thereafter distributes any of said products under any of respondent's brand names or labels.

II

It is further ordered, That within sixty (60) days after this order becomes final, and annually thereafter, respondent shall furnish to the Federal Trade Commission a verified written report setting forth the manner and form in which it intends to comply, is complying, or has complied with paragraph I of this order.

III

It is further ordered, That in the event the Commission issues any order or rule which is less restrictive than the provisions of paragraph I of this order, in any proceeding involving the merger or acquisition of a snack food or milling or cereal company, then the Commission shall, upon the application of General Mills reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraph into conformity with the less stringent restrictions imposed upon respondent's competitors.

IV

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

GREEN & ROTHMAN, ET AL.

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

Docket C–1502. Complaint, Mar. 11, 1969—Decision, Mar. 11, 1969

Consent order requiring a New York City manufacturing furrier to cease misbranding and falsely invoicing its fur products, and furnishing false guaranties that its fur products are not misbranded or falsely invoiced.

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 Green & Rothman, a partnership, and William Green and Zoltan Rothman, individually and as copartners trading as Green & Rothman, hereinafter referred to as respondents, have 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 Green & Rothman is a partnership, existing and doing business under and by virtue of the laws of the State of New York.

Respondents William Green and Zoltan Rothman are individual copartners trading as Green & Rothman.

Respondents are manufacturers of fur products with their office and principal place of business located at 214 West 30th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been 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 misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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 with labels 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 misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder inasmuch as information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on labels in abbreviated form, in violation of Rule 4 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 to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 7. 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. 8. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised when respondents in furnishing such guaranties had reason to believe that fur products so falsely guarantied would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and 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 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 Fur Products Labeling 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Green & Rotham in a partnership existing and doing business under the laws of the State of New York, with its office and principal place of business located at 214 West 30th Street, city of New York, State of New York.

Respondents William Green and Zoltan Rothman are individual copartners trading as Green & Rothman 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 Green & Rothman, a partnership, and Willian Green and Zoltan Rothman, individually and as copartners trading as Green & Rothman or any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into com-

merce, 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:

A. Misbranding any fur product by:

1. Representing, directly or by implication, on a label that the fur contained in such fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

3. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in an abbreviated form on a label affixed to such fur product.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, 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 by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

It is further ordered, That the respondents Green & Rothman, a partnership, and William Green and Zoltan Rothman, individually and as copartners trading as Green & Rothman or any other name or names, 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

THE B. F. GOODRICH COMPANY AND TEXACO, INC.
(Formerly The Texas Company)

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

Docket 6485. Complaint, Jan. 11, 1956—Decision, Mar. 12, 1969

Order modifying a cease and desist order dated January 14, 1966, 69 F.T.C. 22, pursuant to a decision and remand of the Supreme Court, 393 U.S. 223, by deleting numbered paragraphs 5 and 6 of the order directed against Texaco, Inc.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the District of Columbia Circuit petitions to review and set aside the order to cease and desist issued herein on January 14, 1966; and that court on September 25, 1967, having rendered its opinion setting aside the Commission's order; and the Supreme Court of the United States on December 16, 1968, having issued its opinion reversing in part the judgment of the United States Court of Appeals for the District of Columbia Circuit and remanding the case to that court for enforcement of the Commission's order to cease and desist with the exception of numbered paragraphs 5 and 6 of that portion of the order directed against Texaco; and the Supreme Court on January 10, 1969, having forwarded its judgment in lieu of mandate to the court of appeals; and the court of appeals on February 25, 1969, having issued its judgment in accordance with the mandate of the Supreme Court;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified by deleting numbered paragraphs 5 and 6 of that portion of the order directed against Texaco.

It is further ordered, That respondents, The B.F. Goodrich

Company, a corporation, and The Texas Company, a corporation, shall within sixty (60) days after service upon them of this order, file with the Commission reports in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Chairman Dixon not participating.

IN THE MATTER OF

WASSNER SPORTSWEAR MFG., INC., ET AL.

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

Docket C–1503. Complaint, Mar. 13, 1969—Decision, Mar. 13, 1969

Consent order requiring four affiliated New York City importers and manufacturers of wearing apparel to cease misbranding their wool products and falsely advertising their textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 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 Wassner Sportswear Mfg., Inc., Gotham Men's & Boys' Wear, Inc., Olympic Shirts, Inc., and Lustberg, Nast & Co., Inc., corporations, and Isidor Wassner, David Wassner and Joseph Wassner, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Wassner Sportswear Mfg., Inc., Gotham Men's & Boys' Wear, Inc., Olympic Shirts, Inc., and Lustberg, Nast & Co., Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their office and principal place of business located at 31 West 27th Street, New York, New York.

Respondents Isidor Wassner, David Wassner and Joseph Wassner are officers of the aforesaid corporations. They formulate, direct and control the acts, practices and policies of the said corporations. Their office and principal place of business are the same as that of the corporate respondents.

Respondents import, manufacture and distribute wool and textile fiber products.

PAR. 2. Respondents now and for some time last past, have manufactured for introduction into commerce, 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 Wool Products Labeling Act of 1939.

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 stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Also among such misbranded wool products, but not limited thereto, were men's jackets containing interlining material stamped, tagged, labeled, or otherwise identified as "90% Acrylic, 10% Other Fibers" whereas, in truth and in fact, such interlining material contained woolen fibers together with substantially different fibers and amounts of fibers than represented.

Also among such wool products, but not limited thereto, were men's jackets containing interlining material stamped, tagged, labeled, or otherwise identified as "90% Reprocessed wool, 10% other fibers" whereas, in truth and in fact, such interlining material contained substantially different amounts and types of fibers than as represented.

PAR. 4. 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 and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among said misbranded wool products, but not limited thereto, were certain men's jackets 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 per centum of said total fiber weight of (1) wool; (2) reprocessed

wool; (3) re-used wool; (4) each fiber other than wool when said percentage by weight of such fiber was 5 per centum or more; and (5) 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 respect.

The generic names of manufactured fibers established in Rule 7 of the Regulations promulgated under the Textile Fiber Products Identification Act were not used in naming such fibers in required information, in violation of Rule 8(b) of the aforesaid Rules and Regulations.

Among such misbranded wool products but not limited thereto were certain men's jackets with labels on or affixed thereto which described a portion of the fiber content as Orlon without using the generic name of said fiber, "acrylic."

PAR. 6. 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.

PAR. 7. Respondents now and for some time last past have been engaged in the introduction, the manufacture for 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 have sold, offered for sale, and advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have 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. 8. Certain of such textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, or assist, directly or indirectly in the sale or offering for sale of such

products failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products but not limited thereto were men's jackets which were falsely and deceptively advertised by means of a "catalogue" distributed by respondents throughout the United States in that the true generic names of the fibers contained in such textile fiber products were not set out in said catalogue.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that the said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. Fiber trademarks were used in advertising textile fiber products without the full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in the said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

B. Fiber trademarks were used in advertising textile fiber products containing more than one fiber and such trademarks did not appear in the required fiber content information in immediate proximity and conjunction with the fibers in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

PAR. 10. The acts and practices of the respondents as set forth in Paragraphs Eight and Nine 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 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, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Wassner Sportswear Mfg., Inc., Gotham Men's & Boys' Wear, Inc., Olympic Shirts, Inc., and Lustberg, Nast & Co., Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 31 West 27th Street, New York, New York.

Respondents Isidor Wassner, David Wassner and Joseph Wassner are officers of the aforesaid corporations and their address is the same as that of the said corporations.

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 Wassner Sportswear Mfg., Inc., Gotham Men's & Boys' Wear, Inc., Olympic Shirts, Inc., and Lustberg, Nast & Co., Inc., corporations, and their officers, and Isidor Wassner, David Wassner and Joseph Wassner, individually and as officers of said corporations, 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, delivery for shipment or shipment, 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:

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

2. Failing to securely affix to or place on each such wool product a stamp, tag, label, or other means of identification correctly 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. Failing to set forth the generic names of manufactured fibers established in Rule 7 of the Regulations promulgated under the Textile Fiber Products Identification Act, in naming such fibers in required informations on stamps, tags, labels, or other means of identification attached to wool products.

It is further ordered, That respondents Wassner Sportswear Mfg., Inc., Gotham Men's & Boys' Wear, Inc., Olympic Shirts, Inc., and Lustberg, Nast & Co., Inc., corporations, and their officers, and Isidor Wassner, David Wassner and Joseph Wassner, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture 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 falsely and deceptively advertising textile fiber products by:

1. Making any representations, directly or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label, or other means of identification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using a fiber trademark in an advertisement without a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of the Order to each of their operating divisions.

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

OPPORTUNITY PUBLISHING COMPANY

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

Docket C-1504. Complaint, Mar. 13, 1969—Decision, Mar. 13, 1969

Consent order requiring a Chicago, Ill., publisher of a monthly trade magazine to cease misrepresenting, exaggerating and changing the copy material supplied it by its advertisers in the preparation of its 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 Opportunity Publishing Company, a corporation, hereinafter referred to as the 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. Opportunity Publishing 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 850 North Dearborn Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent Opportunity Publishing Company is now, and for some time last past has been, engaged in the preparation, advertising, publishing and sale and distribution of a monthly trade magazine known as "Salesman's Opportunity," which is primarily designed for readers connected with the direct-selling industry. In the course and conduct of its business, respondent offers advertising space in said monthly publication for sale to various firms which wish to recruit direct-selling personnel to promote the sale of their respective products. To induce the sale of such advertising space, respondent now prepares, and for some time last past has prepared, for publication in its monthly magazine, advertising materials to promote the sale of its customers' products.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, copies of its monthly trade magazine, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has 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 its aforesaid business, respondent engages, and has engaged, in the following described unfair and false, misleading and deceptive acts and practices.

In the development and preparation of advertising material for its advertising customers, respondent includes, and has included, statements and representations not supplied by the advertisers and omits, and has omitted, facts and information supplied by the advertiser from such advertisements. In a substantial number of instances said inclusions or omissions have resulted in

advertisements which directly or by implication, vary in substantial degree from the facts supplied to respondent. In a substantial number of other instances, respondent has been supplied with matter and information which it knew or should have known were false or grossly exaggerated and has included such matter and information in the preparation and development of said advertisements.

Therefore, the aforesaid acts and practices were and are unfair and false, misleading and deceptive.

PAR. 5. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been and now is in substantial competition, in commerce, with corporations, firms and individuals engaged in the preparation of advertising and promotional material and in the sale of a monthly trade magazine of the same general kind and nature as that sold by respondent.

PAR. 6. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of the products advertised in respondent's publications by reason of said erroneous and mistaken belief and of respondent's services. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondent from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 7. The aforesaid acts and practices of the 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 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 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 Deceptive Practices 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 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Opportunity Publishing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 850 North Dearborn Street, Chicago, Illinois.

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 Opportunity Publishing Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of its services in the preparation, composition or publication of advertising or promotional material for its "Salesman's Opportunity" magazine or other publications in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Preparing or assisting in the preparation of any advertisement which does not fully and accurately state and rep-

resent both directly and indirectly the pertinent information and material supplied to respondent, and the pertinent facts otherwise known to respondent.

2. Preparing or assisting in the preparation of any advertisement which contains matter or information which the respondent knew or should have known to be false or misleading.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

SYDELL WORONOFF TRADING AS SYDELL GOWNS

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

Docket C-1505. Complaint, Mar. 13, 1969—Decision, Mar. 13, 1969

Consent order requiring a New York City retailer of ladies' ready-to-wear garments to cease misbranding its wool, textile fiber, and fur products and falsely invoicing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification 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 Sydell Woronoff, an individual trading as Sydell Gowns, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification Act and 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 Sydell Woronoff is an individual trading under the name of Sydell Gowns.

Respondent is engaged in business as a retailer of ladies' ready-to-wear garments, including wool, textile and fur products, with his office and principal place of business located at 4 West 56th Street, New York, New York.

PAR. 2. Respondent, now and for some time last past, has introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by respondent 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 wool products without labels, or with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was five per centum or more; and (5) the aggregate of all other fibers.

PAR. 4. Respondent, now and for some time last past, and with the intent of violating the provisions of the Wool Products Labeling Act of 1939, after shipment to him in commerce of wool products, has, in violation of Section 5 of said Act, removed or caused or participated in the removal of the stamp, tag, label or other identification required by said Act to be affixed to such wool products, prior to the time such wool products were sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4(a)(2) of said Act.

PAR. 5. The acts and practices of the respondent 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 com-

merce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. Respondent is now and for some time last past has been 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, 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. 7. Certain of said textile fiber products were 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, was a textile fiber product with a label which failed:

1. To disclose the true generic name of the fibers present; and
2. To disclose the percentages of such fibers by weight.

PAR. 8. Respondent, in violation of Section 5(a) of the Textile Fiber Products Identification Act has caused and participated in the removal of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products Identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefor labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged in Paragraphs Seven and Eight 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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 10. Respondent is now and for some time last past has been engaged in the introduction into commerce, and in the sale,

advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 11. 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 were fur products without labels, or with labels which failed to give any of the information required under the various subsections of Section 4(2) of the Fur Products Labeling Act.

PAR. 12. 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:

1. 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.

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

PAR. 13. Certain of said fur products were falsely and deceptively invoiced by respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder, in that respondent failed to issue invoices to purchasers of said fur products containing all the information required under said Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

PAR. 14. 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:

1. 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.

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

PAR. 15. Respondent, in violation of Section 3(d) of the Fur Products Labeling Act, has removed and has caused and participated in the removal of, prior to the time fur products subject to the provisions of said Act were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products, without substituting therefor labels conforming to Section 4 of said Act and in the manner prescribed by Section 3(e) of said Act.

PAR. 16. The aforesaid acts and practices of respondent, as herein alleged in Paragraphs Eleven through Fifteen are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and 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, the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification Act and the Fur Products Labeling 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agree-

ment on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sydell Woronoff is an individual trading under the name of Sydell Gowns, with his office and principal place of business located at 4 West 56th Street, New York, New York.

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 Sydell Woronoff, individually and trading as Sydell Gowns, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or offering for sale, sale, transportation, distribution, delivery for shipment or shipment, 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 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 respondent Sydell Woronoff, individually and trading as Sydell Gowns, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing or participating in the removal of, the stamp, tag, label or other identification required by the Wool Products Labeling Act of 1939 to be affixed to wool products subject to the provisions of such Act, prior to the time any such wool product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4(a)(2) of said Act.

It is further ordered, That respondent Sydell Woronoff, individually and trading as Sydell Gowns, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in con-

nection 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, 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 misbranding such textile fiber products by failing to affix a stamp, tag, label, or other means of identification to each such textile fiber product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondent Sydell Woronoff, individually and trading as Sydell Gowns, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4 of said Act and the Rules and Regulations promulgated thereunder and in the manner prescribed by Section 5(b) of said Act.

It is further ordered, That respondent Sydell Woronoff, individually and trading as Sydell Gowns, or under any other name or names, 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. Misbranding any fur product by:

1. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Failing to set forth the term "natural" as part of the information required to be disclosed on a label under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to set forth on a label the item number or mark assigned to such fur product.

B. 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. 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, or otherwise artificially colored.

3. Failing to set forth on invoices the item numbers or marks assigned to such fur products.

It is further ordered, That respondent Sydell Woronoff, individually and trading as Sydell Gowns, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing or causing or participating in the removal of, prior to the time any fur product subject to the provisions of the Fur Products Labeling Act is sold and delivered to the ultimate consumer, any label required by the said Act to be affixed to such fur products, without substituting therefor labels conforming to Section 4 of said Act and the Rules and Regulations promulgated thereunder, and in the manner prescribed by Section 3(e) of said 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

JACK FEIT, 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–1506. Complaint, Mar. 13, 1969—Decision, Mar. 13, 1969

Consent order requiring a New York City manufacturer of fur trimmed ladies' garments to cease misbranding and falsely invoicing its fur products.

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 Jack Feit, Inc., a corporation, and Jack Feit and Elaine Feit, 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 Jack Feit, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Jack Feit and Elaine Feit are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur trimmed ladies' garments with their office and principal place of business located 530 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past, have been 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 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 with labels which failed:

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

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

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

PAR. 4. Certain of said fur products were misbranded in that labels attached thereto, set forth the name of an animal other than the name or names of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 4(3) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder.

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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth on labels in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) 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.

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 set forth 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. 7. Certain of said fur products were falsely and deceptively invoiced with respect to the name of designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 8. 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.

PAR. 9. The aforesaid acts and practices by respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and 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 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 Fur Products Labeling 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Jack Feit, 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 530 Seventh Avenue, city of New York, State of New York.

Respondents Jack Feit and Elaine Feit 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 Jack Feit, Inc., a corporation, and its officers, and Jack Feit and Elaine Feit, 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 the 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 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. Misbranding fur products by:

1. Failing to affix a label to such fur products showing in words and in figures plainly legible all of the in-

formation required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Setting forth on labels attached to fur products the name or names of any animal or animals other than the name of the animal producing the fur contained in such fur products, as specified in the Fur Products Name Guide and as prescribed by the aforesaid Rules and Regulations.

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

4. Failing to set forth on labels the term "natural" to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

B. 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 by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth on invoices pertaining thereto, the name or names of any animal or animals other than the name of the animal producing the fur contained in such fur product as specified in the Fur Products Name Guide and as prescribed by the Rules and Regulations.

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 an invoice under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe such product which is not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions.

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

HEMPHILL ENTERPRISES, INC., ET AL.

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

Docket C–1507. Complaint, Mar. 13, 1969—Decision, Mar. 13, 1969

Consent order requiring a Los Angeles, Calif., distributor of books, reference services and teaching aids to cease misusing the words "Guild" and "Society," misrepresenting the savings, discounts, or prices of its products, that it is conducting tests or surveys, that any book or service is "free," that its teaching aids have been approved by school authorities, that any school or university has devised or approved its tests or programs, and that it will assist purchasers to obtain scholarships for their children.

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 Hemphill Enterprises, Inc., a corporation, and Jack L. Hemphill and Noel J. Gravino, 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 and in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hemphill Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware.

Respondent Jack L. Hemphill is chairman of the board, chief executive officer and principal stockholder of corporate respondent. Respondent Noel J. Gravino is president of the corporate respondent. Together they formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth.

The offices and principal place of business of both the corporate

and individual respondents are located at 601 North Alvarado Street, Los Angeles, California.

Respondents also do business under the trade names Consumer's Guild and Gerell Society, Incorporated.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of the offering for sale, sale and distribution of books, publications and services, including as examples thereof, Richard's Topical Encyclopedia (15 volumes), Personal Success Library (8 volumes), Child Horizons (5 volumes), "Univox" teaching aids and a question reference service.

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

PAR. 4. In the course and conduct of their business, as aforesaid, respondents sell said books, publications and services at retail to the general public. Sales are made by respondents' agents, representatives or employees, who contact prospective purchasers in their homes or at their places of business. These agents, representatives or employees operate in the usual and customary manner of door-to-door salesmen engaged in the direct sale of their products.

Respondents have formulated, developed and carried out various plans for selling said books, publications and services, including representations that they are introducing:

1. A discount buying service for consumers called variously "Consumer's Guild" or "Gerell Society Incorporated";

2. "Univox" teaching aids, a set of courses described as "an automated speed-learning method"; and

3. A question reference service.

Respondents supply their agents, representatives or employees with printed "sales pitches" and material for use in connection therewith and instruct them to use and follow the same. Said agents, representatives or employees use said printed sales pre-

sentations and material in orally soliciting the purchase of respondents' books, publications and services.

Respondents, in said printed sales presentations and printed material, and respondents' agents, representatives or employees, in the course of their sales talks, make many statements and representations concerning the offer, the trade status and organization of respondents' business, their own status and employment, free merchandise, cost savings, approval and administration by educational institutions, tests, surveys and research, and various educational benefits that will allegedly accrue to prospective customers if they purchase respondents' books, publications and services.

By and through the use of said statements and representations and others similar thereto, but not specifically set forth herein, respondents represent, and have represented, directly or by implication:

1. Through the use of the following trade names separately and in conjunction with various statements and representations made in connection therewith, that they are offering membership in a buying guild for consumers called "Consumer's Guild" or in a buying society for consumers called "Gerell Society, Incorporated"; and that they are a guild or association of persons organized for the mutual benefit of its members or a society of persons having a common interest.

2. That members of said Consumer's Guild or said Gerell Society, Incorporated could regularly purchase merchandise from catalogs supplied by respondents at savings or discounts from 20% to 60% below the prices at which such merchandise has been regularly offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area.

3. That respondents' agents, representatives or employees are engaged in conducting tests, surveys or research programs.

4. That respondents' representatives, agents or employees are calling on families specially selected by the respondents to participate in educational programs.

5. That respondents' books, publications and services are given free in various combination offers, and any payment made by a customer is either for membership in the Consumer's Guild or Gerell Society, Incorporated, or for the maintenance and upkeep of the Univox teaching aids or for the financing or cost of administering reference services or educational programs.

6. That the Univox teaching aids have been approved by local school authorities, and that said courses would soon be widely distributed by respondents to local schools.

7. That children of families participating in said educational programs would be regularly tested by respondents to determine their scholastic progress; that local schools would assist respondents in the administration of said tests and counseling of participating children; that respondents are connected, affiliated or associated with local schools; and that respondents would review and evaluate the report cards of participating children and furnish materials to assist them in any area in which the child may be deficient.

8. That the tests administered to the children of families participating in the educational programs were devised by the Massachusetts Institute of Technology or other educational institutions of higher learning or by the government.

9. That respondents were responsible for administering the testing program which was the basis of and is referred to in a "Crest" toothpaste commercial.

10. That respondents' usual price of books, publications and the reference service supplied to respondents' customers would exceed $1100.

11. That respondents are offering the reference service and educational programs at a reduced, special introductory price to selected test families; and that once the service and programs are made available to the general public, the price would be far in excess of the introductory price.

12. That respondents would assist in obtaining scholarships for children of customers, or that respondents would furnish two or four years of college education for all children of families participating in said educational programs who wanted to and were academically capable of attending college.

13. That respondents' books, publications and the reference service are offered for sale at a specified total amount, payable in annual installments over a ten-year period.

PAR. 5. In truth and in fact:

1. Respondents were not offering membership in a buying guild for consumers or buying society for consumers nor are they a guild or society of persons associated or organized for the mutual benefit of its members or having a common interest. On the contrary, their business is that of selling books, publications and a reference service for the sole profit of respondents.

2. Respondents' customers could not regularly purchase merchandise from catalogs supplied by respondents at savings or discounts from 20% to 60% below the prices at which such merchandise has been regularly offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area. On the contrary, the prices listed in said catalogs for the merchandise are often higher than the said regular retail prices for such merchandise, and in instances when the catalogs do provide savings or discounts from the said regular retail prices, the discount amounts are usually below 20% and never as high as 60%.

3. Respondents' agents, representatives or employees, when calling on prospective customers, were not conducting tests, surveys or research programs but made such representations for the purpose of gaining entrance into prospects' homes with the ultimate objective of making a sale of respondents' books, publications and services.

4. Respondents' representatives, agents or employees were not calling on families specially selected to participate in any educational programs. Furthermore, respondents were not conducting or connected with any educational programs. Their sales agents, representatives or employees would generally go from door-to-door for the purpose of selling respondents' books, publications and services and sell to whomever would purchase the same.

5. The books, publications and services distributed by respondents are not given free in any of respondents' combination offers. The cost of all said books, publications and services are included in the contract price of each combination offer. Any charges respondents make for membership in the Consumer's Guild or Gerell Society, Incorporated, or for the Univox teaching aids or for the reference services are substantially less than the total contract prices, and any such charges were not for or related to any educational programs.

6. The Univox teaching aids have not been approved by local school authorities, nor have respondents distributed said machines to local schools. Said representations were made with the ultimate objective of selling responents' books, publications and services.

7. Respondents have not tested the scholastic progress of children of respondents' customers; respondents have not made arrangements with local schools to obtain their assistance in the administration of any tests or counseling of the children of respondents' customers, nor are they in any manner connected,

affiliated or associated with local schools; nor have respondents reviewed or evaluated the report cards of children of respondents' customers or supplied materials to assist said children in any areas in which the children are deficient. Said representations were made for the ultimate objective of selling respondents' books, publications and services.

8. Neither the Massachusetts Institute of Technology, any other educational institution of higher learning nor the government, devised any educational tests for respondents.

9. Respondents were not responsible for administering any tests or obtaining data forming the basis for any "Crest" toothpaste commercial nor are respondents connected with any individual, firm, institution or government, in any survey, test, experiment or research program. Said representations were made for the sole purpose of gaining entrance into prospects' homes with the ultimate objective of making a sale of respondents' books, publications and services.

10. Respondents' usual price of all books, publications and the reference service received by respondents' customers would not exceed $1100. Respondents have regularly sold said products or services for substantially less than $1100.

11. Respondents do not offer the reference service and educational programs at a reduced, special or introductory price to selected test families; nor do respondents in good faith intend to increase the price of the reference service and educational programs at a later date. Furthermore, respondents have regularly offered their reference service and educational programs to the general public at prices substantially similar to those designated as reduced, special or introductory prices.

12. Respondents have not nor do they in good faith intend to assist customers in obtaining scholarships for children of respondents' customers, nor do respondents furnish any financial assistance or secure any amount of college education for the child of respondents' customers.

13. In a substantial number of instances, the purchase contract when completed and delivered to the purchaser requires the payment of a greater sum than that represented and contains a requirement that said amount be paid in consecutive monthly installments.

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

PAR. 6. In the course and conduct of their business, respondents have been, and now are, in substantial competition, in commerce, with corporations, individuals and firms in the sale of books, publications and services of the same general kind and nature as those sold by the respondents.

PAR. 7. The use by respondents of the aforementioned 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 and services by reason 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 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules and which agreement further provides that if it is accepted by the Commission the Commission may without further notice to the respondents issue its complaint and enter its decision in disposition of this proceeding; and

1. Respondent Hemphill Enterprises, Inc., is a corporation

organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 601 North Alvarado Street, Los Angeles, California.

Respondents Jack L. Hemphill and Noel J. Gravino 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 Hemphill Enterprises, Inc., a corporation, and its officers, and Jack L. Hemphill and Noel J. Gravino, 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 offering for sale, sale or distribution of books, publications or question reference services, or any other products or services, 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 respondents are offering membership in a guild or society of persons associated or organized for the mutual benefit of its members or having a common interest; or using the word "Guild" or the word "Society" or any word or words of similar import or meaning in or as part of respondents' trade or corporate name; or misrepresenting, in any manner, their trade or business status or the nature of their business.

2. Representing, directly or by implication, that discounts or savings are available to respondents' customers or prospective customers purchasing merchandise from any source or through any material or plan supplied by respondents: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented amount of discounts or savings are realized by respondents' customers from the prices at which such merchandise has been regularly offered for sale and sold in the recent regular course of business by a substantial number of the principal retail outlets in the same trade area.

3. Representing, directly or by implication, that respond-

ents' representatives, agents or employees are making or conducting a test, survey or research program or that the purpose of the call or interview by respondents' representatives, agents or employees relates to other than the sale of books, publications or services; or misrepresenting, in any manner, the purpose of the call or interview by respondents' representatives, agents or employees with prospective purchasers.

4. Representing, directly or by implication, that any prospective purchaser to whom an offer to sell respondents' books, publications, other products or services is made is specially selected, or is a member of a specially selected test family or is one of an otherwise limited or restricted group.

5. Representing, directly or by implication:

(a) That any books, publications, other products or services are given free or without additional cost or obligation to the purchaser.

(b) That any payment or the amount thereof, received from a customer is for:

1. Membership in any guild or society of persons associated or organized for the mutual benefit of its members or having a common interest;

2. The maintenance or upkeep of Univox courses or any other services or products: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any payment or amount thereof, received from a customer is for the maintenance or upkeep of Univox courses or any other services or products;

3. The financing or cost of administering any reference service or educational program: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any payment or amount thereof, received from a customer is for the financing or cost of administering any reference service or educational program.

(c) That any payment is for other than the purchase of respondents' books, publications, or other products or services.

6. Representing, directly or by implication, that "Univox"

teaching aids or other products, sold or offered for sale by respondents, are approved by local school authorities or will be distributed by respondents to schools.

7. Representing, directly or by implication:

(a) That respondents test or will test, review or evaluate the scholastic progress of children of respondents' customers.

(b) That schools or any board or committee thereof, will assist respondents in the administration of tests or the evaluation of the scholastic progress or counseling of children of respondents' customers, or that respondents are in any way connected, affiliated or associated with schools, or with any board or committee thereof.

(c) That respondents evaluate or will evaluate the report cards of participants' children or supply or will supply educational materials to customers designed to assist them or their children in any area in which they are educationally deficient.

8. Representing, directly or by implication, that the Massachusetts Institute of Technology or any other educational institution of higher learning or board or committee thereof, devised, approved or sponsored any test or educational program offered by respondents; or misrepresenting, in any manner, the persons or organizations which assisted or participated in the formulation of any tests or programs offered by respondents to prospective purchasers.

9. Representing, directly or by implication, that respondents are connected with any individual, firm, institution or government agency, in any survey, test, experiment or research program or have administered any survey, test, experiment or research program.

10. Representing, directly or by implication, that the respondents' regular price of any products or services when singly offered for sale is any amount in excess of the price at which such products or services have been sold by respondents in substantial quantities for a substantial period of time, in the recent regular course of their business; or that the regular price of any products or services offered in combination is any amount in excess of the price at which such products or services have been sold by respondents in combination for a substantial period of time in substantial quantities, in the recent regular course of their business.

11. Representing, directly or by implication, that any price for respondents' products or services is a reduced or special price or an introductory price: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any price designated by the words "special" or "reduced" or by words of similar import or meaning is in fact significantly less than the price at which respondents have openly and actively offered such products or services for sale, in good faith for a reasonably substantial period of time, in the recent regular course of their business or to establish that any price for the products or services designated by the word "introductory" price or by words of similar import is less than the price to which respondents in good faith intend to increase the price in the trade area at a later date and that within a reasonable period of time thereafter the reduced price was in fact so increased in each such trade area.

12. Representing, directly or by implication, that respondents will assist in obtaining any scholarship for children of customers or that respondents will provide or assist in arranging financial assistance for the education of the child of a customer; or misrepresenting, in any manner, the financial assistance offered or furnished by respondents.

13. Misrepresenting, in any manner, the price of respondents' products or services, the amount or number of installment payments or the period of time during which a contract of purchase may be discharged.

14. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

CONSUMERS PRODUCTS OF AMERICA, INC., ET AL.

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

Docket 8679. Complaint, Mar. 1, 1966—Decision, Mar. 14, 1969

Order modifying an earlier order, 72 F.T.C. 533, dated September 7, 1967, which charged a seller of encyclopedias with certain deceptive practices, pursuant to a decision of the Court of Appeals, Third Circuit, 400 F. 2d 930, dated September 12, 1968, by eliminating from paragraph 10 the provisions requiring respondent to dismiss or withhold commissions from its salesmen.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Third Circuit a petition to review and set aside the order to cease and desist issued herein on September 7, 1967 [72 F.T.C. 533], and the court on September 12, 1968, having issued its opinion modifying paragraph 10 thereof and as modified, affirming and directing enforcement of the Commission's order and on October 11, 1968, having issued its judgment enforcing the Commission's order as modified and a petition for certiorari having been filed by respondents and denied by the United States Supreme Court:

Now, therefore, it is hereby ordered, That the aforesaid order of the Commission to cease and desist be, and hereby is modified to read as follows:

It is ordered, That respondents Consumers Products of America, Inc., a corporation, and its officers, Eastern Guild, Inc., a corporation, and its officers, Keystone Guild, Inc., a corporation, and its officers, and Jack Weinstock, Nat Loesberg, Jack Gerstel and Louis Tafler, individually and as officers of said corporations, 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 encyclopedias, books or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme or de-

vice wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise or services.

2. Discouraging the purchase of, or disparaging, any products or services which are advertised or offered for sale.

3. Representing, directly or by implication, that any products or services are offered for sale when such offer is not a bona fide offer to sell such products or services.

4. Representing, directly or indirectly, that said merchandise will be delivered to prospective purchasers for a five-day free examination or for any other period of time without clearly and conspicuously revealing all of the conditions, obligations or requirements, pertaining to said offer.

5. Representing, directly or indirectly, that any merchandise is "free" or is delivered to or may be retained by purchasers or prospective purchasers without clearly and conspicuously revealing all of the terms, conditions or obligations necessary to the receipt and retention of said merchandise.

6. Representing, directly or indirectly, that any offer is limited as to time: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such time restriction or limitation was actually imposed and in good faith adhered to by respondents.

7. Representing, directly or indirectly, that The First National Fidelity Co., Metropolitan Credit Bureau, or Vogt Collection Agency or any other fictitious name, or trade names owned in whole or in part by respondents or over which respondents exercise any direction or control, are independent, bona fide financing, collection or credit reporting agencies; or representing in any other manner that delinquent accounts have been turned over to a bona fide, separate collection agency or to a credit reporting agency for collection or for any other purpose, unless respondents in fact have turned such accounts over to an agency of the nature represented.

8. Using the trade name "Educational Foundation" in connection with respondents' enterprises or representing, in any other manner, that respondents operate any

nonprofit organization engaged in educational work.

9. Misrepresenting, in any manner, the kind of offer made to sell merchandise, the terms, limitations or conditions of any offer, or the nature or status of respondents' business or of their collection operations.

10. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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

IN THE MATTER OF

SIVIA AULETTE, INC., ET AL.

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

Docket C-1508. Complaint, Mar. 18, 1969—Decision, Mar. 18, 1969

Consent order requiring a New York City retailer of ladies' ready-to-wear garments to cease misbranding its wool and textile fiber products and failing to keep required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 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 Sivia Aulette, Inc., a corporation, and Sivia Montague and Milton Montague, 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 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 Sivia Aulette, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Sivia Montague and Milton Montague are officers of the said corporation. They formulate, direct, and control the acts, practices and policies of said corporation.

Respondents are retailers of ladies' ready-to-wear garments, both wool and textile, with their office and principal place of business located at 661 Madison Avenue, New York, New York.

PAR. 2. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were 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 wool products without labels, or with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was five per centum or more; and (5) the aggregate of all other fibers.

PAR. 4. Respondents, now and for some time last past, and with the intent of violating the provisions of the Wool Products Labeling Act of 1939, after shipment to them in commerce of wool products, have, in violation of Section 5 of said Act, removed or caused or participated in the removal of the stamp, tag, label or other identification required by said Act to be affixed to such wool products, prior to the time such wool products were sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4(a)(2) of said Act.

PAR. 5. 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.

PAR. 6. Respondents are now and for some time last past have been 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 have 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 have 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. 7. Certain of said textile fiber products were misbranded by respondents 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, was a textile fiber product with a label which failed:

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

2. To disclose the percentages of such fibers by weight; and

3. To disclose the name of the country where the imported textile fiber product was processed or manufactured.

PAR. 8. Respondents, in violation of Section 5(a) of the Textile Fiber Products Identification Act have caused and participated in the removal of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products Identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefor labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 9. Respondents in substituting a stamp, tag, label or other identification pursuant to Section 5(b) have not kept such

records as would show the information set forth on the stamp, tag, label or other identification that was removed and the name or names of the person or persons from whom such textile fiber product was received, in violation of Section 6(b) of the Textile Fiber Products Identification Act.

PAR. 10. The acts and practices of respondents as set forth in Paragraphs Seven through Nine are in violation of the Textile Fiber Products Identification 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.

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, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sivia Aulette, 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 661 Madison Avenue, New York, New York.

Respondents Sivia Montague and Milton Montague 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 Sivia Aulette, Inc., a corporation, and its officers, and Sivia Montague and Milton Montague, 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 offering for sale, sale, transportation, distribution, delivery for shipment or shipment, 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 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 Sivia Aulette, Inc., a corporation, and its officers, and Sivia Montague and Milton Montague, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing or participating in the removal of, the stamp, tag, label or other identification required by the Wool Products Labeling Act of 1939 to be affixed to wool products subject to the provisions of such Act, prior to the time any such wool product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4(a)(2) of said Act.

It is further ordered, That respondents Sivia Aulette, Inc., a corporation, and its officers, and Sivia Montague and Milton Montague, 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, 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 misbranding such textile fiber products by failing to affix a stamp, tag, label, or other means of identification to each such textile fiber product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Sivia Aulette, Inc., a corporation, and its officers, and Sivia Montague and Milton Montague, 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 removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4 of said Act and the Rules and Regulations promulgated thereunder and in the manner prescribed by Section 5(b) of said Act.

It is further ordered, That respondents Sivia Aulette, Inc., a corporation, and its officers, and Sivia Montague and Milton Montague, 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 failing to keep such records when substituting a stamp, tag, label, or other identification pursuant to Section 5(b) as would show the information set forth on the stamp, tag, label, or other identification that was removed, and the name or names

of the person or persons from whom such textile fiber product was received.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

SHELTON HOSIERY MILLS, 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-1509. Complaint, Mar. 24, 1969—Decision, Mar. 24, 1969

Consent order requiring a Shelton, Conn., men's hosiery mill to cease misbranding and falsely guaranteeing its wool products.

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 Shelton Hosiery Mills, Inc., a corporation, and Henry J. De Marco, Alexander H. De Marco and Joseph R. De Marco, 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 Shelton Hosiery Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business located at 549 Howe Street, Shelton, Connecticut.

Respondents Henry J. De Marco, Alexander H. De Marco and

Joseph R. De Marco are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of the corporate respondent.

Respondents are engaged in the manufacture and sale of men's woolen hosiery. They ship and distribute such products to various customers in the United States.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, 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 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 wool products, namely men's hosiery, which contained substantially different amounts and types of fibers than as represented.

PAR. 4. 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 wool products, namely men's hosiery, with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. Respondents have furnished a false guaranty that 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. 6. 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 methods of competition and unfair and deceptive acts and practices 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 Wool Products Labeling Act of 1939; 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in §2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Shelton Hosiery Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 549 Howe Street, Shelton, Connecticut.

Respondents Henry J. De Marco, Alexander H. De Marco and Joseph R. De Marco 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 Shelton Hosiery Mills, Inc., a corporation, and its officers, and Henry J. De Marco, Alexander H. De Marco, and Joseph R. De Marco, 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 offering for sale, sale, transportation, distribution, delivery for shipment or shipment, 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:

A. Misbranding such products by:

1. Falsely and deceptively stamping, 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, 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.

B. Furnishing a false guaranty that their wool products are not misbranded under the provisions of the Wool Products Labeling Act, where 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 respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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.

Complaint

IN THE MATTER OF

YOUNGSTOWN SPECTRUM CORPORATION, ET AL.

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

Docket C-1510. Complaint, Mar. 24, 1969—Decision, Mar. 24, 1969

Consent order requiring two affiliated Youngstown, Ohio, marketers of radio and television tube testing devices and supplies to cease using exaggerated earning claims, deceptive offers of assistance in obtaining profitable locations, and other misrepresentations to recruit franchised distribution of their products.

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 Youngstown Spectrum Corporation, a corporation, International Distribution Center, Inc., a corporation, and Edward M. Gallagher, individually and as an officer of said corporations, 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. Respondents Youngstown Spectrum Corporation and International Distribution Center, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio. Respondent Edward M. Gallagher is an individual and an officer of said corporations. He formulates, directs and controls the acts, practices and policies of the said corporate respondents including the acts and practices hereinafter set forth. The principal office and place of business of the respondents is located at 5335 Market Street, Youngstown, Ohio. Respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in advertising, offering for sale, selling and distributing of radio and television tube testing devices and the tubes, supplies and equipment for use in connection therewith, and franchises or distributorships relating thereto to purchasers at retail.

Said tube testing devices are located in various places such as hardware stores, drug stores and the like where the public will be induced to test the tubes from their radio and television sets and purchase replacements for defective tubes.

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

PAR. 4. Respondents' method of doing business is to insert advertisements in the classified advertisement section of newspapers and periodicals. Persons responding to said classified advertisements are then contacted by respondents or their employees, agents or representatives who display to the prospective purchaser a variety of promotional material and make various oral representations regarding the aforementioned franchises or distributorships and undertake to sell and do in many instances sell said products and franchises to such persons.

PAR. 5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of said products, franchises or distributorships, respondents have made various statements and representations concerning said franchises, distributorships, and the business opportunity afforded. Such representations have been made and continue to be made by respondents, their employees, agents or representatives, through advertising and promotional material furnished by respondents to said employees, agents or representatives, through advertisements inserted in newspapers and periodicals, through letters and other advertising literature circulated generally among the purchasing public, and through oral representations made by respondents, their employees, agents or representatives.

Typical and illustrative of the newspaper advertisements used by respondents, but not all inclusive thereof, is the following:

GUARANTEED PROFIT STRUCTURE
RCA
SYLVANIA
GENERAL ELECTRIC
WESTINGHOUSE

PART TIME WORK FOR ADDED INCOME
EXCEPTIONAL HIGH EARNINGS

RELIABLE party or persons, male or female, wanted for this area to handle the world-famous RCA, SYLVANIA, G.E. AND WESTINGHOUSE TELEVISION AND RADIO TUBES. Sold through our latest modern tube testing and merchandising units. Will not interfere with your present employment.

To qualify, you must have $3,750 cash available immediately, car, 5 spare hours weekly. Earning potential could be $500 per mo. in your spare time. More, full time. This company will extend financial assistance to full time if desired. Do not answer unless fully qualified for time and investment.

- INCOME STARTS IMMEDIATELY
- BUSINESS IS SET UP FOR YOU
- WE SECURE LOCATIONS
- SELLING, SOLICITING OR EXPERIENCE NOT NECESSARY

For personal interview, company representative in Cleveland Sun. thru Wed. Call A.M. or P.M.

MR. E. GALLAGHER
267–1708
Area Code 216

Interested parties outside the Cleveland area may also call.

PAR. 6. Through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set out herein, separately and in connection with statements and representations orally made by respondents, their employees, agents and representatives to prospective purchasers, respondents have represented, and do represent, directly or by implication, to the purchasing public, that:

1. Persons investing $3,750 in said products, franchises or distributorships will earn a net income of $100 to $500 per month.

2. Purchasers of respondents' products, franchises or distributorships must own an automobile, furnish references, have special qualities or be specially selected to qualify for purchase of respondents' products, franchises or distributorships.

3. The net profits from the operation of said products, franchises or distributorships will be sufficient to return the investment of the purchaser within one year or some other stated period of time.

4. Respondents have conducted a machine location survey of the area and that they obtain top sales producing locations for the placement of tube testing machines purchased from them which assure profits in the represented amounts.

5. No selling, soliciting or experience are or will be required.

6. If the purchaser becomes dissatisfied, or for any reason wishes to go out of business, the respondents will either accept

a return of the equipment and articles of merchandise purchased from them or will help the purchaser to resell them so that the purchaser will recoup his investment.

7. The purchaser's investment in the franchise, distributorship, or articles of merchandise is secure.

8. The purchaser will receive an exclusive territory for the sale of the product involved and that no other franchisee or distributor of respondents' products will be located in the said exclusive territory.

PAR. 7. In truth and in fact:

1. Income in the foregoing amount will not be realized by persons investing the sum indicated. Persons investing the foregoing amount in said franchises, distributorships and articles of merchandise purchased from respondents receive little, if any, net profits from their investment.

2. It is not necessary for purchasers of respondents' products, franchises or distributorships to own an automobile, to furnish references, to have special qualities or to be specially selected to qualify for purchase of respondents' products, franchises, or distributorships. The only requirement is that the purchase price be paid.

3. Few, if any, purchasers realize a return of their investment within one year or any other stated period of time.

4. Respondents seldom, if ever, conduct or have available a machine location survey of the prospective purchaser's area and do not obtain top income producing locations for tube testers which assure profits in the represented amounts; but place most of the machines in locations which have very little consumer traffic. The locations secured by respondents are usually undesirable, unsuitable, and unprofitable.

5. Purchasers of respondents' products, franchises or distributorships are required to do selling and soliciting and to have experience. It is frequently necessary to place machines in other locations because of the unprofitable nature of the locations selected by respondents and like any other business venture experience is required.

6. Respondents do not repurchase the franchise, distributorship or articles of merchandise purchased from them and do not help the purchaser to resell them regardless of the purchaser's reasons for going out of business.

7. The purchaser's investment is not secure. Said business

operation is subject to all of the hazards of small businesses of this type.

8. Respondents on a substantial number of occasions have sold more than one company franchise or distributorship and products in the same territory.

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

PAR. 8. In the course and conduct of their busniess, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of the same or similar products.

PAR. 9. 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 mistaken and erroneous belief.

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

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 respondents that the law has been

violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record and having duly considered the comment filed thereafter pursuant to § 2.34(b) of its Rules, now, in further conformity with the procedure prescribed in such Rule, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Youngstown Spectrum Corporation and International Distribution Center, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio, with their office and principal place of business located at 5335 Market Street, Youngstown, Ohio.

Respondent Edward M. Gallagher is an individual and officer of said corporations and his address is the same as that of said corporations.

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 Youngstown Spectrum Corporation, a corporation, International Distribution Center, Inc., a corporation, and their officers, and Edward M. Gallagher, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of radio or television tube testing devices or the tubes, supplies or equipment for use in connection therewith, or of any other products, or of any franchises or distributorships connected therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

(1) Persons investing $3,750.00 in respondents' said tube testing devices and the tubes, supplies or equipment for use in connection therewith, or the franchises or distributorships

ate conjunction therewith, the average net or gross earnings realized by a substantial number of purchasers from machines in locations obtained by respondents or through their assistance under circumstances similar to those of the purchaser to whom the representation is made.

(7) Selling, soliciting or experience is not required of those investing in any product or business offered by respondents: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that selling, soliciting or experience is not required for the successful operation of such business.

(8) Respondents will repurchase or otherwise assist in the disposition of products, franchises or distributorships purchased from respondents.

(9) The purchasers' investment in the franchise, distributorship or articles of merchandise purchased from respondents is secure.

(10) Purchasers of respondents' products, franchises or distributorships, are granted exclusive territories within which their products may be placed for operation; or that sales will not be made to other persons in such territories: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that respondents do give an exclusive franchise or distributorship purchased from them.

It is further ordered, That the respondents shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, franchises, or distributorships and secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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.

relating thereto, will earn a net income of $100 to $500 per month.

(2) Purchasers of respondents' products, franchises or distributorships will earn any stated or gross or net amount; or representing, in any manner, the past earnings of said purchasers unless in fact the past earnings represented are those of a substantial number of purchasers and accurately reflect the average earnings of these purchasers under circumstances similar to those of the purchaser or prospective purchaser to whom the representation is made.

(3) Purchasers of respondents' products, franchises or distributorships must own an automobile, furnish references, have special qualities or be specially selected to qualify for purchase of respondents' products, franchises or distributorships: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented qualification or requirements are in fact fully enforced as to each purchaser.

(4) The net profits from the operation of said business, franchises or distributorships will be sufficient to return the investment of the purchaser within one year or within any other period of time: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the said investment is usually and fully recovered by a substantial number of purchasers in the represented time under circumstances similar to those of the purchasers or prospective purchasers to whom the representation is made.

(5) Respondents, their agents, representatives or employees have conducted or have available a machine location survey or other potential business survey in the prospective purchasers trade area: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that a bona fide survey of the kind represented has in fact been conducted or is available.

(6) Respondents, their agents, representatives or employees will obtain satisfactory or profitable locations for the machines purchased from them: *Provided, however,* That nothing herein shall be construed to prohibit respondents from truthfully and nondeceptively representing that they have obtained locations or assisted in obtaining locations if respondents clearly and conspicuously disclose, in immedi-

IN THE MATTER OF

ALL-STATE INDUSTRIES OF NORTH CAROLINA, INC., ET AL.

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

Docket 8738. Complaint, June 19, 1967—Decision, Apr. 1, 1969

Order requiring five affiliated companies selling residential aluminum siding and other home improvement products to cease using "bait and switch" tactics and fictitious pricing, falsely guaranteeing and implying that it manufactures its products, and failing to disclose that its sales contracts may be negotiated to a finance company.

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 All-State Industries of North Carolina, Inc., ABC Storm Window Co., Inc., All-State Industries of Tennessee, Inc., All-State Industries, Inc., and All-State Industries of Illinois, Inc., corporations, and William B. Starr, individually and as an officer of said corporations, 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 All-State Industries of North Carolina, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 1130 West Lee Street, Greensboro, North Carolina. The aforesaid company was originally incorporated and did business at the above address as ABC Jalousie Company of North Carolina, Inc.

Respondent ABC Storm Window Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 1128 West Lee Street, Greensboro, North Carolina.

Respondent All-State Industries of Tennessee, Inc., was origi-

nally incorporated and engaged in business as Starr Industries, Inc. It is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 910 Eighth Avenue, South, Nashville, Tennessee.

Respondent All-State Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 660 Eleventh Street, NW., Atlanta, Georgia.

Respondent All-State Industries of Illinois, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2111 State Street, East St. Louis, Illinois.

Respondent William B. Starr is the principal officer of all of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is 1130 West Lee Street, Greensboro, North Carolina.

Respondent William B. Starr has in the past operated, and in some instances still operates, his business of installing home improvement products through the following corporations: Southern Installers, Inc., 1130 West Lee Street, Greensboro, North Carolina, incorporated in the State of North Carolina to handle North Carolina installations; Northern Installation Company, Inc., 2111 State Street, East St. Louis, Illinois, incorporated in the State of Illinois to handle Illinois installations; Tru-Fit Installation Company, Inc., 910 Eighth Avenue, South, Nashville, Tennessee, incorporated in the State of Tennessee to handle Tennessee installations; and United Installation Company, Inc., 660 Eleventh Street, NW., Atlanta, Georgia, incorporated in the State of Georgia to handle Georgia installations.

Respondent William B. Starr is also the principal officer of Empire Acceptance Corporation, 1130 West Lee Street, Greensboro, North Carolina, a finance company to which certain contracts and instruments are negotiated by companies operated by respondent Starr; and he is the principal officer of Mail-Outs, Inc., of the same address, a company formed to handle the circulation of respondents' direct mail advertising and promotional literature.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and

distribution of residential aluminum siding, storm windows, storm doors and various other home improvement products to the public and in the installation thereof.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, advertising and promotional material, contracts and other business papers and documents to be shipped and transmitted to, from and between their several places of business, located as aforesaid, and to prospective purchasers and purchasers thereof located in various other States of the United States other than the State of organization, 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 for the purpose of inducing the purchase of their home improvement products, respondents have made numerous statements and representations, through oral statements made to prospective purchasers by their salesmen or representatives, in newspaper advertisements, and in direct mail advertising circulars and other promotional material, respecting the nature of their offer and their business, price, time limitations, their guarantee and the quality of their products.

Typical and illustrative of respondents' published advertising representations, but not all inclusive thereof, are the following:

SAVE ON SPECIAL OFFER
ALUMINUM SIDING SALE
FOR A LIMITED TIME ONLY
COMPLETELY INSTALLED as low as
$229.00
NO EXTRAS

* * * * * * *

BIG SAVINGS TO ALL HOME OWNERS
LIMITED OFFER
ALL ALUMINUM COMBINATION STORM WINDOWS
$5.55 EACH
Minimum of 8 Windows
BONUS STORM DOOR $14.95
With purchase of 8 or more windows

* * * * * * *

ALL-ALUMINUM SIDING SALE!
SAVE ON ALL-STATE'S SPECIAL OFFER
Our Regular $500
NOW ONLY $249.00 Completely Installed
NO EXTRAS

* * * * * * *

Save $251.00 now on our regular $500.00 Aluminum Siding. This special offer is being made to stimulate business in your area. The sale is limited. First inquiries will receive preference. (Home owners only.)

* * * * * * *

ALUMINUM PATIOS
3-DAY
AWNINGS
CARPORTS
SALE

We manufacture 17 types of Aluminum and Awnings. All Prices Included Complete Installation And Support Columns!

PATIO ROOFS	PORCH ROOFS	CARPORTS
9′ x 10½′ $59.50	8′ x 12′ $57.50	8′ x 20′ $79.00

* * * * * * *

BUY DIRECT FROM OUR FACTORY
100% Aluminum—Any Size Up to A
Giant 8 x 20
PATI-O-PORT
FULL PRICE
$79.00
Installation Included

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, and through oral statements made by their salesmen or representatives, respondents represent, and have represented, directly or by implication, that:

1. The offer set forth in said advertisements is a bona fide offer to sell the advertised products at the prices and on the terms and conditions stated.

2. Respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling prices.

3. Respondents' advertised offer is made for a limited time only.

4. Respondents manufacture the home improvement products which they sell, and respondents sell their home improvement products directly from their factory.

5. Homes of prospective purchasers are specially selected as model homes for installation of respondents' aluminum siding; after installation such homes will be used for demonstration and advertising purposes by respondents; and, as a result of allowing their homes to be used as models, purchasers will be granted reduced prices or will receive allowances, discounts or commissions.

6. Certain of respondents' home improvement products are unconditionally guaranteed or are guaranteed for life.

7. Respondents' siding materials will never require repainting.

PAR. 6. In truth and in fact:

1. Respondents' said advertised offers are not genuine or bona fide offers but are made for the purpose of obtaining leads as to persons interested in the purchase of respondents' products. After obtaining such leads, respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, they write a contract calling for the sale of the advertised product and the prospective purchaser is permitted to execute that contract. Immediately thereafter, respondents' salesmen or representatives disparage the advertised product and otherwise discourage the purchase thereof and attempt to sell and frequently do sell a different and more expensive product instead of the product for which the customer originally contracted.

2. Respondents' products are not being offered for sale at special or reduced prices, and savings are not thereby afforded purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

3. Respondents' advertised offer is not made for a limited time only. Said merchandise is advertised regularly at the represented prices and on the terms and conditions therein stated.

4. Respondents do not manufacture the home improvement products which they sell, and respondents do not own a factory from which their home improvement products are shipped directly.

5. Homes of prospective purchasers are not specially selected as model homes for installation of respondents' aluminum siding; after installation such homes are not used for demonstration or advertising purposes by respondents; and purchasers, as a result of allowing their homes to be used as models, are not granted reduced prices, nor do they receive allowances, discounts or commissions.

6. Respondents' home improvement products are not unconditionally guaranteed or guaranteed for life. Such guarantee as may be provided is subject to numerous terms, conditions and

limitations respecting the duration of the guarantee and the extent and manner of performance thereunder.

7. Respondents' siding materials will require repainting.

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

PAR. 7. In the course and conduct of their business, as aforesaid, respondents or their salesmen in a substantial number of cases fail to disclose orally at the time of sale and in writing on any conditional sales contract, promissory note or other instrument executed by the purchaser, with such conspicuousness and clarity as is likely to be read and observed by the purchaser, that such conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party and that if such negotiation or assignment is effected, the purchaser will then owe the amount due under the contract to the finance company or third party and may have to pay this amount in full whether or not he has claims against the seller under the contract for defects in the merchandise, nondelivery or the like.

The aforesaid failure of the respondents or their representatives to reveal said facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the respondents will not negotiate or transfer such documents, as aforesaid, and that legal obligations and relationships will exist only between such respondents and purchasers and will remain unchanged and unaltered, and has the tendency and capacity to induce a substantial number of such persons to enter into contracts or execute promissory notes for the purchase of respondents' products of which facts the Commission takes official notice.

In truth and in fact, respondents frequently and in a substantial number of cases and in the usual course of their business sell, transfer and assign said notes and contracts to finance companies or third parties so as to bring about the aforementioned changes in legal obligations and relationships.

Therefore, the failure of respondents or their representatives to reveal such facts to prospective purchasers, as aforesaid, was and is an unfair and false, misleading and deceptive act and practice.

PAR. 8. In the conduct of their business, at all times mentioned

herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum siding and other home improvement products of the same general kind and nature as those sold by respondents.

PAR. 9. 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. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. John T. Walker in support of the complaint.

Mr. Joseph J. Lyman and *Mr. Jacob A. Stein* for the respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER [1]

AUGUST 14, 1968

The Federal Trade Commission issued its complaint against respondents on June 19, 1967, charging them with violations of Section 5 of the Federal Trade Commission Act. The respondents filed an answer in which they denied that they had violated Section 5 of the Federal Trade Commission Act. The complaint alleged that the respondents had made certain representations in commerce pertaining to their home improvement products—aluminum siding, storm windows, awnings, carports, patios and porch roofs. The complaint also alleged that respondents' claims were false and misleading in several respects considered hereafter.

This matter is before the hearing examiner for final consideration on the complaint, answer, evidence, and the proposed findings of fact, conclusions, and briefs filed by counsel for the respondents

[1] During the course of hearings, it was stipulated and agreed that the proper title of the corporation, All-State Industries of North Carolina, Inc., is "All-State Industries of N.C., Inc." It was also stipulated that any order entered against All-State Industries of N.C., Inc., ABC Storm Window Co., Inc. and William B. Starr, individually and as an officer of said corporations, would also be entered against the other corporate respondents named in the complaint.

and counsel in support of the complaint. Consideration has been given to the proposed findings of fact and conclusions and briefs submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected; and the hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusions drawn therefrom, and issues the following order:

FINDINGS OF FACT

1. Respondent All-State Industries of N.C., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 1130 West Lee Street, Greensboro, North Carolina. The aforesaid company was originally incorporated and did business at the above address as ABC Jalousie Company of North Carolina, Inc. (Admitted, see Resp. Prop. Finding One.)

2. Respondent ABC Storm Window Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 1128 West Lee Street, Greensboro, North Carolina. (Admitted, see Resp. Prop. Finding One.)

3. Respondent All-State Industries of Tennessee, Inc., was originally incorporated and engaged in business as Starr Industries, Inc. It is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 910 Eighth Avenue, South, Nashville, Tennessee. (Admitted, see Resp. Prop. Finding One.)

4. Respondent All-State Industries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its prinicpal office and place of business located at 660 Eleventh Street, NW., Atlanta, Georgia. (Admitted, see Resp. Prop. Finding One.)

5. Respondent All-State Industries of Illinois, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2111 State Street, East St. Louis, Illinois. (Admitted, see Resp. Prop. Finding One.)

6. Respondent William B. Starr has in the past operated, and in some instances still operates, his business of installing home improvement products through the following corporations:

Southern Installers, Inc., 1130 West Lee Street, Greensboro, North Carolina, incorporated in the State of North Carolina to handle North Carolina installations; Northern Installation Company, Inc., 2111 State Street, East St. Louis, Illinois, incorporated in the State of Illinois to handle Illinois installations; Tru-Fit Installation Company, Inc., 910 Eighth Avenue, South, Nashville, Tennessee, incorporated in the State of Tennessee to handle Tennessee installations; and United Installations, and United Installation Company, Inc., 660 Eleventh Street, NW., Atlanta, Georgia, incorporated in the State of Georgia to handle Georgia installations. (Admitted, see Resp. Proposed Finding One.)

7. Respondent William B. Starr is also the principal officer of Empire Acceptance Corporation, 1130 West Lee Street, Greensboro, North Carolina, a finance company to which certain contracts and instruments are negotiated by companies operated by respondent Starr; and he is the principal officer of Mail-Outs, Inc., of the same address, a company formed to handle the circulation of respondents' direct mail advertising and promotional literature. (Admitted, see Resp. Prop. Finding One.)

8. Respondents deny that there is any substantial evidence in the record that Mr. William B. Starr, the president of all corporate respondents, participated in any of the activities charged in the complaint to be violative of Section 5 of the Federal Trade Commission Act. (See Resp. Prop. Finding Two; Tr. 386.) This contention must be rejected. It was stipulated in the record that Mr. Starr was the president and principal officer and operator of all of the corporate respondents. This was confirmed by the testimony of Mr. Starr (Tr. 43–44, 86–88, 178–179). The record is clear that Mr. Starr personally executed respondents' guarantees of their products (CX 47; Tr. 126) and that he personally supervised the preparation and distribution of respondents' mail-out advertising and newspaper advertising (Tr. 108). In addition, the testimony of two witnesses directly involves Mr. Starr with the activities charged to be violations of the Federal Trade Commission Act (Tr. 190–191, 287–292). The cases cited by respondents, *Flotill Products, Inc.* v. *FTC*, 358 F. 2d 224 (9th Cir. 1966); *Coro, Inc.* v. *FTC*, 338 F. 2d 149 (1st Cir. 1964), and *Rayex Corp.* v. *FTC*, 317 F. 2d 290 (2nd Cir. 1963), are not determinative that the complaint must be dismissed as to Mr. William B. Starr. In none of these cases was there clear-cut evidence tying in individual officers of the corporations there involved to the

illegal activities charged and found. The record in this matter contains ample evidence of Mr. William B. Starr's direct participation in the practices involved in this proceeding.

The respondents insist that their salesmen are independent contractors and not employees of any of the respondent corporations or Mr. William B. Starr and that consequently their sales activity, if it was illegal, cannot form the basis of any findings against the corporate respondents or Mr. Starr (Resp. Prop. Finding Two). Whether the sales force of approximately 25 salesmen (Tr. 229) are employees or independent contractors is immaterial in this proceeding. It is true that respondents do not pay their salesmen a salary but recompense them with a sales commission supplemented by a drawing account if commissions are not high enough (Tr. 255). However, the charges against respondents are based upon allegedly false claims made in "mail-outs" and other promotional material used by the named respondents. In addition, respondents conduct a sales training program in which the salesmen are given extensive training in the use of bait and switch operations and respondents furnish to these salesmen all of the sample cases, contracts, credit applications and other forms used by such salesmen (Tr. 264–265).

There is ample authority that it is a violation of Section 5 of the Federal Trade Commission Act to place in the hands of others, even independent third parties, the means of deception. See for example, *Goodman* v. *FTC*, 244 F. 2d 584 (9th Cir. 1957).

9. Consequently, it is found that respondent William B. Starr is the principal officer of all of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is 1130 West Lee Street, Greensboro, North Carolina.

10. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of residential aluminum siding, storm windows, storm doors and various other home improvement products to the public and in the installation thereof. (Admitted, see Resp. Prop. Finding Three.)

11. In the course and conduct of their business, respondents now cause and for some time last past have caused their said products, advertising and promotional material, contracts and other business papers and documents to be shipped and transmitted to, from, and between their several places of business,

located as aforesaid, and to purchasers thereof located in various other States of the United States other than the State of organization; and they 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. (Admitted, see Resp. Prop. Finding Three.)

12. The principal charge leveled at respondents in the complaint is that they have engaged in a bait and switch operation in selling their products, including aluminum siding, storm windows and doors, aluminum patios, porch roofs and carports. Respondents' principal method of advertising products is through mail-outs to people whose names are obtained from telephone directories. Return mail-cards are included in the mail-outs, and when prospective customers fill in the cards and return them to respondents, the cards then become leads and are turned over to the salesmen. Thereafter the salesmen make appointments with the prospective customers and attempt to sell them whatever products they are interested in. The respondents generally have two classes of products that they sell. The first is what respondents term the "ADV" products and the second, the "PRO" products. The "PRO" products are not generally advertised. The "ADV" products are the cheaper products and are extensively advertised. Typical of the advertisements of the "ADV" products are the following:

ALL-ALUMINUM SIDING SALE! * * *
SAVE ON A B C'S SPECIAL OFFER * * *
Our Regular $500.
NOW ONLY $249.00 Completely Installed
NO EXTRAS

(CX 3, see also CX 1 & 2.)

ALL-ALUMINUM SIDING SALE! * * *
SAVE
ON ALL-STATE'S SPECIAL OFFER
COMPLETELY INSTALLED
THIS $500.00 VALUE
NOW ONLY 249.00
COMPLETELY INSTALLED
NO EXTRAS! ! ! (CX 2.)

3-DAY SALE
100% ALUMINUM COMBINATION
STORM WINDOWS
As Low As
$5.55 Each
Minimum of 8
Installation
Available

All Aluminum Storm Door $14.95
With Purchase of 8 or more Windows
(CX 11, see also CX 6, 9.)

Save $251.00 now on our regular $500.00 Aluminum Siding. This special offer is being made to stimulate business in your area. The sale is limited. First inquiries will receive preference. (Home owners only.)
(CX 2, 3.)

ALUMINUM PATIOS
3-DAY
AWNINGS
CARPORTS
SALE

We manufacture 17 types of Aluminum and Awnings.

* * * * * * *

All Prices Include Complete Installation and Support Columns!

PATIO ROOFS	PORCH ROOFS	CARPORTS
8′ x 10½′	8′ x 12′	8′ x 20′
Alum. Installed	Installed	Alum. Installed
As Low As $59.50	As Low As $57.50	As Low As $79.00

(CX 8, 10, see also 70C.)

13. The respondents' sales approach or "pitch" is to sell the "ADV" product and obtain a signed contract (CX 50A–J, 51A–O, 52A–R, 53A–N, 54A–Z2, 56A–R). Along with the contract, the salesman attempts to establish the payment terms for the "ADV" product and obtain a signed note and deed in blank for the price thereof. After obtaining the signed contract with a prospective customer, the salesman then shows the customer samples of the "ADV" product and immediately proceeds to disparage the "ADV" product pointing out all possible deficiencies in the "ADV" product whether real or imaginary. The salesman then produces a sample of the "PRO" product, goes into a lengthy comparison of the two products, and ends up, wherever possible, selling the "PRO" product to the customer in place of the "ADV" product. The respondents also provide a substantial incentive to their salesmen to operate in the fashion outlined above, since the salesmen receive no commission on the "ADV" product but do receive their regular commission on the "PRO" product (Tr. 248–254). The respondents do, however, install the "ADV" product if a customer insists or demands its installation in compliance with the contract for the "ADV" product (Tr. 250, 411–412).

14. The testimony of the witnesses who appeared in this proceeding fully supports the fact that respondents' bait and switch methods of selling their products as described in respondents' training manuals were carried out. First, the testimony of Mr.

John E. Moseley, a former sales trainee, described his experiences as a trainee and prospective salesman for respondents. His experiences were that he was trained in the above-described bait and switch operation and that he was actually present with some of respondents' salesmen while the operation was put into effect. Moreover, he tied in Mr. Starr directly to the training program because he testified that Mr. Starr personally advised him that the manual was very important, that it was to be adhered to, and that he had had a part in putting the manual together (Tr. 190–191). Second, a Commission investigator testified (Tr. 286, *et seq.*) as to statements made to him by Mr. Starr during the course of the investigation that outlined the bait and switch method of operation which again tied in Mr. Starr directly to the program. Third, a number of consumer witnesses appeared and testified as to their experiences in dealing with the respondents' sales representatives (Tr. 317, *et seq.;* 332, *et seq.;* 341, *et seq.;* 416, *et seq.*). In addition, it was stipulated that a number of additional witnesses could have appeared and testified in the same manner as the four consumer witnesses who did appear and testify. This stipulation covered an additional twenty-three witnesses. Consequently, the record contains substantial proof evidencing the use by respondents of the bait and switch method of selling their products described above.

15. The record establishes that the advertising claims made by respondents in their "mail-outs" and other advertising materials are not truly offers at special or reduced prices from respondents' regular selling prices for a limited time only. With minor changes from time to time, respondents' prices for their "ADV" products have always remained substantially the same and do not represent any reduction from previously established prices. Nor is there any true time limit that a particular price may be in effect. The respondents' "PRO" products do not have any established prices but are sold at the highest price obtainable from an individual customer.

16. Respondents' salesmen make use of a number of gimmicks whereby the original prices quoted for respondents' products can be reduced. These include advising a prospective customer that his home would be used by respondents as a model home for demonstration and advertising purposes, thereby permitting respondents to grant a lower price than originally quoted (CX 48, 49). The record establishes that in general respondents do not use these homes for demonstration or advertising purposes but

that they make these statements solely for the purpose of enabling a salesman who has met with sales resistance at a higher price to quote a lower price for respondents' products and to have some apparently reasonable basis for the reduction in price. The use by respondents of this device is clearly false and misleading because a customer who is not skilled in the prices of these products, as most are not, is easily misled. The whole import of this practice is that the customer is led to believe that he is receiving something special in the form of a discount from some normal or regular price, when this is in fact false.

17. In their advertising the respondents claim that they manufacture their products and that they sell the products they manufacture directly from their factory to their customers (CX 4A, 8, 10, 25, 26, 29). Respondents do not manufacture their products and do not have a factory (Tr. 98).

18. In its mail-outs respondents advertise that their products are "100% Guaranteed Genuine Aluminum Siding" (CX 70B, 72). Respondents' actual guarantee, when presented to a customer, is not an unconditional 100% guarantee. The respondents' latest guarantee contains the following limitations:

ALL-STATE INDUSTRIES LIFETIME GUARANTEE

All-State Industries, Inc. hereby warrants to the original purchaser of the Aluminum Siding that any part or parts thereof which prove to be defective in workmanship and materials will be replaced or repaired without charge, but from no other causes, at a price not to exceed 1/60th of the then current regular price for replacement of the siding for each month the siding has been in service, not to exceed 36/60th of the then current regular price for replacement of the lifetime of the house during the continued ownership of the original purchaser.

* * * * * * *

Damage by fire, windstorm, accidental breakage, or by circumstances, beyond our control are not covered by this warranty. This warranty is in lieu of all other warranties, implied or expressed, and All-State Industries, Inc. will neither assume nor authorize any person to assume in our name any other liability or obligation in connection with this aluminum siding installation. (CX 71.)

Respondents' salesmen, as a part of their selling presentation, guarantee that respondents' aluminum siding is "unconditionally guaranteed against fading, chipping, peeling or cracking." This statement is incorporated into some of the contracts with customers (CX 23, 29). There is no evidence that this guarantee is not honored by respondents. Consequently, there can be no finding, as requested by counsel in support of the complaint, that this statement is in any way false or deceptive. However,

respondents' present guarantee, quoted above, is not a 100 percent guarantee or a full guarantee as claimed but is merely an agreement to replace siding under certain circumstances on a pro rata basis, and therefore respondents present guarantee claims are false and misleading.

19. The complaint charges that respondents' advertising is false and misleading in that respondents claim that their aluminum siding materials will never require repainting. The evidence in the record on this point is very meager. The only claims by respondents that the examiner can find and that are cited by counsel in support of the complaint are in respondents' mail-outs which contain statements to the effect "You get permanent beauty with no extra charge" (CX 70B and 72), "PERMANENT BEAUTY," and "enjoy everlasting home beauty" (CX 1A–B, 2, 3). There are no claims made in any of the advertising of record that respondents' siding will never require repainting. While respondents' siding is painted when installed, Mr. Starr, when he testified, admitted that the siding would fade and lose its original appearance after a considerable period of time and that waxing or washing might be necessary to retain the original finish (Tr. 413–415). However, this only established that some reasonable care by the homeowner of the respondents' siding is necessary in order to obtain the full benefits claimed by respondents in their advertising. The evidence of record neither establishes that respondents claim that their siding will never need repainting nor even that repainting is ever necessary if reasonable care is taken of the siding.

20. The final charge in the complaint is that respondents falsely advertise easy credit to finance the installation of their home improvement products. This charge is based upon the fact that at the time respondents' sales representatives enter into contracts with prospective buyers they obtain an executed conditional sales contract, promissory note, or other instrument of indebtedness if the prospective buyer desires to purchase on credit. After obtaining these executed negotiable instruments, the respondents generally discount or transfer them to finance companies after obtaining satisfactory credit approval. At the time one of these instruments is obtained from a customer, the customer is not advised of the fact that the instrument may be transferred to a third-party credit organization. The basis for the charge of deception is that the customer is led to believe by respondents' failure to advise him with regard to the transfer

that the respondents themselves are financing the installation and that the customer will not owe the amount due on the note to a third party against whom the customer will have no defenses in the event respondents fail to carry out properly the original contract.

21. The only evidence in the record to support this charge is that the respondents do sell or transfer these papers to third parties and that they do not advise their customers that this will be done. In the examiner's opinion, this is not sufficient evidence on which to find that this practice is false and misleading. There is no testimony from any witness that he was or could have been misled by this practice. There is no evidence that the respondents have failed to carry out in proper fashion the installation of the materials contracted for by the customer. There is no evidence that respondents have been able to avoid their legal responsibility to provide proper installation of the exact materials contracted for as a result of selling or transferring these papers. The record contains no evidence that respondents or their representatives ever said the negotiable papers would not be transferred to a third party or that they ever said the respondents themselves operated as finance organizations. It is possible that customers may have been misled by this practice, but the record contains no such evidence and any finding of violation, by the examiner, would of necessity be based upon pure speculation that deception in some instances may occur. Consequently, this charge in the complaint must be dismissed.

22. In the conduct of their business, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of aluminum siding and other home improvement products of the same general kind and nature as those sold by respondents.

CONCLUSIONS

1. Respondents have engaged in deceptive advertising by using their advertised products primarily to bait prospective customers. Respondents then attempt to switch and do switch these customers to the respondents' more expensive products. In this process respondents have disparaged their cheaper products in order to sell the more expensive products.

2. Respondents have engaged in deceptive advertising by claiming that their products are being offered at special or reduced prices.

3. Respondents have engaged in deceptive advertising by claiming that their advertised offers are made for a limited time only.

4. Respondents have engaged in deceptive advertising by claiming that their advertised products are manufactured by respondents and sold from respondents' factories.

5. Respondents have engaged in deceptive advertising and selling practices by advising prospective customers that their homes may be used as model homes for advertising purposes and thereby granting a reduction from prices originally quoted.

6. Respondents have engaged in deceptive advertising by claiming that their products are unconditionally guaranteed.

7. 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.

8. The aforesaid acts and practices of respondents, as herein found, 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.

9. The record does not contain reliable, probative, and substantial evidence that respondents have engaged in deceptive advertising or claims to the effect that their aluminum siding materials will never require repainting.

10. The record does not contain reliable, probative, and substantial evidence that respondents have engaged in deceptive practices as a result of respondents' failure to advise customers or prospective customers that any conditional sales contracts, promissory notes, or other evidences of indebtedness may or will be transferred to third-party credit organizations.

ORDER TO CEASE AND DESIST

It is ordered, That respondents All-State Industries of N.C., Inc., ABC Storm Window Co., Inc., All-State Industries of Tennessee, Inc., All-State Industries, Inc., and All-State Industries of Illinois, Inc., corporations, and their officers, and William B. Starr, individually and as an officer of each of said corporations,

and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution, or installation of residential aluminum siding, storm windows, storm doors, or any other products, or in connection with their business in such products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of other merchandise or services.

2. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale, either before or after a contract has been signed for the purchase of such merchandise or services.

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

5. Representing, directly or by implication, that any price for respondents' products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

6. Representing, directly or by implication, that any offer to sell products is limited as to time, or is limited in any other manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented limitation as to time or other represented restriction is actually imposed and adhered to by respondents.

7. Representing, directly or by implication, that respondents manufacture any of the home improvement products which they sell, or that respondents sell their home improvement products directly from their factory; or misrepresent-

ing, in any manner, the nature or scope of respondents' business.

8. Representing, directly or by implication, that the home of any of respondents' customers, or prospective customers, has been selected to be used or will be used as a model home, or otherwise, for advertising or sales purposes.

9. Representing, directly or by implication, that any allowance, discount, or commission is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed to be used for model homes or demonstration purposes.

10. Representing, directly or by implication, that any of respondents' products 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 respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents shall deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and shall secure from each such salesman or other person a signed statement acknowledgeing receipt of said order.

It is further ordered, That the allegations of subparagraphs 7 of Paragraphs Five and Six of the complaint and the allegations of Paragraph Seven of the complaint be dismissed.

Opinion of the Commission

APRIL 1, 1969

By Elman, *Commissioner:*

I

The complaint in this proceeding, issued June 19, 1967, charged that respondents had violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by engaging in unfair methods of competition and in unfair and deceptive acts and practices in the advertising, sale, and installation of various home improvement products, including aluminum siding and storm windows. The respondents filed an answer denying the allegations of the complaint. Before hearing, the respondents, on February

1, 1968, moved to dismiss the complaint on the ground, *inter alia,* that the Commission was disqualified from performing a judicial function in this case because of an alleged prejudgment of the facts. The Commission denied this motion, fully stating the reasons for its denial in an opinion issued on March 18, 1968.

After full evidentiary hearing, the examiner issued an initial decision on August 14, 1968, in which he upheld most of the charges of the complaint and dismissed the other charges; he entered an order as proposed by complaint counsel on those charges which were sustained. The case is before us on the cross-appeals of respondents and complaint counsel.

Respondents contend that the evidence is insufficient to support a finding that the respondents engaged in "bait and switch" sales techniques; that the examiner erred in finding liability against the individual respondent, William B. Starr; and that the Commission should reconsider and grant respondents' prior motion to dismiss the complaint. Complaint counsel, on the other hand, argue that the examiner did not go far enough in his finding that respondents misrepresented the nature of their guarantees and that the examiner also erred in not finding that respondents misrepresented certain characteristics of their residential aluminum siding products and in not finding that respondents engaged in unfair and deceptive acts relating to their financing practices.

II

The facts are adequately set out in the initial decision; to the extent they are not inconsistent with findings made in this opinion, the examiner's findings are hereby adopted as those of the Commission.

All-State Industries of North Carolina, Inc., is a corporation organized and doing business under the laws of the State of North Carolina, with its principal place of business at 1130 West Lee Street, Greensboro, North Carolina.[1] ABC Storm Window Co., Inc., is a corporation also organized and doing business under the laws of the State of North Carolina, with its principal place of business at 1128 West Lee Street, Greensboro, North Carolina. Respondent William B. Starr was at all relevant times the presi-

[1] This company was originally incorporated and did business at the designated address as ABC Jalousie Company of North Carolina, Inc.

dent and principal officer and operator of all the corporate respondents.[2]

Respondents are engaged in the advertising, sale, and installation of residential aluminum siding, storm windows, storm doors and various other home improvement products. The complaint alleges, and the examiner found, that respondents have engaged in what is termed a "bait and switch" operation in the advertising and sale of their products.[3]

Respondents' principal method of advertising is through mail-outs which include return mail cards. These mail-out advertisements promote an inexpensive product within respondents' product line which they refer to as an "ADV" product. The ADV product is ostensibly offered at a substantial reduction from a fictitious "regular" price for a fictitious "limited" time. Respondents also sell a more expensive line of similar products which they term "PRO" products. When prospective customers return the mail cards to respondents, the cards are turned over to salesmen who make appointments with the prospective customers. Respondents' sales approach is to attempt to obtain a signed contract for sale of the ADV product along with a signed note for the price of the product and a deed in blank. After obtaining the signed contract, the salesman proceeds to disparage the ADV product by pointing out a multitude of deficiencies in the product.[4] The salesman then produces a sample of the PRO product, embarks upon a lengthy discussion of its virtues in contrast with the deficiencies of the ADV and concludes, wherever possible, by selling the PRO product to the customer in place of the ADV product.[5] Respondents do, however, install the ADV product if a customer insists or demands its installation in accordance with the ADV contract.

Respondents argue that the evidence is insufficient to establish that they had engaged in an unlawful bait and switch

[2] It was stipulated during the course of the hearing that any order entered against All-State Industries of North Carolina, Inc., ABC Storm Window Co., Inc., and William B. Starr, individually and as an officer of said corporations, would also be entered against the other corporate respondents named in the complaint.

[3] See, *e.g.*, *In the Matter of Royal Construction Company*, F.T.C. Dkt. 8690 (Initial Decision, January 30, 1967, adopted by the Commission, June 1, 1967); *Pati-Port, Inc.* v. *F.T.C.*, 60 F.T.C. 35 (1962), *aff'd* 313 F. 2d 103 (4th Cir. 1963); *Luxury Industries, Inc.* 59 F.T.C. 442 (1961); *Clean-Rite Vacuum Stores, Inc.*, 51 F.T.C. 887 (1955).

[4] In addition to oral representations, this disparagement of the ADV may include exhibiting a sample of the ADV in very poor condition and a "guarantee" of the ADV which grossly disparages the product and authorizes respondent "to install this cheap grade of aluminum [product] * * *" (R. 336; CX 60–CX 62B).

[5] Respondents provide a substantial incentive to their salesman to operate in this fashion since the salesmen receive no commission on the ADV product but do receive their regular commission on the PRO product.

scheme. Relying upon our opinion in *In the Matter of Clarence Soles,* FTC Docket 8602 (December 3, 1964) [66 F.T.C. 1234, 1248], they base their claim of good faith in the advertising of their products upon the fact that the advertised product was available to the customer. In effect, respondents contend that the mere availability and occasional consummated sale of their advertised products are sufficient to establish their good faith and preclude a finding that their advertising and sales techniques were unfair or deceptive. This contention is without merit. The Commission has long made it clear that actual sales of advertised merchandise do not preclude the existence of a bait and switch scheme.[6] Moreover, *Soles* is inapplicable to respondents' position. The availability of respondents' advertised product in that case was only one of several factors which supported a finding in respondent's favor. In *Soles,* respondent's salesmen did not disparage or downgrade their advertised product in an attempt to switch their customers to other products nor was there sufficient evidence to establish that the advertised offer was in other respects insincere. In sharp contrast to the evidence in that case, this record furnishes overwhelming support for the examiner's conclusion that respondents have used their advertised products primarily to "bait" prospective customers and "switch" them to respondents' more expensive products. (See Initial Decision, pp. 475–477.)

Since the record clearly requires a finding that respondents' sale of their advertised product was "a mere incidental by-product" of an overall bait and switch scheme, respondents' claim of error in this respect is rejected.

Respondents also contend that the evidence does not support a finding of liability against the individual respondent, William B. Starr. While conceding that Mr. Starr "is a major stockholder and leading official of the respondent corporations," respondents assert that there is "no evidence that he personally performed any of the acts charged in the complaint." (Respondents' Appeal Brief, pp. 4–5.) Consequently, respondents contend that an order against Mr. Starr, personally, is without warrant, citing *Coro, Inc.* v. *F.T.C.,* 338 F. 2d 149 (1st Cir. 1964), *cert. den.* 380 U.S. 954 (1965), and *Rayex Corp.* v. *F.T.C.,* 317 F. 2d

[6] The Commission's *Guides Against Bait Advertising* note that "Sales of the advertised merchandise do not preclude the existence of a bait and switch scheme. It has been determined that, on occasions, this is a mere incidental by-product of the fundamental plan and is intended to provide an aura of legitimacy to the overall operation." CCH Trade Regulation Reporter, ¶7893, November 24, 1959.

290 (2d Cir. 1963), as authority for their position. The examiner expressly rejected respondents' contention that there was no substantial evidence in the record that Mr. Starr participated in the activities charged in the complaint. After reviewing the record, we are satisfied that there was abundant evidence to support the examiner's finding that Mr. Starr was personally and actively involved in the practices challenged here. In light of this record, neither case cited by respondents is applicable here. In *Coro,* there was no showing that the individual respondent was even aware of the unlawful practices or that the corporate respondent was participating in them.[7] Here the evidence is sufficient to establish that Mr. Starr was not only aware of these practices but participated in them and actively encouraged them.[8] Similarly, in *Rayex,* a Commission order against one of the individual respondents was modified to exclude him on the basis of Commission counsel's concession on oral argument that the individual respondent involved—unlike Mr. Starr—neither personally engaged in the company's sales and advertising practices nor was in a position to exercise any control over such matters. While the fact that Mr. Starr is the principal incorporator, the majority stockholder, and the principal operating officer of all the respondent corporations may in itself be sufficient to justify an order against him individually[9] we note also that the record supports the examiner's finding that Mr. Starr personally participated in the unlawful practices involved here and we adopt that finding. Respondents' claim of error in this respect is therefore also rejected.

Respondents' request that the Commission reconsider their prior motion for dismissal of the complaint is likewise denied. In renewing their motion, respondents have presented no ground for the motion which was not previously urged, considered in detail, and rejected in our opinion of March 18, 1968. In view of the detailed consideration there given to respondents' claim (pp. 2–7),* no purpose would be served by burdening this opinion

[7] 338 F. 2d at 154. *Cf. Benrus Watch Co.* v. *F.T.C.,* 352 F. 2d 313 (8th Cir. 1965), *cert. den.* 384 U.S. 939 (1966) and *Clinton Watch Co.* v. *F.T.C.,* 291 F. 2d 838 (7th Cir. 1961), *cert. den.* 368 U.S. 952 (1962).

[8] See, *e.g.,* the testimony at R. 190–191 and R. 286–292 relating to Mr. Starr's knowledge of and participation in respondents' sales training program. Note also that the mail-outs and other advertisements, the preparation of which Mr. Starr personally supervised, were themselves misrepresentations (R. 108; Initial Decision, p. 477, Finding 15).

[9] See *Guziak* v. *F.T.C.,* 361 F. 2d 700 (8th Cir. 1966), *cert. den.* 385 U.S. 1007 (1967); *Rayex Corp.* v. *F.T.C.,* 317 F. 2d 290 (2d Cir. 1963); *cf. F.T.C.* v. *Standard Education Society,* 302 U.S. 112 (1937) and the majority's construction of *Standard Education* in *Standard Distributors, Inc.* v. *F.T.C.,* 211 F. 2d 7, 15 (2d Cir. 1954).

*[73 F.T.C. 1242]

with a restatement of the issue raised and its disposition by the Commission. Respondents' appeal is dismissed in all respects.

III

In addition to the charges in the original complaint which were upheld by the examiner, there were other charges which he dismissed. The complaint alleged that respondents had misrepresented that their products "are unconditionally guaranteed or are guaranteed for life." While the examiner found that respondents had misrepresented the extent of their guarantee (Initial Decision, pp. 478, 479) and included a provision therefor in the proposed order, he did not find that respondents' guarantees were in other respects false or deceptive. Consequently, he declined to include in the order other provisions recommended by complaint counsel concerning respondents' guarantees. Complaint counsel argue that respondents have additionally misrepresented their guarantees primarily in that respondents have represented that their aluminum siding is "unconditionally guaranteed against fading" or is "guaranteed never to * * * fade," when in fact (1) the siding will fade in the course of time and customer maintenance is required in order to retain the original lustre of the siding, and (2) these guarantees, while added to a number of customer's contracts by respondents salesmen, are not included in respondents' printed or registered guarantees.

The examiner stated that there was no evidence that respondents did not honor these guarantees. (Initial Decision, p. 478.) In this respect, we believe the examiner erred. Respondents admitted that their siding will fade unless it is waxed and otherwise maintained (R. 413–414; see CX 71). Consequently, we do not see how the representation that the siding is guaranteed "never" to fade or is "unconditionally" guaranteed not to fade can be regarded as anything other than false and deceptive.[10] Moreover, while respondents' "unconditional" guarantees against fading are included in a number of their contracts (*e.g.*, CX 23, CX 29, cf. CX 39, CX 40), they are not included in their printed guarantee which, rather, is accompanied by literature instructing purchasers how to maintain the siding to preserve its

[10] Although this charge relates primarily to guarantees inserted in contracts for respondents' PRO siding, it is worth noting the amazement expressed by one witness when he discovered what maintenance was required to retain the lustre of the ADV siding; maintenance which is not dissimilar to that required for the PRO siding (R. 421; CX 71). Moreover, we note that respondents' salesmen apparently represent that the PRO siding does not require waxing to retain its lustre (R. 320–322), contrary to the instructions accompanying the PRO siding guarantee (CX 71).

lustre (CX 71). Even if respondents adhere to the terms of their contractual guarantee by restoring siding which has not been maintained by the customer and which has discolored or faded through normal weathering—a possibility which is not suggested by this record—the palpably false representations respecting the durability of the siding's finish are clearly capable of deceiving respondents' customers by leading them to believe that the siding will retain its lustre without substantial maintenance. *Cf. Montgomery Ward & Co., Inc.* v. *F.T.C.*, 379 F. 2d 666 (7th Cir. 1967). If respondents wish to guarantee their siding against fading they should be required to state clearly and conspicuously exactly what the purchaser must do before respondents will fulfill their obligation under the guarantee.[11] The order is modified accordingly.[12]

One further claim remains to be considered. The complaint charged that respondents had violated section 5 of the Federal Trade Commission Act by failing to disclose to their credit purchasers that instruments of indebtedness executed in connection with the purchase of respondents' products would be transferred to third parties to whom respondents' purchasers would thereafter be indebted and against whom the purchasers' claims or defenses on the contract may not be available.[13] Complaint counsel appeal the examiner's dismissal of this charge of the complaint.

The examiner found that, although respondents generally discount or transfer instruments of indebtedness obtained in connection with a retail sale to finance companies or other third parties, respondents' customers are not informed of this fact at the time the instrument is executed (Initial Decision, pp. 479, 480). While stating that it was possible that customers may have been misled by respondents' practice, the examiner dismissed the charge principally on the ground that there was no evidence in the record that respondents' customers were or could

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[11] See Federal Trade Commission *Guides Against Deceptive Advertising of Guarantees*, CCH Trade Regulation Reporter, ¶ 7895, April 26, 1960.

[12] Complaint counsel have also urged that the examiner erred in not finding that respondents have deceptively represented, directly or by implication, that their siding products will never require repainting. We agree with the examiner that the record is insufficient to establish this claim. Similarly, although there appears to be some discrepancy between the "life" referred to in contract guarantees (see, *e.g.*, CX 37, 39, 40, 45) and in respondent's printed "Lifetime" Guarantees (CX 5A, CX 71), there is nothing in the record to indicate that these guarantees are deceptive with respect to their duration.

[13] The examiner apparently misread the charge in the complaint as alleging that "respondents falsely advertise easy credit to finance the installation of their home improvement products." (Initial Decision, p. 479). However, the examiner's reasons for dismissing the charge are applicable to the issues thereby raised and will be considered as though directed to the proper charge.

have been misled by it.[14] Although complaint counsel introduce no evidence in this proceeding on the capacity of respondents nondisclosure to deceive respondents' customers, the complain declared that the Commission takes official notice of the fact tha such nondisclosure is unfair and deceptive in that it tends t induce a belief in a substantial number of purchasers that re spondents will not transfer the executed instrument and tha legal obligations will exist, unchanged, only between respondents and purchasers and, further, that respondents' nondisclosure tends to induce a substantial number of purchasers to enter into contracts or execute promissory notes for the purchase of respondents' products. We hold that the examiner erred in dismissing this charge of the complaint. Our holding is based upon two grounds discussed in detail below: first, that failure to disclose to prospective purchasers that notes of indebtedness executed in connection with a retail sale may be assigned to third parties to whom the purchaser's claims or defenses on the contract may not be available is inherently unfair where, as here, the seller routinely assigns such instruments to third parties; and second, that such failure to disclose is deceptive in view of facts officially noticed by the Commission.

The Federal Trade Commission Act, as amended, imposes upon the Commission the duty to prevent not only unfair methods of competition but "unfair or deceptive acts or practices in commerce." 15 U.S.C. § 45. This latter aspect of the Commission's mandate was added to the Federal Trade Commission Act in 1938 as a part of the Wheeler-Lea amendments to the Act. One of the purposes of this amendment was to make clear that the protection of the consumer from unfair trade practices, equally with the protection of competitors and the competitive process, is a concern of public policy within the scope of responsibility of the Federal Trade Commission. The legislative history of the Wheeler-Lea amendments to section 5 of the Act discloses explicit and substantial concern with the exploitation of consumers

[14] The examiner dismissed the charge on the additional ground that there was no evidence in the record that respondents have utilized their financing arrangements to escape their obligations under their contracts of sale or that purchasers have in fact been injured by respondents' routine assignment of notes executed in connection with their sales. This does not provide, however, an adequate basis for dismissing the charge in the complaint. The questioned practice must be judged in light of its capacity to deceive or its unfairness and not on the basis of any demonstrated injury to purchasers. See *Montgomery Ward & Co.* v. *F.T.C.*, 379 F. 2d 666 (7th Cir. 1967); *Charles of the Ritz Distributors Corp.* v. *F.T.C.*, 143 F. 2d 676 (2d Cir. 1944).

through deceptive, unethical or otherwise unfair trade practices.[15] Moreover, the responsibility of the Commission in this respect is a dynamic one: it is charged not only with preventing well-understood, clearly defined, unlawful conduct but with utilizing its broad powers of investigation and its accumulated knowledge and experience in the field of trade regulation to investigate, identify, and define those practices which should be forbidden as unfair because contrary to the public policy declared in the Act. The Commission, in short, is expected to proceed not only against practices forbidden by statute or common law, but also against practices not previously considered unlawful, and thus to create a new body of law—a law of unfair trade practices adapted to the diverse and changing needs of a complex and evolving competitive system.[16]

In accordance with the responsibility of the Commission to execute its statutory responsibilities in the light of the changing characteristics of the American marketplace, the Commission has focused increased attention upon unfair or deceptive practices associated with credit transactions.[17] It is a matter of common knowledge that, in the years since the end of the Second World War, the frequency of retail credit buying has spiralled to the

[15] The test of legality under Section 5 had to be amended, it was stated, "to stop the exploitation or deception of the public." S. Rep. No. 1705, 74th Cong., 2d Sess. 3 (1936). See also S. Rep. No. 221, 75th Cong., 1st Sess. 3 (1937). *Cf.* H.R. Rep. No. 1613, 75th Cong., 1st Sess. 3 (1937).

[16] "Courts have always recognized the customs of merchants, and it is my impression that under this act the Commission and the courts will be called upon to consider and recognize the fair and unfair customs of merchants, manufacturers and traders, and probably prohibit many practices and methods which have not heretofore been clearly recognized as unlawful." 51 Cong. Rec. 11593 (1914) (remarks of Senator Saulsbury). See, *e.g.*, *F.T.C.* v. *Texaco, Inc.*, 393 U.S. 223, 89 S.Ct. 429 (1968); *F.T.C.* v. *Brown Shoe Co.*, 384 U.S. 316 (1966); *Atlantic Refining Co.* v. *F.T.C.*, 381 U.S. 357 (1965); *F.T.C.* v. *R. F. Keppel & Bro., Inc.*, 291 U.S. 304 (1934); *F.T.C.* v. *Algoma Lumber Co.*, 291 U.S. 67 (1934). In the words of Judge Learned Hand, describing the Commission's power in the field of deceptive and unfair practices: "The Commission has a wide latitude in such matters; its powers are not confined to such practices as would be unlawful before it acted; they are more than procedural; its duty in part at any rate, is to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop." *F.T.C.* v. *Standard Education Society*, 86 F. 2d 692, 696 (2d Cir. 1936), *rev'd on other grounds*, 302 U.S. 112 (1937).

[17] On July 22, 1965, the Commission published its *Guides Against Debt Collection Deception*, CCH Trade Regulation Reporter ¶ 7907. In 1964 it brought its first case challenging deceptive practices in the field of debt consolidation, *Budget Counsellors, Inc.*, FTC Dkt. C-748, May 27, 1964. Most recently, the Commission instituted a special program to investigate unfair and receptive practices in the District of Columbia to which the poor are most susceptible, which resulted in the publication of two reports: *Economic Report on Installment Credit and Retail Sales Practices of District of Columbia Retailers*, March 1968, and *Report on District of Columbia Consumer Protection Program*, June 1968. The former report found that low-income market retailers used installment credit in 93 percent of their sales; the latter report noted that a typical and recurring consumer complaint was that a customer discovered only after a purchase that he was indebted to a finance company and not to the merchant with whom he had dealt.

point at which it has become an accepted and common feature of American purchasing habits.[18] Indeed, recognition of the increased importance of consumer credit to the operation of our economy was a basic reason for enactment of the Truth in Lending Act of 1968.[19] With the increased use of credit for the purchase of consumer goods has also come the increased use of negotiable instruments of indebtedness, most notably the conditional sales contract, executed in connection with consummation of a retail sale.[20] This in turn has changed the character of many retail transactions from transactions involving only a buyer and a seller to transactions in which at least three parties are involved: the buyer, the seller, and the assignee of a negotiable instrument executed in connection with the sale. When a seller knows, but the buyer does not know, that the debt contracted by the buyer in making a credit purchase will be assigned to a third party,[21] the buyer may be entering into a transaction quite different in its characteristics from the one the buyer imagines he is entering. If the instrument executed in con-

[18] In 1945, the total consumer credit debt, exclusive of real estate mortgages and insurance policy loans, amounted to $5.7 billion. By the end of 1968, it had risen to over $113 billion. Included in this latter figure is nearly $25 billion in consumer installment credit notes other than those executed for personal loans, automobiles, and home repairs and improvement, more than half of which are held by banks, finance companies and other financial institutions. See *Federal Reserve Bulletin*, February 1969, p. A-52 *et seq.*

[19] P.L. 90-321, May 29, 1968. Section 102 of the Act declares in part: "The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit . . ." It should be noted that the Truth in Lending Act does not restrict the jurisdiction of the Federal Trade Commission to enforce the Federal Trade Commission Act in areas related to credit transactions. Indeed, § 108(c) of the Act expressly provides that a violation of any requirement imposed by the Truth in Lending Act shall be deemed a violation of a requirement imposed under the Federal Trade Commission Act.

[20] See note 18, *supra*.

[21] See *FTC Report on District of Columbia Consumer Protection Program*, June 1968, pp. 9-10. This problem was presented to the Commission in an exaggerated form as early as 1961 in *Lifetime, Inc.*, 59 F.T.C. 1231 (December 1, 1961). In the past six years, the Commission has instituted more than a dozen cases in which one or more charges in the complaint related to respondent's failure to disclose that a negotiable instrument executed in connection with a sale would be assigned to a finance company or other third party to whom the purchaser would thereafter be indebted. With one exception, these cases were all terminated by default judgments, consent decrees, or assurances of voluntary compliance. In one case, *Marlo Furniture Company*, FTC Dkt. 8745, which was terminated by an assurance of voluntary compliance on January 16, 1969 [75 F.T.C. 112], there had been a full hearing in which several witnesses testified as to their ignorance of the fact that the conditional sales contracts they executed were to be assigned to third parties. They further indicated their lack of knowledge as to how such a transfer would affect their rights. Several witnesses also testified to a preference for credit extended by the merchant with whom they were dealing rather than a finance company. In another case, *Empeco Corporation*, FTC Dkt. 8702 (February 14, 1967) [71 F.T.C. 158], the issue was decided on stipulated facts, the Commission entering an order requiring respondent to disclose to purchasers that negotiable instruments executed in connection with a sale may be assigned to a finance company or other third party at the respondent's option and without notice to the purchasers.

nection with the purchase is negotiated to a holder in due course, the buyer may be indebted to the assignee notwithstanding any defense or claim the buyer may have against the seller on the original contract such as nondelivery or defects in the purchased merchandise (see the Uniform Commercial Code § 3–305, now adopted in most States).[22] In this circumstance, we find it palpably unfair for a seller who routinely assigns instruments of indebtedness executed by his purchasers to third parties to fail to disclose to his purchasers that such transfer is contemplated and may result in a substantial alteration of the buyer's rights and liabilities.

If the average consumer were aware of the legal implications of signing a conditional sales contract or other negotiable instrument, such disclosure might be unnecessary. However, the average consumer does not have such knowledge; he is not only, in many cases, unaware of the fact that conditional sales contracts might be negotiated or assigned to a third party, he is also unaware of how such transfer may affect his rights.[23] In the absence of such disclosure, he has no reason to believe that his liability on the note may persist even in the face of unconscionable conduct by the seller. He therefore stands in a wholly unequal relation to the seller, who may defer, evade or seek to mitigate his responsibilities under the contract while the buyer remains fully indebted to a third party for the amount of his purchase. It seems to us, therefore, that a seller's failure to disclose to a purchaser that an instrument which the buyer executes in connection with the sale may be transferred to a third party to whom the buyer will thereafter be indebted and against whom the buyer's claims or defenses may not be available is, in the most clear and literal sense of the term, an unfair trade practice. In the words of the Supreme Court in another context, "It would seem a gross perversion of the normal meaning of the word, which is the first criterion of statutory construction, to hold that the method is not 'unfair.'" *F.T.C.* v *Keppel*, 291 U.S. 304, 313 (1934).

Moreover, we believe that the Commission has had sufficient experience in this area [24] to take official notice of the fact—which appears almost self-evident—that in the absence of an affirmative

[22] Moreover, even though some courts have become increasingly reluctant to find that an assignee took as a holder in due course where his connection to the transaction indicated some awareness of the buyer's defenses, this fact provides little comfort to the consumer of modest means who is put to the burden and expense of litigation to vindicate his rights.

[23] See footnote 17 and footnote 21, *supra*.

[24] See footnote 17 and footnote 21, *supra*.

disclosure to the contrary, a substantial number of purchasers, having no reason to believe otherwise, will assume that they will be indebted to the seller for the goods they have purchased and that all rights and liabilities between the parties to the sale, and those parties only, will persist.[25] Where, as here, the seller in fact routinely assigns negotiable instruments executed in connection with his sales to finance companies or other third parties without disclosing to the purchaser that this may be done, the purchaser is thus deceived. Since assignment of a purchaser's note to a holder in due course may materially alter the nature of the purchaser's rights and liabilities,[26] such deception is contrary to the public interest and is prohibited by section 5 of the Trade Commission Act. The obvious remedy for such deception is to require the seller to disclose affirmatively to the purchaser that a conditional sales contract or other instrument of indebtedness executed in connection with the sale may, at the seller's option and without notice the purchaser, be assigned to a finance company or other third party to whom the purchaser will thereafter be indebted and against whom the purchaser's claims or defenses on the contract may not be available. This is only one of many kinds of cases in which the Commission has found a requirement of affirmative disclosure necessary in order to prevent deception.[27] The order will so issue.

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[25] Consistent with the requirements of the Administrative Procedure Act § 7(e), 5 U.S.C. § 556(e), respondents were duly notified of the facts officially noticed by the Commission by declaration in the complaint and were thus afforded ample opportunity to show the contrary. Respondents apparently declined to do so.

[26] We need not consider what remedy, if any, would be appropriate if the holder in due course doctrine were not applicable to instruments arising out of consumer transactions, including the home improvement transactions here involved. To date only two states, Vermont and Massachusetts, have abolished the holder in due course doctrine for consumer paper. The Massachusetts law provides: "If any contract for sale of consumer goods on credit entered into in the Commonwealth between a retail seller and a retail buyer requires or involves the execution of a promissory note, such note shall have printed on the face thereof the words 'consumer note,' and such a note with the words 'consumer note' printed thereon shall not be a negotiable instrument within the meaning of the Uniform Commercial Code—Commercial Paper * * *" Mass. Gen. Laws ch. 255, § 12c (1966 Supp.). See Vt. Stat. Am. tit. 9, § 2455 (1967 Supp.).

Such statutes would seem to provide more complete protection than cease and desist orders entered against individual respondents on a case-by-case basis. It may be that, if such legislation is widely enacted, prohibitory orders like the one entered in the instant case may no longer be necessary. In this connection, we note that Section 3.72(b) of the Commission's Rules of Practice provides an expeditious method for reopening an outstanding order, on respondents' motion or by the Commission acting *sua sponte*, and modifying it in the light of "changed conditions of fact or law."

[27] See, *e.g.*, *Waltham Precision Instrument Co.* v. *F.T.C.* 327 F. 2d 427 (7th Cir. 1964) *cert. den.* 377 U.S. 992 (1964); *Bantam Books, Inc.* v. *F.T.C.*, 275 F. 2d 680 (2d Cir. 1960); *American Medicinal Products, Inc.* v. *F.T.C.*, 136 F. 2d 426 (9th Cir. 1943). See also *Manco Watch Strap Co.*, 60 F.T.C. 495, 510 (March 13, 1962).

FINAL ORDER

This matter has been submitted to the Commission on the cross-appeals of complaint counsel and respondents from the initial decision of the hearing examiner filed on August 14, 1968. The Commission has rendered its decision denying respondents' appeals in all respects, granting complaint counsel's in part, and adopting the findings of the hearing examiner to the extent they are consistent with the opinion accompanying this order. Other findings of fact and conclusions of law made by the Commission are contained in that opinion. For the reasons therein stated, the Commission has determined that the order entered by the hearing examiner should be modified and, as modified, adopted and issued by the Commission as its final order. Accordingly,

It is ordered, That respondents All-State Industries of North Carolina, Inc., ABC Storm Window Co., Inc., All-State Industries of Tennessee, Inc., All-State Industries, Inc., and All-State Industries of Illinois, Inc., corporations, and their officers, and William B. Starr, individually and as an officer of each of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution, or installation of residential aluminum siding, storm windows, storm doors, or any other products, or in connection with their business in such products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of other merchandise or services.

2. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale, either before or after a contract has been signed for the purchase of such merchandise or services.

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

5. Representing, directly or by implication, that any price

for respondents' products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

6. Representing, directly or by implication, that any offer to sell products is limited as to time, or is limited in any other manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented limitation as to time or other represented restriction is actually imposed and adhered to by respondents.

7. Representing, directly or by implication, that respondents manufacture any of the home improvement products which they sell, or that respondents sell their home improvement products directly from their factory; or misrepresenting, in any manner, the nature or scope of respondents business.

8. Representing, directly or by implication, that the home of any of respondents' customers, or prospective customers, has been selected to be used or will be used as a model home, or otherwise, for advertising or sales purposes.

9. Representing, directly or by implication, that any allowance, discount, or commission is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed to be used for model homes or demonstration purposes.

10. Representing, directly or by implication, that respondent's products are unconditionally guaranteed when in fact such guarantee is not an unconditional guarantee; or misrepresenting, in any manner, the nature, terms, or conditions of any guarantee.

11. Representing, directly or by implication, that any of respondents' products 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.

12. Representing, directly or by implication, that respondents' products are guaranteed not to fade without clearly and conspicuously disclosing the limitations applicable to

such guarantee; or misrepresenting, in any manner, the durability, performance, or quality of respondents' products.

13. Failing to disclose orally prior to the time of sale, and in writing on any conditional sales contract, promissory note or other instrument of indebtedness executed by a purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that:

Any such instrument, at respondents' option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to whom the purchaser will thereafter be indebted and against whom the purchaser's claims or defenses may not be available.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions and to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and shall secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the allegations of sub-paragraphs 7 of Paragraphs Five and Six of the complaint be dismissed.

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

IN THE MATTER OF

MEAL OR SNACK SYSTEM, INC., ET AL.

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

Docket C-1511. Complaint, Apr. 1, 1969—Decision, Apr. 1, 1969

Consent order requiring two affiliated Scarsdale, N.Y., franchisers of hamburger-pizza drive-in restaurants to cease using exaggerated earning claims, deceptive offers of employee training and supervision, advertising and promotional programs, and other deceptive means to promote the sale of its franchises, buildings and equipment.

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 Meal or Snack System, Inc., a corporation, and Franchise Development Corporation, a corporation, and Joshua Benanav, individually and as an officer of said corporations, and Ernest Halpern, individually and as an officer of Meal or Snack System, Inc., 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. Respondents Meal or Snack System, Inc., and Franchise Development Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 791 Central Avenue, Scarsdale, New York, 10584.

The corporate respondents, until December 1967, were known as Jolly Giant System, Inc., and Jolly Giant System Franchises, Inc., respectively. Their principal office and place of business was located at the above-stated address.

Respondent Joshua Benanav is an individual and officer of the corporate respondents. Respondent Ernest Halpern is an individual and officer of Meal or Snack System, Inc. Respondent Joshua Benanav formulates, directs and controls the acts and practices of Franchise Development Corporation, including the acts and practices hereinafter set forth, and with respondent Ernest Halpern formulates, directs and controls the acts and practices of Meal or Snack System, Inc., including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents. The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of franchises for restaurants and the restaurant buildings and equipment for use in connection therewith to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned hereinafter have maintained,

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 aforesaid business, and for the purpose of inducing the purchase of their products and franchises, the respondents have made, and are now making, numerous statements and representations in oral sales presentation by respondents or their salesmen and in advertisements inserted in magazines and newspapers and in promotional material with respect to the franchisee's profit, the training, assistance and supervision provided to franchisees, the franchisee's sales volume, the amount of money required to purchase a franchise, the success of respondents' plans and methods for operating drive-in restaurants, the discounts on restaurant's supplies and provisions that are available to franchisees, the advertising material provided to franchisees and the fame of the "Jolly Giant" trade name, trademark and products.

Typical and illustrative of said statements and representations contained in said advertising and promotional material, but not all inclusive thereof, are the following:

THEY SAID IT COULDN'T BE DONE! * * *, but we did it * * * we can offer a complete JOLLY GIANT Hamburger-Pizza Drive-In that you can own with an investment of ONLY $9,500.00

And—we mean complete—ready to operate * * *

Start a business of your own! Earn as much as $30,000.00 a year, more than three times your original investment. * * *

This is JOLLY GIANT, the Hamburger-Pizza Drive-In with completely new ideas organized into a package that puts you into business fast—at a reasonable cost—at a minimum risk and with proven methods to help bring about the successful and profitable operation. * * *

This Is How We Get Together * * *

We prepare the unit for opening in accordance with franchise agreement and lease agreement. Completely train you and your staff. Assist you in your opening and provide periodic supervision and assistance thereafter.

We have shown that when you are finished with our training course, you are ready—and we mean ready—to make money.

$9,500—is all you need to own a Jolly Giant ECONOMY UNIT, suitable for areas with expected volume below $150,000—

WHY THE JOLLY GIANT SYSTEM?

THE ANSWER IS QUITE SIMPLE * * *

TRAINING PROGRAM

A training program is provided for you as well as your key employees at our pilot operation. A trained Jolly Giant consultant is sent to your unit and stays with you during your opening and the following days as long as needed. * * *

ADVERTISING

Jolly Giant has a full proven and tested system for grand openings pro-

viding free drinks or hamburgers—supplies, banners, posters, newspaper releases and mats for advertising.

VOLUME PURCHASE

Jolly Giant System negotiates national contracts with leading suppliers on a volume purchase basis, although a manager may purchase his supplies from sources preferred by him providing they meet set quality standard and price, he may also take advantage of the volume contracts and purchase his supplies, directly from the various suppliers with whom Jolly Giant System has entered into such contracts.

JOLLY GIANT products, its trademark and name are nationally known and enjoy a wide consumer acceptance. * * *

* * * JOLLY GIANT will supply you with: All advantages of brand identification.

$8,500 IS ALL YOU NEED TO OWN A 15¢ HAMBURGER-PIZZA DRIVE-IN. NO FRANCHISE FEE—BE YOUR OWN BOSS—EARN $20,000 to $30,000 YEARLY

Questions and Answers about JOLLY GIANT franchises.

1. Do I have to be an experienced restaurant operator to be eligible for a Jolly Giant Drive-In?

No, you don't have to be experienced. You will be trained and schooled by our expert staff at an operating Jolly Giant and your own help will be trained by our supervision at your location when you open for business. * * *

2. What assistance do you give in promotion and advertising?

Our company has developed an extensive program in merchandising the product—advertising mats, banners, point of sale advertising (show cards) and radio jingles and they are all supplied free to each unit.

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements of respondents or their representatives, the respondents have represented, and are now representing, directly or by implication that:

1. The "Jolly Giant" trade name, trademark and products are known throughout the country.

2. A purchaser can obtain a complete ready-to-operate Jolly Giant Hamburger-Pizza Drive-In restaurant for a total investment of only $8,500 or $9,500.

3. Jolly Giant franchisees investing $9,500 will earn $30,000 a year or three times their original investment.

4. The Jolly Giant methods and plans for operating hamburger-pizza drive-in restaurants have proved to be successful and that franchisees employing such methods and plans are financially successful.

5. Franchisees are provided with a complete training program in the management of Jolly Giant restaurants for themselves and their employees.

6. Through the training furnished to franchisees by respondents, franchisees are able to operate a restaurant as a commercially profitable enterprise.

7. Respondents provide franchisees with supervision and assistance in the management and operation of a Jolly Giant drive-in restaurant.

8. Jolly Giant franchises have a minimum sales volume of $100,000.

9. Franchisees are provided with an extensive, planned advertising promotional program designed to publicize the franchisee's restaurant.

10. Because of national contracts between leading suppliers and the respondents, franchisees are able to purchase their restaurant supplies and provisions at lower prices than those charged to other restaurants.

PAR. 6. In truth and in fact:

1. The Jolly Giant trade name, trademark and products are not known throughout the country. The small number of Jolly Giant drive-in restaurants that were in existence were restricted to the States of New Jersey, New York and Massachusetts.

2. A complete ready-to-operate Jolly Giant Hamburger Pizza Drive-In restaurant cannot be purchased for the represented prices of $8,500 or $9,500. Such franchises cost substantially more than said amounts.

3. Jolly Giant franchisees investing $9,500 do not earn an income of $30,000 a year but substantially less than that amount; neither do they earn three times their original investment.

4. The Jolly Giant methods and plans for operating hamburger-pizza drive-in restaurants have not been successful and franchisees employing such methods and plans are not financially successful. All of the franchisees employing respondents' methods and plans are out of business and when in business such methods and plans did not enable them to be financially successful.

5. Franchisees are not provided with a complete training program in the management of Jolly Giant restaurants for themselves and their employees. Such training as is provided is inadequate and incomplete.

6. Franchisees are not able, through the training furnished by respondents, to operate a restaurant as a commercially profitable enterprise. All of the franchisees receiving such training are now out of business and such franchises, when in existence, were not commercially profitable enterprises.

7. Respondents provide franchisees with little, if any, supervision and assistance in the management and operation of a Jolly Giant drive-in restaurant.

8. Jolly Giant franchisees do not have a minimum sales volume of $100,000 but generally less than that amount.

9. Franchisees are not provided with an extensive, planned advertising promotional program designed to publicize the franchisee's restaurant. Said program consisted of one plastic advertising mat and one cloth banner.

10. Respondents do not have national contracts with leading suppliers which enable franchisees to purchase their restaurant supplies at lower prices than those charged to other restaurants.

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

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale of restaurant equipment, drive-in restaurant buildings and franchises in relation thereto 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 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 the 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 in 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Meal or Snack System, Inc., and Franchise Development Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 791 Central Avenue, Scarsdale, New York, 10584. Corporate respondents until December 1967 were known as Jolly Giant System, Inc., and Jolly Giant System Franchises Inc., respectively.

Respondent Joshua Benanav is an officer of said corporations and respondent Ernest Halpern is an officer of Meal or Snack System, Inc. Their address is the same as that of said corporations.

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 Meal or Snack System, Inc., a corporation formerly known as Jolly Giant System, Inc., and its officers, and Franchise Development Corporation, a corporation formerly known as Jolly Giant System Franchises, Inc., and its officers and Joshua Benanav, individually and as an

officer of said corporations, and Ernest Halpern, individually and as an officer of Meal or Snack System, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of restaurant equipment, restaurant buildings or franchises or licenses in relation thereto, or any other product, franchise or license, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. The "Jolly Giant" trade name, trademark or products are known throughout the country; or misrepresenting, in any manner, the fame, renown or reputation of respondents' franchises, licenses, trade name, trademark or products.

2. Purchasers can obtain a complete ready-to-operate Jolly Giant Hamburger-Pizza Drive-In restaurant for $8,500 or $9,500; or misrepresenting, in any manner, the investment required to purchase any franchise, license, business or products from respondents.

3. Persons investing $9,500 in respondents' franchises, buildings and equipment will earn $30,000 each year or three times their original investment each year.

4. Purchasers of respondents' franchises, licenses or products will realize a gross, net or minimum income, earnings, profits ~~or ratio~~ of profits to investment in any amount or range of amounts: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented amount or range of amounts of income, earnings or profits are actually and usually realized by purchasers of respondents' franchises, licenses or products.

5. Respondents' methods or plans for operating franchised or licensed businesses are or have been successful; or that franchisees or licensees employing such methods or plans are or have been financially successful.

6. Purchasers of respondents' franchises or licenses and their employees are given training in the management of their businesses.

7. The training furnished to purchasers of respondents' franchises or licenses will enable purchasers to

operate their businesses as a commercially profitable enterprise.

8. Purchasers of respondents' franchises or licenses are provided with supervision, assistance or advice in the management and operation of their franchised or licensed businesses.

9. Purchasers of respondents' franchises or licenses have a minimum sales volume of $100,000.

10. Purchasers of respondents' franchises or licenses have a minimum, average or maximum sales volume in any amount or range of amounts: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that their franchisees or licensees do have the represented sales volume or volumes.

11. Purchasers of respondents' franchises or licenses are provided with an advertising promotional program or that they are provided with advertising of any kind or type.

12. Purchasers of respondents' franchises or licenses will be able to purchase their provisions, supplies or equipment through respondents or through arrangements made by respondents at lower prices than others in the same kind of type of business as that of the purchaser.

B. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondents' products, services or franchises and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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.