furniture and home furnishings offered for sale by respondents have not been withdrawn or obtained from model homes or apartments.

(b) Purchasers of said merchandise are not afforded substantial savings by virtue of said furniture having been withdrawn or obtained from a model home or apartment.

(c) The furniture and home furnishings described in said adver-

tisements as "Danish" and "Danish Modern" were not manufactured in the country of Denmark.

(d) The merchandise advertised as "completely guaranteed" was not so guaranteed, and the advertisements failed to set forth the nature and extent of the guarantee and the manner in which the guarantor will perform.

(e) The quantity of merchandise for sale was not limited and the offers of said merchandise did not have to be accepted within a limited time as adequate quantities were available.

13. Therefore, the statements and representations set forth in Paragraphs 10 and 11 hereof were and are false, misleading and deceptive.

14. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals in the sale of furniture and home furnishings of the same general kind and nature as that sold by respondents.

15. 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.

16. 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.

17. Because of the foregoing findings of facts and conclusions of law,

It is ordered, That respondents ADF Warehouse, Inc., a corporation, and its officers, Maxwell Auslander and Elena Auslander, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of furniture, home furnishings or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that furniture or home furnishings offered for sale have been withdrawn or obtained from model homes or apartments: *Provided, however*, That it shall

be a defense in any enforcement proceeding instituted for violation hereof, for respondents to affirmatively establish the truth of such representations.

2. Representing directly or by implication that purchasers of said merchandise are afforded savings by virtue of said merchandise having been withdrawn or obtained from a model home or apartment: *Provided, however*, That it shall be the defense in any enforcement proceeding instituted for violation hereof for respondents to affirmatively establish the truth of any such representation.

3. Misrepresenting in any manner the savings afforded purchasers of respondents' merchandise.

4. Representing directly or by implication by the use of the words "Danish," "Danish Modern," or any other words or terms of similar import or meaning, or in any other manner, that domestically manufactured furniture is manufactured in the country of Denmark; or misrepresenting in any other manner the country of origin of respondents' merchandise.

5. Representing, directly or by implication that 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.

6. Representing, directly or by implication,

(a) That the supply of merchandise being advertised is limited, or

(b) That any offer is limited in point of time or in any other manner: *Provided, however*, That it shall be the defense in any enforcement proceeding instituted for violation of (a) hereof for respondents to affirmatively establish that an adequate supply was, in fact, not available to respondents and under (b) hereof to affirmatively establish that any represented restriction or limitation was actually imposed and in good faith adhered to by respondents

Final Order

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 12th day of December, 1964, become the decision of the Commission.

It is further ordered, That ADF Warehouse, Inc., a corporation, and Maxwell Auslander and Elena Auslander, individually and as officers of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by each respondent named in this order, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

NATIONAL GOLF BALL COMPANY ET AL.

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

Docket C-863. Complaint, Dec. 16, 1964—Decision, Dec. 16, 1964

Consent order requiring a Chicago, Ill., seller and distributor of previously used golf balls, to cease selling said golf balls without clearly disclosing that they were rebuilt or reconstructed.

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 National Golf Ball Company, a partnership, and Michael Coglianese and Albert B. Coglianese, individually and as copartners trading and doing business as National Golf Ball Company, 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 National Golf Ball Company is a general partnership comprised of the subsequently named individuals who formulate, direct and control the acts and practices of said partnership, including the acts and practices hereinafter set forth. The office and principal place of business of said partnership is located at 3700 West 38th Street, Chicago, Ill.

Respondents Michael Coglianese and Albert B. Coglianese are individuals and copartners trading and doing business as National Golf

Ball Company with their office and principal place of business located at the same address as that of the said partnership.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the offering for sale, sale and distribution of previously used golf balls which have been rebuilt or reconstructed to dealers for resale to the public.

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

PAR. 4. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by the respondents and with manufacturers, jobbers and retailers of new golf balls.

PAR. 5. In the course and conduct of their business, respondents rebuild or reconstruct golf balls, using in said process portions of the balls which have been previously used.

Respondents do not disclose either on the balls, on the wrapper or on the box in which the balls are packed, or in any other manner, that said golf balls are previously used balls which have been rebuilt or reconstructed.

When previously used golf balls are rebuilt or reconstructed, in the absence of any disclosure to the contrary, or in the absence of an adequate disclosure, such golf balls are understood to be and are readily accepted by the public as new balls, a fact of which the Commission takes official notice.

PAR. 6. By failing to disclose the facts as set forth in Paragraph Five, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature and construction of their said golf balls.

PAR. 7. The failure of the respondents to disclose on the golf ball itself, on the wrapper and on the box in which they are packed, or in any other manner, that they are previously used balls which have been rebuilt or reconstructed has had, and now has, the capacity and tendency to mislead members of the purchasing public into the errone-

ous and mistaken belief that said golf balls were, and are, new in their entirety and into the purchase of substantial quantities of respondents' products by means of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are, all to the prejudice and injury of the public and of the respondents' competitors, and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent National Golf Ball Company is a general partnership comprised of respondents Michael Coglianese and Albert B. Coglianese, with its office and principal place of business located at 3700 West 38th Street, Chicago, Illinois.

Respondents Michael Coglianese and Albert B. Coglianese are individuals and copartners trading and doing business as said partnership, and their address is the same as that of said partnership.

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

ORDER

It is ordered, That respondents National Golf Ball Company, a partnership, and Michael Coglianese and Albert B. Coglianese, individually and as copartners trading and doing business as National Golf Ball Company, or any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of used, rebuilt or reconstructed golf balls in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to clearly and conspicuously disclose on the boxes in which the respondents' rebuilt or reconstructed golf balls are packaged, on the wrapper and on said golf balls themselves, that they are previously used balls which have been rebuilt or reconstructed. *Provided, however*, That disclosure need not be made on the golf balls themselves if respondents establish that the disclosure on the boxes and/or wrappers is such that retail customers, at the point of sale, are informed that the golf balls are previously used and have been rebuilt or reconstructed.

2. Placing any means or instrumentalities in the hands of others whereby they may mislead the public as to the prior use and rebuilt nature and construction of their golf balls.

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

IN THE MATTER OF

WEST FOREST CORPORATION ET AL.

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

Docket C-864. Complaint, Dec. 16, 1964—Decision, Dec. 16, 1964

Consent order requiring a Great Neck, N.Y., corporation engaged in selling and distributing "Hask" a hair and scalp preparation to cease advertising falsely through United States mails and otherwise that their product "Hask" would prevent, permanently eliminate or cure dandruff.

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 West Forest Corporation, a corporation, and Ralph L. Godfrey, 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 West Forest Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 350 Northern Boulevard in the city of Great Neck, State of New York.

Respondent Ralph L. Godfrey formulates, directs and controls the acts and practices of the West Forest Corporation, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents West Forest Corporation and Ralph L. Godfrey are now and have been for more than one year last past, engaged in the sale and distribution of a preparation which is a drug as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation, the formula thereof and directions for use are as follows:

Designation.—"Hask" Hair & Scalp Conditioner.

Formula.—One-Three Dihydroxy, Two Ethyl Hexane, Colored 15.8%; Water Colored 84.8%; Perfume .2%.

Directions.—SHAKE WELL BEFORE USING. Apply generously and gently massage onto scalp daily until dandruff condition disappears (one or two weeks), then two or three times a week—occasionally massaging with a rough towel. Just comb after each application—no additional hair dressing or shampooing is necessary—see and feel the difference * * * always ask for Hask.

PAR. 3. Respondents West Forest Corporation and Ralph L. Godfrey cause the said preparation, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents West Forest Corporation and Ralph L. Godfrey maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal

Trade Commission Act, including, but not limited to advertisements inserted in magazines, promotional display materials, decals, and catalog sheets, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and have disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

POSITIVELY PREVENTS DANDRUFF

POSITIVELY PREVENTS DANDRUFF once and for all * * * even without shampooing.

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication:

1. That "Hask" prevents dandruff.

2. That "Hask" permanently eliminates or cures dandruff.

PAR. 7. In truth and in fact, "Hask" does not prevent dandruff, permanently eliminate or cure dandruff, nor is it of any benefit in the prevention, relief or treatment of dandruff in excess of temporary prevention or relief thereof while the product is being used regularly.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by the respondents, West Forest Corporation, and Ralph L. Godfrey of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy

of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent West Forest Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 350 Northern Boulevard, in the city of Great Neck, State of New York.

Respondent Ralph L. Godfrey is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents West Forest Corporation, a corporation, its officers, and Ralph L. Godfrey, 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 offering for sale, sale or distribution of "Hask," or any other preparation of similar composition or possessing substantially similar properties, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing the dissemination of, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication:

That such preparation prevents, permanently eliminates or cures dandruff or is of any greater benefit in the prevention, relief or treatment of dandruff than the temporary prevention or relief thereof while the product is being used regularly.

2. Disseminating, or causing to be disseminated, by any means,

for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of the preparation "Hask," or any other preparation of similar composition or possessing substantially similar properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1 hereof.

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

IN THE MATTER OF

THE GEORGE E. DUFFY MANUFACTURING CO. ET AL.

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

Docket C-865. Complaint, Dec. 16, 1964—Decision, Dec. 16, 1964

Consent order requiring a Worcester, Mass., manufacturer and distributor of woolen fabrics to cease violating the Wool Products Labeling Act by such practices as labeling and invoicing certain fabrics "65% reprocessed wool and 35% rayon" and "70% reprocessed wool, 25% rayon, and 5% nylon," which contained substantially different quantities of such fibers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The George E. Duffy Manufacturing Co., a corporation, and its officers, and Ralph E. Duffy, individually and as an officer of said corporation, and Herman P. Riccius, individually and as a former officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The George E. Duffy Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its

office and principal place of business located at 1511 Main Street, Worcester, in the Commonwealth of Massachusetts.

Respondent Ralph E. Duffy is an officer of said corporation. Respondent Herman P. Riccius is a former officer of said corporation and is now retired. During all times material to this proceeding they formulated, directed and controlled the policies, acts and practices of said corporation. The address of Ralph E. Duffy is the same as that of said corporation and that of Herman P. Riccius is 39 William Street, Worcester, Massachusetts.

The respondent corporation is a manufacturer of woolen fabrics composed mostly of reprocessed wool which is sold through the sales office of Benedict F. Cramer to its customers.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 respondents have introduced into commerce, manufactured for introduction into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, wool products, as the terms "commerce" and "wool product" are defined in said Act.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were fabrics, labeled or tagged by the respondents as "65% reprocessed wool and 35% rayon" and "70% reprocessed wool, 25% rayon, 5% nylon," whereas, in truth and in fact, said products contained substantially different quantities of such fibers and other fibers which were not disclosed.

PAR. 4. Certain of such wool products were further misbranded by the respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under the said Act.

Among such misbranded wool products, but not limited thereto, were fabrics with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation, not exceeding 5 per centum of said total fiber weight of, (1) woolen fibers; (2) each fiber other than wool if said percentage

by weight of such fiber is 5 per centum or more; and (3) the aggregate of all other fibers.

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. Respondents have been engaged in the offering for sale, sale and distribution of products, namely fabrics, to manufacturers and also to jobbers who, in turn, distribute the fabrics to customers throughout the United States. The respondents, at all times mentioned herein, have maintained a substantial course of trade of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondents, in the course and conduct of their business as aforesaid, have made statements on invoices to their customers misrepresenting the character and fiber content of certain of their said products.

Among such misrepresentations, but not limited thereto, were statements representing certain fabrics to be "65% reprocessed wool and 35% rayon" and "70% reprocessed wool, 25% rayon, and 5% nylon," whereas, in truth and in fact, said fabrics contained substantially different quantities of the fibers than were represented and other fibers which were not disclosed.

PAR. 8. The acts and practices set out in Paragraph Seven have had, and now have, the tendency and capacity to mislead and deceive purchasers of said fabrics as to the true content thereof, and to cause them to misbrand products manufactured by them in which said materials are used.

PAR. 9. The acts and practices of the respondents as set forth in Paragraph Seven were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and the respondents having been served with notice

of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent The George E. Duffy Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1511 Main Street, in the city of Worcester, Commonwealth of Massachusetts.

Respondent Ralph E. Duffy is an officer of said corporation and his address is the same as that of said corporation.

Respondent Herman P. Riccius is a former officer of said corporation, and his address is 39 William Street, in the city of Worcester, Commonwealth of Massachusetts.

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

ORDER

It is ordered, That respondents The George E. Duffy Manufacturing Co., a corporation, and its officers, and Ralph E. Duffy, individually and as an officer of said corporation, and Herman P. Riccius, individually and as a former officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, manufacture for introduction into commerce, or the offering for sale, sale, transportation, delivery for shipment, or distribution, in commerce, of woolen fabrics or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939 do forthwith cease and desist from misbranding wool products by:

(1) Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of constituent fibers included therein.

(2) Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner, each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents The George E. Duffy Manufacturing Co., a corporation, and its officers, and Ralph E. Duffy, individually and as an officer of said corporation, and Herman P. Riccius, individually and as a former officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fabrics or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices applicable thereto, or in any other manner.

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

IN THE MATTER OF

SUN-CAL COAT & SUIT MFG. CO. ET AL.

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

Docket C-866. Complaint, Dec. 17, 1964—Decision, Dec. 17, 1964

Consent order requiring Los Angeles, Calif., manufacturers and distributors of wool products to cease violating the Wool Products Labeling Act by such practices as falsely labeling ladies' topper coats as "100% Wool" when they contained a substantial quantity of other fibers, falsely labeling non-woolen materials used in certain topper coats, furnishing false guaranties that certain of their wool products were not misbranded, and failing to comply with other labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the

authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sun-Cal Coat & Suit Mfg. Co., a partnership, and Melville Mathes and Sam Rubinstein, individually and as copartners trading as Sun-Cal Coat & Suit Mfg. Co., and also trading as Imperial Cloak & Suit Co., Sportrite Originals, and California Juniors, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 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 it charges in that respect as follows:

PARAGRAPH 1. Respondent Sun-Cal Coat & Suit Mfg. Co., is a partnership, existing and doing business in the State of California with its principal place of business located at 834 South Broadway, Los Angeles, California. Individual respondents Melville Mathes and Sam Rubinstein are copartners in said partnership also trading as Imperial Cloak & Suit Co., Sportrite Originals, and California Juniors. They formulate, direct and control the acts, policies and practices of the said partnership, including the acts and practices hereinafter referred to. The address of the individual respondents is the same as that of Sun-Cal Coat & Suit Mfg. Co. Respondents are engaged in the manufacture and distribution of ladies' coats and suits.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 respondents have introduced, manufactured for introduction, into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, wool products, as the terms "commerce" and "wool product" are defined in said Act.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain topper coats that were labeled or tagged by respondents as "100% Wool" whereas in truth and in fact said topper coats contained a substantial quantity of fibers other than wool.

PAR. 4. Certain of said wool products, namely ladies' topper coats, were misbranded by the respondents within the intent and meaning

of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the identity and character of foam backing laminated to the shell of the coats.

Among such misbranded wool products, but not limited thereto, were certain ladies' topper coats that were labeled or tagged by respondents as containing "Polyester Foam Back" whereas in truth and in fact said topper coats did not contain polyester foam backing.

PAR. 5. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain topper coats with labels on or affixed thereto, which failed to disclose:

The percentage of the total fiber weight of the wool products, exclusive of ornamentation, not exceeding 5 percentum of said total fiber weight of, (1) woolen fibers; (2) each fiber other than wool if said percentage by weight of such fiber is 5 percentum or more; (3) the aggregate of all other fibers.

PAR. 6. The respondents furnished false guaranties that certain of their said wool products were not misbranded, when respondents in furnishing such guaranties had reason to believe that the wool products so falsely guaranteed might be introduced, sold, transported, or distributed in commerce, in violation of Section 9(b) of the Wool Products Labeling Act of 1939.

PAR. 7. The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair or deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and the respondents having been served with notice of said determination and with a copy of the complaint the

Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sun-Cal Coat & Suit Mfg. Co. is a partnership existing and doing business in the State of California with its office and principal place of business located at 834 South Broadway, Los Angeles, California.

Respondents Melville Mathes and Sam Rubinstein are copartners in said partnership and also trade as Imperial Cloak & Suit Co., Sportrite Originals, and California Juniors, and their address is the same as that of Sun-Cal Coat & Suit Mfg. Co.

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

ORDER

It is ordered, That respondents Sun-Cal Coat & Suit Mfg. Co., a partnership, and Melville Mathes and Sam Rubinstein, individually and as copartners trading as Sun-Cal Coat & Suit Mfg. Co. and also trading as Imperial Cloak & Suit Co., Sportrite Originals, and California Juniors, or under any trade name, and respondents' representatives, agents and employees directly or through any corporate or other device in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment or shipment in commerce of topper coats or other wool products as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding of such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein.

2. Falsely or deceptively stamping, tagging, labeling or otherwise identifying any non-woolen material or substance as to the identity, character or use of such material or substance in the manufacture of the aforesaid wool products.

3. Failing to securely affix to, or place on, each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents, Sun-Cal Coat & Suit Mfg. Co. a partnership, and Melville Mathes and Sam Rubinstein, individually and as copartners trading as Sun-Cal Coat & Suit Mfg. Co. and also trading as Imperial Cloak & Suit Co., Sportrite Originals, and California Juniors, or under any other trade name and respondents' representatives, agents and employees, directly or through any corporate or other device do forthwith cease and desist from furnishing a false guaranty that any wool product is not misbranded under the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder when there is reason to believe that any wool product so guaranteed may be introduced, sold, transported or distributed in commerce as the term "commerce" is defined in the aforesaid Act.

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

IN THE MATTER OF

RICHARD S. MARCUS TRADING AS STANTON BLANKET COMPANY

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

Docket 8610. Complaint, Dec. 17, 1963—Decision, Dec. 18, 1964

Order requiring a Fairfield, Conn., company to cease violating the Wool Products Labeling Act by falsely labeling wool blankets and other wool products as to the true generic name of fibers and the percentages of such fibers, and to cease falsely invoicing such products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Richard S. Marcus, an individual trading as Stanton Blanket Company, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Richard S. Marcus is an individual trading as Stanton Blanket Company, with his office and principal place of business located at 36 Curtis Terrace, Fairfield, Connecticut (P.O. Box 6251, Bridgeport, Connecticut).

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1961, respondent has introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were wool products, namely, blankets, which contained substantially different amounts and types of fibers than were set forth on the labels thereto affixed.

PAR. 4. Certain of said wool products were further misbranded by respondent in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products with labels which failed:

1. To set forth the true generic name of the fibers present; and

2. To show the percentages of such fibers.

PAR. 5. The acts and practices of respondent, as set out in Paragraphs Three and Four were, and are, in violation of the Wool Products

Labeling Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. Respondent in the course and conduct of his business as aforesaid, has made statements on invoices and shipping memoranda to his customers, misrepresenting the character and fiber content of certain of his said products. Among such misrepresentations, but not limited thereto, were statements representing certain blankets to be "100% Wool," whereas, in truth and in fact, the said blankets contained substantially less wool than the amount represented.

PAR. 7. The acts and practices set out in Paragraph six have had, and now have, the tendency and capacity to mislead and deceive purchasers of said blankets as to the true content thereof, and were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Thomas C. Marshall and *Mr. William Harry Garber* for the Commission.

Respondent, *pro se.*

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

JUNE 8, 1964

The allegations in this matter charge violations of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act. The Wool Act charges are that the respondent has violated Section 4(a)(1) in that certain of his wool products were misbranded because they were falsely and deceptively labeled or tagged as to the character and amount of the constituent fibers contained therein. It is also charged respondent has violated Section 4(a)(2) in that certain of his wool products were misbranded since they were not stamped, tagged or labeled as required under the provisions of said section and in the manner and form as prescribed by the Rules and Regulations promulgated under said act. The former charge is directed at the practice of affixing to blankets labels which set forth fiber contents substantially different from the fiber contents of the woolen blankets, thereby affirmatively misrepresenting the fiber content of such blankets. The latter charge is directed to respondent's failure to set forth on the labels the true generic name of all of the fibers

present in the woolen blankets to which the labels were affixed, and his failure to show the correct percentages of such fibers, thereby omitting to properly make the affirmative disclosure of fiber content in accordance with the requirements of the statute.

With respect to the Federal Trade Commission Act, the charges are that the respondent has made statements on invoices and shipping memoranda to his customers, misrepresenting the character and fiber content of certain of his wool blankets, and that these practices have the tendency and capacity to deceive purchasers of said blankets, and are to the prejudice and injury of the public and of the respondent's competitors.

The hearing examiner has carefully reviewed and considered the proposed findings of fact and conclusions of law with reasons therefor. Such proposed findings and conclusions as are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters. Upon the entire record in this case, the hearing examiner makes the following findings of fact.

FINDINGS OF FACT

A. *Respondent*

1. Respondent Richard S. Marcus is an individual trading as Stanton Blanket Company, with his office and principal place of business located at 36 Curtis Terrace, Fairfield, Connecticut (P. O. Box 6128, Bridgeport, Connecticut).

B. *Commerce*

2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1961, respondent has introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said act, wool products as "wool product" is defined therein.

C. *Deceptive Labeling as to Fiber Constituency Under Section 4(a)(1)*

3. Certain of said wool products were misbranded by the respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

4. Among such misbranded wool products, but not limited thereto,

were wool products, namely, blankets, which contained substantially different amounts and types of fibers than were set forth on the labels thereto affixed.

5. On or about June 14, 1962, Commission Investigator Posnick purchased one of the respondent's blankets (Commission Exhibit 8) from Medical Service Co., Inc., 373 West Market Street, Newark, New Jersey (Transcript pages 25–31, 52–65). This blanket bore a Stanton Blanket Company label which set forth the fiber content as "70% Wool, 30% Rayon." (See Commission Exhibit 7; see also, Commission Exhibit 14 and Transcript pages 30, 31, 52–55.)

6. Subsequently, tests on the aforesaid blanket were conducted by a duly qualified expert, Chemist Carl Ackerbauer. The result of these tests showed the actual fiber content of Commission Exhibit 8 to be "79.0% Wool, 5.9% Nylon, 1.0% Viscose, 10.1% Orlon, 3.5% other fibers." (See Commission Exhibit 47; see also, Transcript pages 257–266 re testing of Commission Exhibits 8, 17, 29 by Mr. Ackerbauer.)

7. The foregoing exhibit (*i.e.*, Commission Exhibit 8) was also tested by Idelle Shapiro, a duly qualified textile technologist employed by the Federal Trade Commission, who found it to contain substantially the same fibers. (See Commission Exhibit 50; see also, Transcript pages 194–244 as to testing of Commission Exhibits 8, 17, 22 by Miss Shapiro.)

8. The "acrylic" referred to in the Commission laboratory report is the generic name for the "Orlon" referred to in the Ackerbauer report and the "Rayon" referred to in the Commission report is the generic name for the "Viscose" referred to in the Ackerbauer report (Transcript page 213). Correlation of the reports is therefore possible. Additionally, minor variations in different areas of a multi-blend fabric are generally anticipated due to a lack of homogeneity in the fabric (Transcript page 213). Under both reports, the wool is substantially overstated, substantial percentages of nylon and acrylic are present in the product although not revealed on the label, and 10% rayon is not present as represented.

9. On or about June 28, 1962, Commission Investigator Posnick purchased another of respondent's blankets (Commission Exhibit 17) from the Kaufman Army-Navy Store, 57 Cortlandt Street, New York, New York (Transcript pages 71–80). This blanket bore a Stanton Blanket Company label which set forth the fiber contents as "90% Wool, 10% Nylon." (See Commission Exhibit 18; see also, Commission Exhibit 19 and Transcript pages 77, 78.) Subsequently, tests were conducted by a duly qualified expert, Chemist Carl A. Ackerbauer. The

results of these tests showed the actual fiber contents to be "89.9% Wool, 3.8% Nylon, 0.5% Viscose, 5.0% Orlon" (Commission Exhibit 46). The blanket was also tested by the Commission textile technologist whose report is essentially the same as that of Mr. Ackerbauer. Thus the nylon present in the product was understated to a substantial extent and substantial amounts of other fibers are present which are not revealed on the label.

10. The same investigator, on or about July 10, 1962, purchased one of respondent's blankets (Commission Exhibit 22) from the same Kaufman Army-Navy Store (Transcript pages 81–87). This blanket bore a label with respondent's "WPL 12295" and set forth the fiber contents as "90% Wool, 10% Nylon." (See Commission Exhibit 23; see also, Commission Exhibit 24 and Transcript page 81.) Subsequently, tests were conducted by the Commission's technologist, Idelle Shapiro, duly qualified as an expert. The results of these tests showed the actual fiber contents to be in one instance "93.7% Wool, 2.0% Nylon, 4.5% other fibers." (See Commission Exhibit 48A.) Thus the nylon was understated by 8% and the presence of substantial amounts of other fibers was not revealed.

11. The same Commission Investigator, on or about May 23, 1962, purchased another of respondent's blankets (Commission Exhibit 29) from M. Rappaport & Son, Inc., 2307 Broadway, New York, New York (Transcript pages 89–103, 138–144). This blanket bore a label with respondent's "WPL 12295" thereon, and a fiber content disclosure of "100% All Wool." (See Commission Exhibit 31; see also, Commission Exhibit 30 and Transcript pages 91–100, 401, 402.) Subsequently, tests were conducted by expert Carl Ackerbauer, which test report (Commission Exhibit 48) showed the presence of 14.2% residue other than wool by the 5% sodium hydroxide boil out method and 14.3% residue (moisture free) other than wool by the sodium hypochlorite method. The residue referred to was fibrous residue, foreign material having been removed (Transcript pages 262, 263).

12. With respect to this particular exhibit (Commission Exhibit 29), respondent insisted that it could not be his blanket. However, the evidence cited in the preceding paragraph is clearly to the contrary. Rebuttal witness Jack Shurgin, by whom respondent sought to prove that Commission Exhibit 29 was not his blanket, conceded that he knew nothing of the transaction whereby Commission Exhibit 29 was acquired (Transcript page 294). Respondent's contention was to the effect that the blanket could not have been his because it was the wrong color. However, he indicated that he handled approximately 26 styles and 100 colors of blankets (Transcript page 269). Respondent further

stated that he is not always present when labels are substituted (Transcript page 361), that all blankets are not examined when received (Transcript pages 356, 357, 359) and that various colors of blankets are in the warehouse at the same time (Transcript page 363). An examination of another of respondent's blankets introduced into evidence (Commission Exhibit 8) demonstrated that respondent does in fact sell blankets of a color similar to Commission Exhibit 29. Furthermore, the evidence establishes that M. Rappaport & Son, Inc., from which Commission Exhibit 29 was obtained, does not remove labels (Transcript page 292). Witness Sam Rappaport testified that blankets of the color of Commission Exhibit 29 were purchased from respondent by M. Rappaport & Son, Inc. (Transcript page 145).

13. All of the blankets aforesaid received in evidence were sold and shipped in commerce by respondent Stanton Blanket Company, and were labeled by Stanton Blanket Company in the manner indicated.

14. As further evidence of misbranding and the questionable intention of respondent to comply fully with the requirements of the Wool Products Labeling Act, uncontradicted testimony by Commission investigators Scott and Posnick indicates that respondent engaged in the practice of removing suppliers' labels bearing the fiber content designation 90% wool, 10% undetermined man-made fibers and substituting therefor labels bearing the designation 90% wool, 10% nylon prior to the time the blankets were sold. Respondent offered no explanation for this practice (Transcript pages 390–402). Furthermore, although respondent knew of the proceeding in the instant matter, he destroyed all suppliers' labels on blankets sold by him up to January 1, 1964 (Transcript pages 348–353).

15. As evidence of continuing violation currently, the Commission investigator on or about March 4, 1964, purchased another of respondent's blankets (Commission Exhibit 35) from Saks Fifth Avenue, New York, New York (Transcript pages 104–118). This blanket bore respondent's label (Commission Exhibit 37, Transcript pages 104, 105, 112–115) showing the fiber content to be "100% All Wool." Such blanket was tested by a duly qualified expert, W. H. Masterson, Better Fabrics Testing Bureau, Inc., 101 West 31st Street, New York, New York, and found to contain only 94.9% wool (Commission Exhibit 42, Transcript pages 314–322).

16. In the instances aforesaid, the sale by Stanton Blanket Company was to a customer located in a State other than the State from which the blanket emanated. Thus, the jurisdictional requirements of the Wool Products Labeling Act are satisfied.

17. Commission experts Carl A. Ackerbauer, Idelle Shapiro, and

W. H. Masterson were qualified to perform the fiber analyses which they made in connection with the instant proceeding. Such fiber content analyses were correctly performed and correctly reflected the fiber content of the swatches tested (see in particular Transcript pages 196–244, 245–256, 314–324). Respondent's expert (*i.e.*, Maurice Marcus, father of the respondent) offered no testimony that discredited in any way Commission's experts or the methods used by them in testing. (See Transcript pages 365–379.)

D. *Misbranding Under Section 4(a)(2)*

18. Certain of said wool products were further misbranded by respondent in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated under said act. Among such misbranded wool products, but not limited thereto, were wool products with labels which failed:

1. To set forth the true generic name of the fibers present; and
2. To show the percentages of such fibers.

E. *Invoice and Shipping Memorandum Misrepresentations*

19. Respondent in the course and conduct of his business as aforesaid, has made statements on invoices and shipping memoranda to his customers, misrepresenting the character and fiber content of certain of his said products. Among such misrepresentations were statements representing certain blankets to be "70% Wool, 30% Nylon," whereas, in truth and fact, the said blankets contained substantially different fibers and amounts of fibers than represented.

20. The evidence in support of this charge includes the misrepresentation on Stanton's invoice to Medical Service Co., Inc. (Commission Exhibit 6), which described the Stanton Blanket Company blanket obtained by Investigator Posnick (Commission Exhibit 8) as containing 70% wool, 30% nylon. The test report (Commission Exhibit 47) of the fiber content anlaysis of this blanket showed the actual contents to be 79.0% wool, 5.9% nylon, 1.0% viscose, 10.1% orlon (acrylic), 3.5% other fibers. Likewise, the report of Idelle Shapiro (Commission Exhibit 50) shows similar variations from the fiber content shown on the invoice. On this showing, it is clear that there is a violation of the Federal Trade Commission Act.

21. Respondent's customers are entitled to rely on the information furnished by respondent on invoices. The sales invoice (Commission

Exhibit 16) furnished the Commission investigator by Medical Service Co., Inc., Newark, New Jersey, when the blanket in question was purchased contains the same fiber content information as respondent's invoice (Commission Exhibit 6).

22. It is the practice of respondent to disclose fiber content information on invoices (see Commission Exhibits 9A–D, 10–13) with respect to a variety of blankets, including blankets invoiced as "100% Wool," "90% Wool, 10% Nylon," "80% Wool, 20% Cotton," "70% Wool, 30% Rayon," "70% Reprocessed Wool, 30% Rayon," and a variety of other fiber content disclosures.

CONCLUSIONS

The acts and practices of respondent, set forth in Findings 3 to 18 inclusive were, and are, in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

The acts and practices, set out in Findings 19 to 22 inclusive above, have had, and now have, the tendency and capacity to mislead and deceive purchasers of said blankets as to the true content thereof, and were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Respondent contends that if a wool product is labeled "70% Wool, 30% Rayon," whereas the wool product has a content of "75% Wool, 25% Rayon," no violation occurs because the purchaser is receiving even more wool than the label indicates. Even assuming that the wool content is more valuable price-wise than the rayon content, the purchaser, under these circumstances, is not entirely aware of what he is purchasing. He is entitled to accurate disclosure under the act. In *National Silver Co.* v. *Federal Trade Commission*, 88 F. 2d, 425 (CCA 2, 1937), it was held that the question of value was without merit in a proceeding under Section 5 of the Federal Trade Commission Act and stated:

> Indeed even where the purchaser benefits by the deception it is misleading.

In the case of *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U.S. 67 (1934), the Supreme Court stated:

> Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a

conception of business standards so corrupting in its tendency. The customer is prejudiced if upon giving an order for one thing, he is supplied with something else * * *. In such matters the public is entitled to get what it chooses though the choice may be dictated by caprice or by fashion or perhaps by ignorance.

That the understatement of wool content is a practice proscribed by the act is made clear by the language of the Commission in its final order in the *Sacks Woolen Company, Inc., et al.*, Docket 8436, Final Order November 27, 1962 [61 F.T.C. 1226, 1236]:

The Commission having concluded that, although respondents' practice of understating on labels attached to wool products the amount of wool contained therein with the consequent overstatement of the other constituent fibers is false and deceptive and constitutes misbranding within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act, due to the substantial variance of the pleadings from the evidence it would be inappropriate to enter a cease and desist order as to the charge on this record.

In the *Sacks* case, the allegation with respect to the violation was that the respondents' wool products had contained less wool than the amount stated on the label; the proof was that there had been an overage of wool. In the instant case, the allegation is so worded as to charge that an overstatement or understatement of wool content is a violation. For example, the subparagraph of Paragraph Three of the complaint states: "Among such misbranded wool products, but not limited thereto, were wool products, namely, blankets, which contained substantially different amounts and types of fibers than were set forth on the labels thereto affixed." Paragraph Four charges the failure to reveal certain specified information required to be disclosed by Section 4(a)(2) of the act.

Respondent also seeks to raise the affirmative defense provided for in Section 4(a)(2) of the Wool Act which states:

* * * *Provided*, That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.

In the matter of *Alscap, Inc., et al.*, Docket 8292 [60 F.T.C. 275], the hearing examiner, in a decision which became the decision of the Commission on February 14, 1962, commencing at page 284 thereof, made the following comments with reference to the foregoing provision as contained in Section 4(a)(2) of the act:

This recognizes that in the manufacturing process there could be a deviation of the actual fiber contents from the percentages stated. The amount of the deviation is not specified and I have indicated above the reason for my opinion

that a deviation, to be considered as subject to this proviso ought to be less than 5%. Respondents sought to show, by an application to take testimony in Italy that the deviations appearing in this case were due to "unavoidable variations in manufacture," and they contended that in any event they exercise "due care to make accurate the statements" on the tags or labels. They thus sought to read into this proviso not one. but two possible defenses—the first an unavoidable variation in the manufacturing process and the second, an exercise of due care.

A correct interpretation or construction of the proviso is that the possibility of deviation in the manufacturing process exists, that this possibility must be anticipated, that tests or analyses of the fabric, once manufactured, are to be made, and that the consequent and indicated care be exercised to make sure that the labels or brandings state, as accurately as possible, the true wool content.

The examiner further commented:

In the absence of both a deviation such as is contemplated by the statute and a showing of due care in the labeling, the defense is not available. Where the facts of a case are such that it is apparent either one or the other does not exist, it is not necessary and would be a waste of the time and money of all concerned to take evidence in Italy of the premanufacturing, manufacturing, and post-manufacturing procedures in that foreign country.

As a matter of fact, in support of their claims of due care, respondents were unable to show That they subjected the materials to tests to determine whether the statements utilized by them were in fact correct. The statute does not permit blind reliance by persons subject thereto on the conduct of others. Reliance on spotchecks or investigations made by others does not serve to absolve a vendor from erroneous or incorrectly stated representations adopted and consequently made by him.

In the instant case respondent offered no evidence whatsoever as to the care exercised by the manufacturer of the products involved or what would constitute a reasonable manufacturing variance. Respondent made no effort to relate the misbranded blankets back to the manufacturer of the products, to show the manufacturing processes employed by such manufacturer or to establish that such processes could have resulted in manufacturing variations, or for that matter to show what information appeared on his suppliers' labels.

Respondent further contends that he did not intend to violate the act and consequently should be excused.

On this point it is held in *Alscap, Inc., supra:*

Respondents argue that since the manufacturers in Italy and not they placed the tags and labels on the products, they should not be held responsible for the representations contained thereon. While it may be assumed and the evidence suggests that the manufacturers affix the tags and labels at the request of and on the direction of the respondents and thereby became respondents' agents in that respect, it is not material who affixes the tags or labels. Respondents, by utilizing the tags or labels so affixed adopted the representations therein contained and became bound thereby and responsible therefor. To conclude otherwise would make the statute a nullity.

* * * * * * *

They claim that they made no effort to falsify the wool content and had no intention to deceive or defraud. These are elements which do not go to the issue. The use in the statute of words like "falsely or deceptively" does not thereby require a showing of intent to deceive in order to make out a violation. The deception or fraud resulting from a mislabeling or misbranding is no different than that resulting in *Ultramares* v. *Touche*, 255 N.Y. 170. 174 N.E. 441, and other like cases. There is nothing novel about something being fraudulent in law without intent.

In *Smithline Coats and Smithline Coat Co.*, Docket 5560, 45 F.T.C. 79, 87, the Commission made the following statement with respect to a misbranding charge under the Wool Products Labeling Act:

Where misbranding occurs with respect to products subject to the provisions of the act, the law contemplates corrective action by the Commission regardless of whether such misbranding is based upon wilfulness, negligence, or other causes.

The Commission also noted:

The question of intent to violate the law is not at issue in this proceeding inasmuch as the complaint makes no such charge, nor is the proving of "intent" necessary in establishing a case of this type under the Wool Act.

Respondent further questions the sufficiency of the sampling with reference to blankets tested for fiber content. Also, in *Smithline Coats and Smithline Coat Co.*, *supra*, the Commission at 45 F.T.C. 87 made the following comment with reference to such a defense:

It would be an unreasonable burden on those charged with the enforcement of this act and it would likewise make the act ineffective, if sellers charged with misbranding certain wool products could plead as an effective defense the fact that they had sold a large number of other wool products which were not misbranded. The enforcement of this act must necessarily be made on the basis of a sampling of the products of a large number of sellers. If violations are indicated it would obviously be most impractical and unnecessary to test several thousand or even several hundred of the products of a seller in order to establish a violation of the act. The act places the responsibility on the manufacturer and distributor of products subject thereto to label them correctly and in accordance with the terms of said act and further provides that if the seller does not so label the goods he is guilty of an unfair method of competition and an unfair and deceptive act or practice in commerce within the meaning of the Federal Trade Commission Act.

Respondent also urges he has discontinued the practices permanently and in good faith and dismissal of this proceeding is warranted. It is well settled[1] "the discontinuance of a practice found by the Commission to constitute a violation of law does not render the controversy moot. *Federal Trade Commission* v. *Goodyear Tire & Rubber Company*, 304 U.S. 257 (1938). Nevertheless, where the practice has been surely stopped by the act of the party offending and the

[1] *Ward Baking Company*, Docket 6833, 54 F.T.C. 1919, 1920, and 1921.

object of the proceeding has been attained, no order is necessary, nor should one be entered. *Eugene Dietzgen Co.* v. *Federal Trade Commission*, 142 F. 2d 321 (1944). The cases most commonly dismissed on such grounds are those in which the practice has been long abandoned and/or in which the conditions which led to the violation have so changed as to render a resumption highly unlikely. *Federal Trade Commission* v. *Civil Service Training Bureau, Inc.*, 79 F. 2d 113 (1935); *National Lead Co., et al.* v. *Federal Trade Commission*, 227 F. 2d 825 (1955), reviewed on other grounds, 352 U.S. 419 (1957); *Stokely Van Camp, Inc., et al.* v. *Federal Trade Commission*, 246 F. 2d 458 (1957); In the Matter of *Bell & Howell Company*, Docket No. 6729 (Decided July 19, 1957) [54 F.T.C. 108].

"Dismissal is rarely warranted, however, in cases where a party waits until the Commission has acted and only then discontinues his illegal practice. *Federal Trade Commission* v. *Wallace*, 75 F. 2d 733 (1935); *Perma-Maid Company, Inc.* v. *Federal Trade Commission*, 121 F. 2d 282 (1941); *Eugene Dietzgen Co.* v. *Federal Trade Commission, supra; Galter* v. *Federal Trade Commission*, 186 F. 2d 810 (1951). In the *Dietzgen* case, the court's view was that 'parties who refused to discontinue the practice until proceedings are begun against them and proof of their wrongdoing obtained, occupy no position where they can demand a dismissal.' It is apparent that the Commission would have no power at all if it lost jurisdiction every time a practice is halted just as the Commission is about to act or has acted. *Hershey Chocolate Corporation, et al.* v. *Federal Trade Commission*, 121 F. 2d 968 (1941).

"In any case of the discontinuance of a practice, the Commission is vested with a broad discretion in the determination of whether the practice has been surely stopped and whether an order to cease and desist is proper. *Deer, et al.* v. *Federal Trade Commission*, 152 F. 2d 65 (1945); *Keasbey & Mattison Co. et al.* v. *Federal Trade Commission*, 159 F. 2d 940 (1947); *Eugene Dietzgen Co.* v. *Federal Trade Commission, supra; Automobile Owners Safety Insurance Company* v. *Federal Trade Commission* (C.A. 8, May 16, 1958). This discretion is limited only to the extent that it may be abused. *National Lead Co., et al.* v. *Federal Trade Commission, supra.*" In the instant case there is insufficient evidence before the hearing examiner to justify the conclusion that discontinuance would not contravene the public interest.

This proceeding is clearly in the public interest and an order to cease and desist from the above-found unlawful practices should issue against the respondent.

ORDER

It is ordered, That respondent Richard S. Marcus, an individual trading as Stanton Blanket Company, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce of blankets or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

2. Failing to securely affix to, or place on, each such product a stamp, tag or label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondent Richard S. Marcus, an individual trading as Stanton Blanket Company or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of blankets or other products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character and amount of constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto, or in any other manner.

FINAL ORDER

This matter has been heard by the Commission on the appeal of respondent from the initial decision of the hearing examiner, filed on June 9, 1964. Oral argument of the appeal was held before the Commission on November 17, 1964. Especially since respondent, who is not a lawyer, has appeared throughout this proceeding *pro se*, the Commission has given the most careful consideration to the record of this proceeding, the initial decision of the hearing examiner, and the briefs and arguments of the parties. We are satisfied that respondent has had a fair hearing and full opportunity to conduct his defense;

that he conducted his defense with vigor and skill throughout the entire proceeding; and that he was not handicapped by not having the aid of counsel.

The record clearly demonstrates that respondent has engaged not only in serious, but in flagrant, violations of the Wool Products Labeling Act; and an order to cease and desist is clearly necessary in the public interest to prevent recurrence of the unlawful conduct. The Commission has concluded that the findings and conclusions of the hearing examiner in the initial decision adequately and correctly dispose of all the issues of this case, and that the cease and desist order contained in the initial decision is appropriate in all respects. Accordingly,

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted by the Commission as its final decision; and that the order contained in the initial decision be, and it hereby is, adopted and issued by the Commission as its final order.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon him, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

BERNARD MAZUR DOING BUSINESS AS MAJOR HOSIERY COMPANY

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

Docket C-867. Complaint, Dec. 18, 1964—Decision, Dec. 18, 1964

Consent order requiring a Baltimore, Md., jobber of textile fiber products to cease violating the Textile Fiber Products Identification Act by failing to disclose the true generic names of fibers present and percentages of such fibers, falsely tagging men's cotton stretch socks as 100% nylon, and failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission 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 Bernard Mazur, an individual doing busi-

ness as Major Hosiery Company, hereinafter referred to as respondent, has violated the provisions of the said Acts and the Rules and Regulations promulgated under 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 Bernard Mazur is an individual trading under the name Major Hosiery Company.

Respondent is a jobber of textile fiber products, with his office and principal place of business located at 110 South Paca Street, Baltimore, Maryland, where the jobbing operation is conducted under the trade name Major Hoisery Company.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has been and is now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce and in the importation into the United States, of textile fiber products; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were men's cotton stretch socks which were falsely and deceptively stamped, tagged and labeled as "100% Nylon Exclusive of Ornamentation."

PAR. 4. Certain of said textile fiber products were further misbranded by respondent in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were men's cotton stretch socks with labels which failed:

1. To disclose the true generic names of the fibers present; and

2. To disclose the percentages of such fibers.

PAR. 5. The acts and practices of respondent as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission, having reason to believe that the respondent has violated the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Bernard Mazur is an individual trading as Major Hosiery Company, with his office and principal place of business located at 110 South Paca Street, in the city of Baltimore, State of Maryland.

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

ORDER

It is ordered, That respondent Bernard Mazur, an individual trading as Major Hosiery Company, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of constituent fibers contained therein:

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

OUTERWEAR GARMENTS, INC., ET AL.

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

Docket C-868. Complaint, Dec. 21, 1964—Decision, Dec. 21, 1964

Consent order requiring a New York City manufacture of ladies' wool coats to cease violating the Wool Products Labeling Act by falsely labeling certain coats as to fiber content and percentage therein, by furnishing false guaranties that the garments were not misbranded, and by failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Outerwear Garments, Inc., a corporation, and David Alexander, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Outerwear Garments, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 237 West 37th Street, New York, New York. Respondent Outerwear Garments, Inc., is engaged in the manufacture and sale of ladies' coats composed at least in part of wool.

Individual respondent David Alexander is an officer of the corporate respondent, and formulates, directs and controls the acts, practices and policies of the corporate respondent, Outerwear Garments, Inc., including those hereinafter set forth. His office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1963, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were wool products, namely, ladies' coats, which contained substantially different amounts and types of fibers than were set forth on the labels thereto affixed.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as re-

quired under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain ladies' coats with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation, but not exceeding five per centum of said total fiber weight of (1) woolen fibers; (2) each fiber other than wool if said percentage by weight of such fiber is five per centum or more; (3) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Words which constitute the name or designation of fibers which are not present in wool products appear in or as a part of the listing or marking of required fiber content on the stamp, tag, label, or other mark of identification affixed to such wool products, in violation of Rule 25 of the aforesaid Rules and Regulations.

(b) The respective percentages of fibers contained in the face and in the back of pile fabrics were not set out in such a manner as to give the ratio between the face and the back of such fabrics where an election was made to separately set out the fiber content of the face and back of wool products containing pile fabrics, in violation of Rule 26 of the aforesaid Rules and Regulations.

PAR. 6. Respondents have furnished false guaranties that certain of their wool products were not misbranded, when they knew, or had reason to believe, that the said wool products so falsely guaranteed might be introduced, sold, transported or distributed in commerce in violation of Section 9 of the Wool Products Labeling Act of 1939.

PAR. 7. The acts and practices of the respondents, as set forth above, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Prod-

ucts Labeling Act of 1939, and the respondents having been served with notice of said determination and with a copy of the complaint, the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Outerwear Garments, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 237 West 37th Street, in the city of New York, State of New York.

Respondent David Alexander is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Outerwear Garments, Inc., a corporation, and its officers, and David Alexander, 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 manufacture for introduction or the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce of ladies' coats or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding wool products by:

1. Falsely or deceptively tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag or label or other means of identification

showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. Using words constituting the name or designation of a fiber not present in the product in or as part of the listing or marking of required fiber content on the stamps, tags, labels or other means of identification attached to said wool products.

4. Failing to set forth on stamps, tags, labels or other means of identification attached to pile fabrics or products made thereof the ratio between the respective percentages of fibers in the face and back of said fabrics when an election is made to set out separately the fiber content of the face and back of such pile fabrics.

B. Furnishing false guaranties that said wool products are not misbranded under the provisions of the Wool Products Labeling Act of 1939, when there is reason to believe that the wool products so guaranteed may be introduced, sold, transported or distributed in commerce.

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 worth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

THE MAGNAVOX COMPANY

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

Docket C-869. Complaint, Dec. 23, 1964—Decision, Dec. 23, 1964

Consent order requiring a Fort Wayne, Ind., manufacturer of television sets, radios, and phonograph equipment, sold through franchised retail dealers, to cease representing falsely in national advertising and in other promotional materials provided for dealer use that prices of its merchandise were substantially reduced during its annual "Factory Authorized Sale", and misrepresenting that its merchandise was unconditionally guaranteed for stated periods.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Magnavox Com-

pany, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Magnavox Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2131 Bueter Road, in the city of Fort Wayne, State of Indiana.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of radios, television receivers, phonograph equipment and other merchandise to retailers for resale to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said radios, television receivers, phonograph equipment and other merchandise, when sold, to be shipped from its place of business in the State of Indiana, and from other production and storage facilities in other States of the United States, to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said radios, television receivers, phonograph equipment and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent offers its radios, television receivers, phonograph equipment and other merchandise for sale through franchised retail dealers located throughout the United States. For the purpose of promoting the sale of its aforesaid merchandise, respondent engages in the practice of sponsoring an annual "Factory Authorized Sale." In conjunction with this "Factory Authorized Sale" respondent places extensive advertising in national publications of general interstate circulation, provides its retail dealers with brochures, banners, price cards and similar materials for their use, and provides matrices and layouts for local dealer advertising. Respondent makes substantial advertising allowances to said local dealers where their advertising meets respondent's established requirements.

In the aforesaid advertising and other materials, respondent has made and placed in the hands of its retail dealers the means and instrumentalities for making certain statements and representations in regard to the price of its merchandise and the savings afforded pur-

chasers thereof. Typical, but not all inclusive of said statements and representations are the following:

SAVE UP TO $100 DURING OUR BIG FACTORY AUTHORIZED ANNUAL SALE

YOUR ONCE-A-YEAR OPPORTUNITY TO ENJOY *BIG SAVINGS ON* * * * magnificent MAGNAVOX

True

- STEREO HIGH FIDELITY
- *Fully* Automatic BIG PICTURE TV
- STEREO THEATRE family entertainment centers
- PORTABLE Phonographs and Radios

For a limited time only * * * COME IN NOW!

SAVE $100 * * * on this FM/AM and Stereo FM ASTRO-SONIC radio-phonograph. ASTRO-SONIC—model 2-ST650 * * * NOW ONLY $595.

NOW ONLY $495 * * * your choice of these styles. Astro-Sonic 30—model 1-ST 671. * * * Radio-Phonograph * * * SAVE $55.

The COLONIAL—model 1-ST652. FM/AM radio-phonograph * * * SAVE $60—NOW ONLY $289.50.

SAVE $100 * * * on this BIG PICTURE 330 Stereo Theatre family entertainment center * * * in mahogany finish (TV). The INTERNATIONAL model 1-MV 383 * * * NOW ONLY $498.50.

The TRADITIONAL—model 1-MV 321 (TV). SAVE $50—NOW ONLY $279.50 * * *

The TRADITIONAL—model 1-ST642 AM/FM radio-phonograph * * * SAVE $60—NOW ONLY $279.50.

Magnavox * * * SAVE $100 ANNUAL SALE.

Come in now! SAVE UP TO $100 on a magnificent Magnavox during our factory authorized ANNUAL SALE FOR A LIMITED TIME ONLY.

For a limited time only * * * SAVE up to $100 on a magnificent Magnavox COLOR TV * * * during our exciting factory authorized ANNUAL SALE.

The Italian Provincial—model 1-MV530 * * * now only $595 * * * SAVE $50 (Color TV).

The Danish Modern—model 1-MV529 * * * now only $595 * * * SAVE $50 (Color TV).

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, respondent represents and places in the hands of its retail dealers the means and instrumentalities for representing:

a. That an actual, bona fide offer to sell the merchandise referred to has been made by the retail dealers, in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made, at a price higher than the presently offered price by the amount of savings stated.

b. That purchasers of the merchandise referred to would realize a savings of the stated amount from the retail dealers' actual, bona fide price at which said merchandise was offered to the public in the recent

regular course of business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made.

c. That the represented reduced prices are available only during the limited period of the sale and would be returned to the retail dealers' pre-sale bona fide offering price or to some other substantially higher amount immediately after the completion of the sale.

PAR. 6. In truth and in fact:

a. An actual bona fide offer to sell the merchandise referred to had not been made by the retail dealers, in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made, at a price higher than the presently offered price by the amount of savings stated. Certain of said advertised merchandise was neither offered nor available for sale before the aforesaid statements and representations were made and other merchandise had not been offered for sale at said higher price.

b. The purchasers of the merchandise referred to would not realize a savings of the stated amounts from the retail dealers' actual, bona-fide price at which said merchandise was offered to the public in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representations is made.

c. Many of the represented reduced prices were not returned to the retail dealers' former bona fide offering prices or to some other substantially higher amount but remained at or substantially near the represented reduced sale prices Thus the period during which the reduced prices were available on many items was not limited to the period of the sale.

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

PAR. 7. In its advertising and other materials, respondent has made certain other statements and representations of which the following are typical, but not all inclusive:

Big Factory Authorized Annual Sales Your Once-A-Year Opportunity to Enjoy *Big Savings* On * * * (On the front of certain sale brochures.)

For a limited time only * * * SAVE up to $100 on a magnificent Magnavox COLOR TV during our exciting factory authorized ANNUAL SALE. (On the front of certain sale brochures.) now only only SAVE

SAVE UP TO $100 on a magificent Magnavox COLOR TV during our big factory authorized ANNUAL SALE FOR A LIMITED TIME. (In certain advertising.)

PAR. 8. By and through the use of the statements and representations set forth in Paragraph Seven, and others of similar import and meaning but not specifically set out herein, respondent represents and places in the hands of its retail dealers the means and instrumentalities to represent that the price of every item of merchandise contained in said advertising and materials represents a reduction, in an amount not so insignificant as to be meaningless, from the price at which respondent's retail dealers had made an actual, bona fide offer to sell said merchandise in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made.

PAR. 9. In truth and in fact, the offering price of each of the items of merchandise offered in the advertising and materials referred to in Paragraph Seven hereof has not been reduced from the retail dealers' actual, bona fide offering price at which such merchandise was offered to the public in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation was made. Certain items contained in said advertising had never previously been offered for sale at any price. Other items were offered at prices which did not represent a reduction from the retail dealers' former offering prices.

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

PAR. 10. Respondent in the course and conduct of its business has made certain statements and representations in advertising and in materials provided for retail dealer use in regard to the guarantee provided to the purchasers of respondent's merchandise. Typical of said statements and representations, but not all inclusive thereof, are the following:

Diamond Stylus is Guaranteed *10 years!*
Astro-Sonic components guaranteed *5 years.*
Picture tube guaranteed *3 years.*
Parts are guaranteed for five years * * *

PAR. 11. By and through the statements and representations set forth in Paragraph Ten hereof, respondent represents and has represented and has placed in the hands of its retail dealers the means and instrumentalities for representing that the merchandise or parts referred to are unconditionally guaranteed for the period stated.

PAR. 12. In truth and in fact, the guarantees provided with the merchandise and products referred to are subject to numerous conditions, limitations and qualifications which are not disclosed in said advertising and other materials.

Therefore, the statements and representations set forth in Paragraphs Ten and Eleven hereof were and are false, misleading and deceptive.

PAR. 13. Respondent, by and through the use of the aforesaid practices, places in the hands of retail dealers the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove stated.

PAR. 14. In the course and conduct of its business, and at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of radios, television receivers, phonograph equipment and other merchandise of the same general kind and nature as that sold by respondent.

PAR. 15. The use by respondent 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts

same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Magnavox Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2131 Bueter Road, in the city of Fort Wayne, State of Indiana.

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

ORDER

It is ordered, That respondent The Magnavox Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of radios, television receivers, phonograph equipment and other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. 1. Using in advertising or other promotional materials for dealer use the word "Save" or any other word or term of similar import or meaning in conjunction with a stated amount of savings unless respondent is able to establish as a fact that the sum of the offering price of the merchandise and the represented amount of savings equals:

a. The actual, bona fide price at which such merchandise was offered to the public by respondent's retail dealers in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made; or

b. If an introductory offer, the price at which respondent in good faith expects to offer such merchandise to the public at a later date through said retail dealers in the trade area where the representation is made and in this instance the basis for the represented saving is clearly stated;

2. Misrepresenting in any manner respondent's retail dealers' actual, bona fide offering price of such merchandise;

3. Representing, in advertising or other promotional materials for dealer use, in any manner that savings are afforded from respondent's retail dealers' former offering price to purchasers of such merchandise unless respondent is able to establish as a fact

that the price at which such merchandise is offered constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual, bona fide price at which such merchandise was offered to the public by respondent's retail dealers in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made;

4. Misrepresenting in any manner the savings afforded purchasers of respondent's merchandise;

5.

a. Representing, directly or by implication that the price of any merchandise is a reduction from respondent's retail dealers' former offering price unless respondent is able to establish as a fact that the price at which such merchandise is now offered constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual, bona fide price at which such merchandise was offered to the public by respondent's retail dealers in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made;

b. Using the statement "Big Factory Authorized Annual Sale—Your Once-A-Year opportunity to Enjoy *Big Savings on* * * *," "for a limited time only * * * SAVE up to $100 on a magnificent COLOR TV * * * during our exciting factory authorized ANNUAL SALE," or any other words or expressions of similar import in catalogs, advertising or other promotional materials containing non-sale items without clearly and conspicuously revealing in immediate conjunction with said representations that non-sale items are contained therein and distinctively identifying said non-sale items;

Provided however, That:

a. Actual sales of an item of merchandise or actually having it physically in the store are not necessarily required to establish a bona fide offering price if, in fact, the item of merchandise is openly and actively offered for sale through dealer brochures or other material referring to the product;

b. The fact that a model number has been changed does not in and of itself foreclose respondent from establishing that an item of merchandise is the same as another for purposes of establishing the truthfulness of any price or savings representation herein, inasmuch as the nature and extent of changes in the item of merchandise, reflected by a change in the model number assigned to such item of merchandise,

might not be such as would destroy the validity of such representations;

B. Representing, directly or by implication that said articles of merchandise are guaranteed without clearly and conspicuously disclosing the nature, conditions and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder: *Provided, however*, That this provision would not be violated where a guarantee representation is made in a catalog and the disclosures of the nature, conditions and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth at one place in the catalog, and each guarantee representation is clearly and conspicuously associated with the page in the catalog where such information is disclosed;

C. Representing, directly or by implication that any offer is limited in point of time or in any manner unless respondent is able to establish as a fact that any represented limitation or restriction was actually imposed and in good faith adhered to: *Provided, however*, That this provision would not be violated where the expression "Annual Sale" is properly utilized, and the duration of the sale is not directly or impliedly limited, but, after the sale, the prices of certain items of merchandise are not raised to their presale level;

D. Furnishing or otherwise placing in the hands of retail dealers or others the means and instrumentalities by and through which they may mislead or deceive the public as to the things or in the manner hereinabove prohibited.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

B. R. PAGE COMPANY ET AL.

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

Docket C-870. Complaint, Dec. 24, 1964—Decision, Dec. 24, 1964

Consent order requiring a mail-order merchant in Watertown, Mass., engaged in selling large size men's clothing and other merchandise, to cease mis-

representing guarantees on mail order merchandise by advertising in catalogs "Money-Back Guarantee Assures You of Complete Satisfaction," when in fact, guarantees were subject to many conditions and limitations not disclosed in the advertisements.

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 B. R. Page Company, a corporation, and Rose Jane (Mrs. Samuel) Robins, individually and as an officer of said corporation, and Bernard N. Abelson, individually, 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 B. R. Page Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 64 Pleasant Street, in the city of Watertown, State of Massachusetts.

Respondent Rose Jane (Mrs. Samuel) Robins is president and treasurer and sole stockholder of the corporate respondent. Respondent Bernard N. Abelson is the son-in-law of respondent Rose Jane (Mrs. Samuel) Robins. The two aforesaid individual respondents formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 sale and distribution of large size men's clothing and other articles of merchandise by mail order to members of the purchasing public.

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

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the

sale of large size men's clothing and other articles of merchandise of the same general kind and nature as that sold by respondents.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their said merchandise, respondents, through the use of catalogs and advertising materials sent to prospective purchasers, make numerous statements and representations respecting their money-back guarantee.

Among and typical, but not all inclusive, of the statements and representations appearing in said advertisements are the following:

B. R. PAGE'S Money-Back Guarantee Assures You of Complete Satisfaction.
We guarantee to please or you will get a Complete Refund, PROMPTLY!
THE B. R. PAGE MONEY-BACK GUARANTEE MEANS WHAT IT SAYS.

PAR. 6. By and through the use of the statements and representations set forth in Paragraph Five hereof and others of similar import not specifically set forth herein, respondents represent, and have represented, directly or by implication, that the full purchase price of any article of merchandise sold by them will be refunded at the option of the purchaser.

PAR. 7. In truth and in fact, the said guarantee is subject to many conditions and limitations so that there are numerous situations and circumstances under which the full purchase price paid for articles of respondents' merchandise will not be refunded by respondents at the option of the purchaser. When, and if, adjustments are made, respondents usually make available to said dissatisfied purchaser credit vouchers which may be used only toward the purchase of other merchandise sold by respondents.

Therefore, the statements and representations referred to in Paragraphs Five and Six hereof were and are false, misleading and deceptive.

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

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

Decision and Order

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

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

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

1. Respondent B. R. Page Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 64 Pleasant Street, in the city of Watertown, State of Massachusetts.

Respondent Rose Jane (Mrs. Samuel) Robins is president and treasurer and sole stockholder of said corporation. Respondent Bernard N. Abelson is the son-in-law of Rose Jane (Mrs. Samuel) Robins. Their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents B. R. Page Company, a corporation, and Rose Jane (Mrs. Samuel) Robins, individually and as an officer of said corporation, and Bernard N. Abelson, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of clothing or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Using the expression "Money-Back Guarantee Assures You of Complete Satisfaction" or similar representations unless respondents do in fact refund the full purchase price of an article of merchandise at the option of the purchaser and 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.

2. Representing, directly or by implication, that any of respondents' articles of merchandise are 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.

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

IN THE MATTER OF

WATUMULL BROTHERS, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-871. Complaint, Dec. 24, 1964—Decision, Dec. 24, 1964

Consent order requiring a Honolulu, Hawaii, importer and manufacturer of wearing apparel, namely saris, to cease violating the Flammable Fabrics Act by importing, manufacturing, selling or transporting into commerce dangerously flammable wearing apparel.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Watumull Brothers, Ltd., a corporation, and Jhamandas Watumull, Sundri R. Watumull, and Gulab Watumull, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics 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 Watumull Brothers, Ltd., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Hawaii. Respondents Jhamandas Watumull, Sundri R. Watumull and Gulab Watumull are officers of the corporate respondent and formulate, direct and control the policies, acts and practices of the said corporate respondent.

Respondents are importers, manufacturers and retailers of wearing apparel with their office and principal place of business located at 1162 Fort Street, Honolulu, Hawaii.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold or offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned above were saris.

PAR. 3. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, and which fabric had been shipped and received in commerce, as the terms "article of wearing apparel," "fabric" and "commerce" are defined in the Flammable Fabrics Act.

Among the articles of wearing apparel mentioned above were saris.

PAR. 4. The acts and practices of respondents herein alleged were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder and as such constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs

proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act; and

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

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

1. Respondent Watumull Brothers, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii with its office and principal place of business located at 1162 Fort Street, city of Honolulu, State of Hawaii.

Respondents Jhamandas Watumull, Sundri R. Watumull, and Gulab Watumull are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondent Watumull Brothers, Ltd., a corporation, and its officers, and respondents Jhamandas Watumull, Sundri R. Watumull, and Gulab Watumull, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1.

(a) Importing into the United States; or

(b) Manufacturing for sale, selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which, under Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

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

IN THE MATTER OF

PICCINA, LTD., ET AL.

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

Docket C-872. Complaint, Dec. 24, 1964—Decision, Dec. 24, 1964

Consent order requiring a New York City importer and seller of children's knitwear to cease violating the Wool Products Labeling Act by misbranding certain knitted sweaters as "Hand Knitted" when they were made by machines, and to cease furnishing false guaranties.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Piccina, Ltd., a corporation and Carl Villa and John J. Villacci, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 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 Piccina, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the

State of New York with its principal place of business located at 130 West 34th Street, New York, New York. Individual respondents Carl Villa and John J. Villacci are officers of said corporate respondent. The said individual respondents, cooperate in formulating, directing, and controlling the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter referred to. The address of said individual respondents is the same as that of the corporate respondent. Respondents are engaged in the importing and distribution of children's knitwear from Italy.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, wool products, as the terms "commerce" and "wool product" are defined in the said Act.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged, in violation of Section 4(a)(1) of the said Wool Products Labeling Act of 1939.

Among such misbranded wool products, but not limited thereto, were certain knitted sweaters labeled or tagged by respondents as "Hand Knitted," which labels or tags, implied that the wool product was knitted by hand, whereas in truth and in fact said wool products were not knitted by hand but were knitted through the use of machines.

PAR. 4. The respondents furnished false guaranties that certain of their said wool products were not misbranded, when respondents in furnishing such guaranties had reason to believe that the wool products so falsely guaranteed might be introduced, sold, transported, or distributed in commerce, in violation of Section 9(b) of the Wool Products Labeling Act of 1939.

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair or deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Products

Labeling Act of 1939, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Piccina, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 130 West 34th Street, New York, New York.

Respondents Carl Villa and John J. Villacci are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Piccina, Ltd., a corporation and its officers, and Carl Villa and John J. Villacci, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the introduction into commerce, or the offering for sale, sale, transportation, delivery for shipment or distribution in commerce of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from: Misbranding wool products by falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as hand-knitted when in fact such products are not knitted by hand or are knitted with the use in any manner of machines or other mechanical devices.

It is further ordered, That respondents Piccina, Ltd., a corporation and its officers, and Carl Villa and John J. Villacci, individually and as officers of said corporation, and respondents' representatives, agents

and employees, directly or through any corporate or other device do forthwith cease and desist from furnishing a false guaranty that any wool product is not misbranded under the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder when there is reason to believe that any wool product so guaranteed may be introduced, sold, transported or distributed in commerce as the term "commerce" is defined in the aforesaid Act.

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

IN THE MATTER OF

J. B. IVEY & COMPANY

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

Docket C-873. Complaint, Dec. 24, 1964—Decision, Dec. 24, 1964

Consent order requiring a Charlotte, N.C., operator of nine stores engaged in selling fur products, to cease violating the Fur Products Labeling Act by falsely labeling, invoicing, and advertising its fur products, and failing to disclose when furs were bleached, dyed or artificially colored.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that J. B. Ivey & Company, a corporation, hereinafter referred to as respondent has violated the provisions of said Act and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent J. B. Ivey & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina.

Respondent J. B. Ivey & Company is a retailer of fur products with its office and principal place of business located at 127 North Tryon Street, city of Charlotte, State of North Carolina. Said respondent

operates nine retail stores throughout the States of North Carolina, South Carolina, and Florida.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now 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 falsely and deceptively labeled or otherwise falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products which were labeled as "Sable," when the fur contained in such products was, in fact, American Sable.

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

Among such misbranded fur products, but not limited thereto, were fur products without labels, and with labels which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Natural" was not used on labels to describe fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products

Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

3. To show the country of origin of imported furs used in fur products.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on invoices in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Natural" was not used on invoices to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

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

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements, but not limited thereto, were advertisements of respondent which appeared in

issues of the *Orlando Sentinel* and the *Orlando Evening Star*, newspapers published in the city of Orlando, State of Florida; in issues of the *Daytona Beach Evening News*, a newspaper published in the city of Daytona Beach, State of Florida; and in issues of the *Charlotte Observer*, a newspaper published in the city of Charlotte, State of North Carolina.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

1. To show the true animal name of the fur used in the fur product.

2. To show that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in that certain of said fur products were falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised as "Broadtail," thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb," when in truth and in fact they were not entitled to such designation.

PAR. 10. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required, in violation of Rule 10 of the said Rules and Regulations.

(b) The term "Natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 11. In advertising fur products for sale, as aforesaid, respondent made pricing claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondent in making such claims and representations failed to maintain full and adequate rec-

ords disclosing the facts upon which such pricing claims and representations were based, in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent J. B. Ivey & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 127 North Tryon Street, in the city of Charlotte, State of North Carolina.

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

ORDER

It is ordered, That respondent J. B. Ivey & Company, a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, selling, advertising

or offering for sale in commerce, or transporting or distributing any fur product; or from selling, advertising, offering for sale, transporting or distributing, any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act:

1. Which is falsely or deceptively labeled or otherwise identified as to the name or designation of the animal or animals that produced the fur contained in the fur product.

2. Unless each such product has securely affixed thereto a label:

(a) Correctly showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

(b) Setting forth the term "Natural" as part of the information required to be disclosed on such labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

(c) Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

(d) Setting forth the item number or mark assigned to a fur product.

3. Which has affixed to any such product a label:

(a) Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with non-required information.

(b) Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.

It is further ordered, That respondent J. B. Ivey & Company, a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce,"

"fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

4. Failing to set forth on invoices the item number or mark assigned to fur products.

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of any fur product, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Falsely or deceptively identifies any such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

3. Fails to set forth the term "Broadtail Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

4. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

C. Making claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act

unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

THE PURE OIL COMPANY ET AL.*

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF SEC. 2(a) OF THE CLAYTON AND THE FEDERAL TRADE COMMISSION ACTS

Dockets 6640, 6898, 7567, 8537. Complaints, Sept. 26, 1956—Decision, Dec. 28, 1964

Order vacating the initial decisions and dismissing the complaints charging four major marketers of gasoline with anti-competitive practices, and announcing a comprehensive industrywide inquiry into the marketing and other competitive problems of the gasoline industry.

COMPLAINT

SEPTEMBER 26, 1956

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating, the provisions of subsection (a) of Section 2 of the Clayton Act (15 U.S.C., Section 13) as amended by the Robinson-Patman Act, approved June 19, 1936, and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45), 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 with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Pure Oil Company is a corporation organized, existing and doing business under and by virtue of the laws

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*And the following related cases: The Texas Company, Docket No. 6898; Standard Oil Company (Indiana), Docket No. 7567; and Shell Oil Company, Docket No. 8537.