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

FEDERAL CONSTRUCTION COMPANY, INC., ET AL.

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

Docket C-1493. Complaint, Feb. 20, 1969—Decision, Feb. 20, 1969

Consent order requiring a Tulsa, Okla., home improvement company to cease using bait advertising, false pricing and savings claims, deceptive guarantees, falsely alleging connection with manufacturers, failing to disclose all terms of its sales contracts, and other deceptive sales practices.

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 Federal Construction Company, Inc., a corporation, and H. Harold Becko, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Federal Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 8178 East 44th Street in the city of Tulsa, State of Oklahoma.

Respondent H. Harold Becko is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including

the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are now trading, and for some time last past have traded, as:

Federal Construction Company, Lifetime Construction Company, General Construction Company, Kaiser Distributors of Tulsa, Aluminum Products, Sterling Homes, Exterior Design Specialists, Globe Aluminum, Plastic Distributors, Alsco, Federal Coatings.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of residential siding materials 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 Oklahoma to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made, and are now making, numerous statements and representations in advertising circulars and other promotional material and in oral statements made by their salesmen and representatives with respect to the nature of their offer, their prices, time limitations, guarantees and performance of their products.

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

Save * * * summer special our regular $499 * * * now only $299 * * * offer good next three days only * * * .

* * * * * * *

We warrant in writing for twenty years.

* * * * * * *

Save up to 30% on air-conditioning and heating bills.

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

1. The offer set forth in said advertisement was a bona fide offer to sell said residential siding material of the kind therein described at the price and on the terms and conditions stated.

2. The offer set forth in said advertisement was for a limited time only.

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

4. All purchasers of respondents' siding material will realize a 30 percent savings in their air-conditioning and heating bills.

5. Siding materials sold by respondents will never require painting or repairing.

6. Respondents' siding materials and installations are unconditionally guaranteed in every respect without condition or limitation for a period of twenty years or more.

7. Homes of prospective purchasers have been specially selected as model homes for the installation of respondents' products; after installation such homes would be used for demonstration and advertising purposes by respondents; and, that as a result of allowing their homes to be used as models, purchasers would receive allowances, discounts or commissions.

8. Purchasers of respondents' siding installations will receive enough commissions from referrals of other prospective purchasers to obtain their installation at little or no cost.

9. Respondents or their salesmen are connected or affiliated with the Kaiser Aluminum and Chemical Corporation or U.S. Steel Corporation.

10. Monthly payments as set forth in the contracts between respondents and their prospective customers include interest and insurance charges.

PAR. 6. In truth and in fact:

1. The offer set forth above was not a genuine or bona fide offer but was made for the purpose of obtaining leads as to persons interested in the purchase of respondents' products. After obtaining such leads, respondents, their salesmen or representatives would call upon such persons at their homes or wait upon them at respondents' place of business. At such times and places, respondents, their salesmen or representatives would disparage the advertised siding and otherwise discourage the purchase thereof and would attempt to sell, and did sell, different and more expensive residential siding materials.

2. The offer set forth above was not for a limited time only.

Said merchandise was advertised regularly at the represented prices and on the terms and conditions therein stated.

3. Respondents' siding materials are not being offered for sale at special or reduced prices, and savings are not thereby afforded respondents' customers because of a reduction from respondents' regular selling prices. In fact, respondents do not have a regular selling price but the price at which respondents' products are sold varies from customer to customer depending on the resistance of the prospective purchaser.

4. All purchasers of respondents' residential siding materials will not realize a 30 percent savings in their air-conditioning and heating bills. Few, if any, will achieve such savings.

5. Residential siding materials sold by respondents will require painting and repairing.

6. Respondents' residential siding materials and installations are not unconditionally guaranteed in every respect without conditions or limitations for a period of twenty years. Such guarantee as may be provided is subject to numerous terms, conditions and limitations, and fails to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder.

7. Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products; after installations 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.

8. Few, if any, purchasers of respondents' residential siding installation received enough referral commissions to obtain their installation at little or no cost and respondents seldom, if ever, pay allowances or commissions in referral sales.

9. Respondents are not connected or affiliated with Kaiser Aluminum and Chemical Corporation or U.S. Steel Corporation.

10. The monthly payments set forth in the contracts between respondents and their prospective customers do not include all the interest and insurance charges. In fact, the finance companies later charge additional insurance and interest charges which were not previously included in the monthly payments; and by virtue of said false, misleading and deceptive representations with respect to terms and condition of sale, respondents thereby secure the execution of partially completed contracts of sale or

other instruments which are later completed to include charges and obligations not agreed to by the purchaser.

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 aforesaid business, and at all times mentioned herein, respondents have been and now are in substantial competition, in commerce, with corporations, firms and individuals in the sale of residential siding materials and other products of the same general kind and nature as that sold by respondents.

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

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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. Respondent Federal Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 8178 East 44th Street, Tulsa, Oklahoma.

Respondent H. Harold Becko is an individual and an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Federal Construction Company, Inc., a corporation, and its officers, and H. Harold Becko, individually and as an officer of said corporation, trading under said corporate name or under any trade name or names, 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 siding materials or other home improvement products or services 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 device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of any 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 respondents' offer of 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 restrictions is actually imposed and in good faith adhered to by respondents.

6. 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, that any savings or a stated amount of savings are available to purchasers.

7. Representing, directly or by implication, that purchasers of respondents' residential siding materials will realize a 30 percent savings or any other percentage or amount of savings in their air-conditioning or heating bills: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that each such purchaser in fact realized the represented savings.

8. Representing, directly or by implication, that residential siding materials sold by respondents will never require painting or repairing; or misrepresenting, in any manner, the durability, performance or quality of respondents' products.

9. Representing, directly or by implication, that any of respondents' products or installations are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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

11. 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.

12. Representing, directly or by implication, that purchasers are able to obtain respondents' products at little or no cost as a result of the receipt of commissions or compensation from referrals.

13. Falsely representing that purchasers will receive referral commissions or misrepresenting in any manner the amount of referral commissions that purchasers will receive.

14. Representing, directly or by implication, that respondents are connected or affiliated with Kaiser Aluminum and Chemical Corporation or U.S. Steel Corporation, or misrepresenting, in any manner, the identity of the manufacturer or the source of any of respondents' products or the respondents' business connections or affiliations.

15. Inducing or causing purchasers or prospective purchasers of respondents' merchandise to sign blank or partially completed sale contracts, or any other instruments.

16. Failing or refusing to disclose the exact amount of the total purchase price of merchandise, including all interests, credit or service charges, at the time the contract for the sale of such merchandise is executed by the purchaser or purchasers.

17. 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

ELGIN NATIONAL WATCH COMPANY

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

Docket C-1494. Complaint, Feb. 20, 1969—Decision, Feb. 20, 1969

Consent order requiring a watch manufacturer in Elgin, Ill., to cease making fictitious pricing claims in the sale of its 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 Elgin National Watch Company, a corporation, also trading as Helbros Watches, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Elgin National Watch 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 25 East Washington Street, in the city of Elgin, State of Illinois. It also trades as Helbros Watches, 2 Park Avenue, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for sometime last past has been, engaged in manufacturing, assembling, advertising, offering for sale, selling and distributing watches to catalog houses, dealers and retailers for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for sometime last past has caused, its said products, when sold, to be shipped from its places of businesses in the States of Illinois and New York to purchasers thereof located in various other States of the United States other than the State of origination 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, and for the purpose of inducing the purchase of the watches offered by its Helbros Watches Division, respondent has made, and is now making numerous statements and representations and price amounts in list price schedules, catalog inserts and other promotional material with respect to the retail selling prices of its Helbros watches and has engaged in the practice of attaching, or causing to be attached, price tickets to said Helbros watches upon which certain amounts are printed.

Respondent thereby represents, and has represented, directly or by implication, that said price amounts are the respondent's good faith estimate of the actual retain prices of said watches and do not appreciably exceed the highest prices at which substantial sales are made in respondent's trade area.

PAR. 5. In truth and in fact, said prices appearing on respondent's said list price schedules, catalog inserts and other promotional material and on respondent's price tags are not its good faith estimate of the actual retail prices of said watches and appreciably exceed the prices at which substantial sales of said Helbros watches are made and have been made in its trade area.

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

PAR. 6. By the aforesaid acts and practices, respondent has placed, and now places, in the hands of catalog houses, retailers, dealers and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 7. 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 in the sale of watches of the same general kind and nature as that sold by respondent.

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

and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair 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 Elgin National Watch 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 in the city of Elgin, State of Illinois. It also trades as Helbros Watches, 2 Park Avenue, in the city of New York, State of 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 Elgin National Watch Company, a corporation, trading as Helbros Watches or under any other trade name or names, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of watches or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by preticketing, list price schedules, catalog inserts or in any other manner, that any amount is the retail selling price of any product, unless said amount is respondent's good faith estimate of the said product's retail selling price and said amount does not appreciably exceed the highest price at which substantial sales of said product are made in respondent's trade area.

2. Misrepresenting, in any manner, the prices at which respondent's products are sold at retail.

3. Placing in the hands of catalog houses, retailers, dealers or others, the means or instrumentalities by or through which they may mislead or deceive the purchasing public in the manner or as to the things hereinabove prohibited.

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

JOHN C. HAMILTON ET AL. TRADING AS CHINCHILLA BREEDERS OF NEW ENGLAND

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

Docket C-1495. Complaint, Feb. 20, 1969—Decision, Feb. 20, 1969

Consent order requiring two Portland, Conn., sellers of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of their stock, deceptively guaranteeing the fertility of the stock, and misrepresenting services to their customers.

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 John C. Hamilton and William Nathaniel, individuals trading and doing business as Chinchilla Breeders of New England, 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 John C. Hamilton and William Nathaniel are individuals trading and doing business under the name Chinchilla Breeders of New England, with their principal place of business located at Penfield Hill Road, Portland, Connecticut 06480.

Respondent John C. Hamilton's address is Box 335, Penfield Hill Road, Portland, Connecticut 06480. The address of respondent William Nathaniel is 20 Oakland Street, Plainville, Connecticut 06062.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said chinchillas, when sold, to be shipped from their place of business in the State of Connecticut to purchasers thereof located in various other States of the United States, and maintain,

and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, the respondents make numerous statements and representations by means of direct mail advertising, newspaper publications, and through the oral statements and display of promotional material to prospective purchasers by their salesmen, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, the expected return from the sale of their pelts and the training assistance to be made available to purchasers of respondents' chinchillas.

Typical and illustrative, but not all inclusive of the said statements and representations made in respondents' direct mail advertising and newspaper publications are the following:

ANIMAL LOVERS!
INVESTERS! (sic) FARMERS!

Tired of working with livestock with no profit?
Tired of investing with no gain?
Tired of working for wages while the boss makes the profit?
Why not raise chinchillas, be your own boss, enjoy the full fruits of your labor.

Small investment large return!

If you really want to get out of the weekly pay check rut write today.
Afraid to take a chance? We not only supply you with quality animals but we also assure your success with our experience and professional assistance.
Start now toward independence and being your own boss!
The chinchilla business is one of the easiest in which to get started. The size of your herd at the beginning is not nearly as important as getting started. Some successful chinchilla ranchers have begun with as few as three animals, others with as many as fifty. Your investment can be as large or as small as you desire.
The Chinchilla is a very hardy animal, lively and friendly, with very modest requirements.
Diet—herbivorous, do very well in common grains and hay in prepared pellets.
Feed Cost—$3 to $4 per year per animal.
Productivity—111 days gestation period, average 2 young per litter.
Sound and Smell—practically no sound and no body odors under reasonably good management.
Space—garage, basement, or any area that is draft free, dry and cool is ideal.
Care—Chinchillas are very easy to care for, minutes a day while you are building a herd, leaves you free to continue working at your regular job.

THERE'S PROFIT IN CHINCHILLA PELTS

Quality pelts are valued at $20 to $55 on today's market. Because Chinchilla is a light weight fur and therefore modern, the demand for it will increase year after year.

How much additional income would you like?

$5,000.00
$10,000.00
$20,000.00

I would like more information of your method of raising Chinchillas.

* * * * * * *

I am interested in additional annual income of:

$5,000_____ $10,000 _____ $20,000 _____

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

1. It is commercially feasible to breed and raise chinchillas, from breeding stock purchased from respondents, in homes, basements or garages, and large profits can be made in this manner.

2. The breeding of chinchillas from breeding stock purchased from respondents, as a commercially profitable enterprise, requires no previous experience in the breeding, raising and caring for such animals.

3. Chinchillas are hardy animals, and are not susceptible to diseases.

4. Purchasers of respondents' breeding stock receive pedigreed or high quality chinchillas.

5. Each female chinchilla purchased from respondents and each female offspring will produce at least three live offspring per year.

6. Each female chinchilla purchased from respondents and each female offspring will produce several successive litters of from one to three live offspring at 111-day intervals.

7. The offspring referred to in Paragraph Five subparagraph (6) above will have pelts selling for an average price of $20 per pelt, and that pelts from offspring or respondents' breeding stock generally sell for from $20 to $55 each.

8. A purchaser starting with four females and one male of respondents' chinchilla breeding stock will have an annual income of $5,000 from the sale of pelts in the fifth year.

9. Chinchilla breeding stock purchased from respondents is unconditionally guaranteed to reproduce within 18 months a number of offspring equal to the number of animals originally purchased.

10. Purchasers of respondents' breeding stock are given guidance in the care and breeding of chinchillas.

11. Purchasers of respondents' breeding stock can expect a great demand for the offspring and for the pelts of the offspring of respondents' chinchillas.

12. Through the assistance and advice furnished to purchasers of respondents' breeding stock by respondents, purchasers are able to successfully breed and raise chinchillas as a commercially profitable enterprise.

13. The respondents will promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in the guarantee applicable to each and every chinchilla.

PAR. 6. In truth and in fact:

1. It is not commercially feasible to breed or raise chinchillas from breeding stock purchased from respondents in homes, basements or garages, and large profits cannot be made in this manner. Such quarters or buildings, unless they have adequate space and the requisite temperature, humidity, ventilation and other necessary environmental conditions are not adaptable to or suitable for the breeding or raising of chinchillas on a commercial basis.

2. The breeding of chinchillas from breeding stock purchased from respondents, as a commercially profitable enterprise, requires specialized knowledge in the breeding, raising and care of said animals much of which must be acquired through actual experience.

3. Chinchillas are not hardy animals and are susceptible to pneumonia and other diseases.

4. Chinchilla breeding stock sold by respondents is not of pedigreed or high quality.

5. Each female chinchilla purchased from respondents and each female offspring will not produce at least three live offspring per year, but generally less than that number.

6. Each female chinchilla purchased from respondents and each female offspring will not produce several successive litters of from one to three live offspring at 111-day intervals, but generally less than that number.

7. The offspring referred to in subparagraph (6) of Paragraph

Five above will not produce pelts selling for an average price of $20 per pelt but substantially less than that amount; and pelts from offspring of respondents' breeding stock will generally not sell for from $20 to $55 each since some of the pelts are not marketable at all and others would not sell for $20 but for substantially less than that amount.

8. A purchaser starting with four females and one male of respondents' breeding stock will not have an annual income of $5,000 from the sale of pelts in the fifth year but substantially less than that amount.

9. Chinchilla breeding stock purchased from respondents is not unconditionally guaranteed to reproduce within 18 months a number of offspring equal to the number of animals originally purchased but such guarantee as is provided is subject to numerous terms, limitations and conditions.

10. Purchasers of respondents' breeding stock are given little, if any, guidance in the care and breeding of chinchillas.

11. Purchasers of respondents' breeding stock cannot expect a great demand for the offspring of and pelts from respondents' chinchillas.

12. Purchasers of respondents' breeding stock are not able to successfully breed and raise chinchillas as a commercially profitable enterprise through the assistance and advice furnished them by respondents.

13. Respondents do not in fact promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in the guarantee applicable to each and every chinchilla.

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 aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of chinchilla breeding stock of the same general kind and nature as those 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' chinchillas 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 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 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, make the following jurisdictional findings, and enters the following order:

1. Respondents John C. Hamilton and William Nathaniel are individuals trading and doing business as Chinchilla Breeders of New England, with their principal place of business located at Penfield Hill Road, Portland, Connecticut 06480.

Respondent John C. Hamilton's address is Box 335, Penfield Hill Road, Portland, Connecticut 06480. Respondent William

Nathaniel's address is 20 Oakland Street, Plainville, Connecticut 06062.

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 John C. Hamilton, an individual, and William Nathaniel, an individual, trading as Chinchilla Breeders of New England, or under any other name or names 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 chinchilla breeding stock or any other products, 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. It is commercially feasible to breed or raise chinchillas in homes, basements or garages, or other quarters or buildings or that large profits can be made in this manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented quarters or buildings have the requisite space, temperature, humidity, ventilation and other environmental conditions which would make them adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis and that large profits can be made in this manner.

2. Breeding chinchillas, as a commercially profitable enterprise, can be achieved without previous knowledge or experience in the breeding, caring for and raising of such animals.

3. Chinchillas are hardy animals or are not susceptible to disease.

4. Purchasers of respondents' chinchilla breeding stock will receive pedigreed or high quality chinchillas or any other grade or quality of chinchillas: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that purchasers do actually receive chinchillas of the represented grade or quality.

5. Each female chinchilla purchased from respond-

ents and each female offspring will produce at least three live young per year.

6. The number of live offspring produced per female chinchilla is any number or range of numbers: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number or range of numbers of offspring are actually and usually produced by female chinchillas purchased from respondents or the offspring of said chinchillas.

7. Each female chinchilla purchased from respondents and each female offspring will produce successive litters of one to three live offspring at 111-day intervals.

8. The number of litters or sizes thereof produced per female by respondents' chinchilla breeding stock is any number or range thereof: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented number or range thereof of litters and sizes thereof are actually and usually produced by chinchillas purchased from respondents or the offspring of said chinchillas.

9. Pelts from the offspring of respondents' chinchilla breeding stock sell for an average price of $20 per pelt; or that pelts from the offspring of respondents' breeding stock generally sell for from $20 to $55 each.

10. Chinchilla pelts from respondents' breeding stock will sell for any price, average price, or range of prices: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented price, average price, or range of prices are actually and usually realized for pelts produced by chinchillas purchased from respondents or by the offspring of such chinchillas.

11. A purchaser starting with four females and one male will have, from the sale of pelts, an annual income, earnings or profits of $5,000 in the fifth year after purchase.

12. Purchasers of respondents' breeding stock will realize earnings, profits or income in any amount or range of amounts; or representing, in any manner, the past earnings, profits or income of purchasers of re-

spondents' breeding stock unless in fact the past earnings, profits or income represented are those of a substantial number of purchasers and accurately reflect the average earnings, profits or income of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

13. Breeding stock purchased from respondents is guaranteed or warranted without clearly and conspicuously disclosing the nature and extent of the guarantee, the manner in which the guarantor will perform thereunder and the identity of the guarantor.

14. Purchasers of respondents' chinchilla breeding stock are given guidance in the care and breeding of chinchillas or are furnished advice by respondents as to the breeding of chinchillas: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that purchasers are actually given the represented guidance in the care and breeding of chinchillas and are furnished the represented advice by respondents as to the breeding of chinchillas.

15. Chinchillas or chinchilla pelts are in great demand; or that purchasers of respondents' breeding stock can expect to be able to sell the offspring or the pelts of the offspring of respondents' chinchillas because said chinchillas or pelts are in great demand.

16. The assistance or advice furnished to purchasers of respondents' chinchilla breeding stock by respondents will enable purchasers to successfully breed or raise chinchillas as a commercially profitable enterprise.

17. Respondents' chinchillas are guaranteed unless respondents do in fact promptly fulfill all of their obligations and requirements set forth in or represented, directly or by implication, to be contained in any guarantee or warranty applicable to each and every chinchilla.

B. 1. Misrepresenting in any manner, the assistance, training, services or advice supplied by respondents to purchasers of their chinchilla breeding stock.

2. Misrepresenting, in any manner, the earnings or profits of purchasers of respondents' chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen and other persons engaged in the sale of the 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 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

MANDEL BROS. & ROSENBERG, INC., ET AL.

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

Docket C-1496. Complaint, Feb. 20, 1969—Decision, Feb. 20, 1969

Consent order requiring a New York City clothing manufacturer to cease misbranding and false invoicing its fur products and misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling 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 Mandel Bros. & Rosenberg, Inc., a corporation, and Albert Mandel and David Rosenberg, individually and as officers of said corporation, and Martin G. Mandel, individually and as general manager 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 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 Mandel Bros. & Rosenberg, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Albert Mandel and David Rosenberg are officers of the corporate respondent. Respondent Martin G. Mandel is the general manager of the corporate respondent, Mandel Bros. & Rosenberg, Inc. They formulate, direct and control the acts, practices and policies of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products and wool products with their office and principal place of business located at 262 West 38th 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 not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products without labels.

PAR. 4. 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 required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 5. 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 show the true animal name of the fur used in such fur products.

PAR. 6. 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) 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.

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

PAR. 7. The aforesaid acts and practices of respondents, as 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.

PAR. 8. 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 the Wool Products Labeling Act of 1939 wool products as "wool product" is defined therein.

PAR. 9. 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 labeled or tagged by respondents as 100 percent wool when, in truth and in fact, said products contained substantially different fibers and amounts of fibers than as represented.

PAR. 10. 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 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 the 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. 11. Certain of said wool products were misbranded by respondents in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. Certain wool products composed of two or more sections of different fiber composition, were not labeled in such a manner as to disclose the fiber composition of each section and such form of marking was necessary to avoid deception in violation to Rule 23(b) of the aforesaid Rules and Regulations.

B. The fiber content of interlinings contained in garments was not set forth separately and distinctly as a part of the required information on the stamps, tags, labels or other marks of identification of such garments, in violation of Rule 24(b) of the aforesaid Rules and Regulations.

PAR. 12. The acts and practices of the respondents as set forth in Paragraphs Nine, Ten and Eleven above were, and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The 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 with 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 Fur Products Labeling 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 Mandel Bros. & Rosenberg, 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 262 West 38th Street, New York, New York.

Respondents Albert Mandel and David Rosenberg are officers of and respondent Martin G. Mandel is general manager 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 Mandel Bros. & Rosenberg, Inc., a corporation, and its officers, and Albert Mandel and David Rosenberg, individually and as officers of said corporation, and Martin G. Mandel, individually and as the General Manager of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the 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 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 labels to fur products showing in words and 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 on labels the item number or mark assigned to a 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 by 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 the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

It is further ordered, That respondents Mandel Bros. & Rosenberg, Inc., a corporation, and its officers, and Albert Mandel and David Rosenberg, individually and as officers of said corporation, and Martin G. Mandel, individually and as the general manager of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the offering for sale, sale, transportation, 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 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.

3. Failing to set forth required information, on labels

attached to wool products consisting of two or more sections of different fiber content, in such a manner as to show the fiber content of each section in all instances where such marking is necessary to avoid deception.

4. Failing to set forth separately and distinctly as part of the required information on the stamp, tag, label or other mark of identification of a garment which contains an interlining, the fiber content of such interlining as required by Rule 24 (b) of the Rules and Regulations under the Wool Products Labeling Act of 1939.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of the 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

LYDIA KESSLER, LTD., 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-1497. Complaint, Feb. 20, 1969—Decision, Feb. 20, 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 maintain 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 Lydia Kessler, Ltd., a corporation, and Lydia Kessler and Frances Van Blarcom, 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 Lydia Kessler, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Lydia Kessler and Frances Van Blarcom are officers of said corporation. They formulate, direct and control the policies, acts and practices 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 711 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 of 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 sub-

stituting 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 promulgated under said Act.

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 which such textile fiber

product was received, in violation of Section 6(b) of the Textile Fiber Products Identification Act.

PAR. 10. The aforesaid acts and practices of respondents as set forth in Paragraphs Seven through Nine 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.

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. Respondent Lydia Kessler, Ltd., 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 711 Madison Avenue, New York, New York.

Respondent Lydia Kessler and Frances Van Blarcom 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 Lydia Kessler, Ltd., a corporation, and its officers, and Lydia Kessler and Frances Van Blarcom, 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 Lydia Kessler, Ltd., a corporation, and its officers, and Lydia Kessler and Frances Van Blarcom, 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 Lydia Kessler, Ltd., a corporation, and its officers, and Lydia Kessler and Frances Van Blarcom, 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 Lydia Kessler, Ltd., a corporation, and its officers, and Lydia Kessler and Frances Van Blarcom, 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 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 Lydia Kessler, Ltd., a corporation, and its officers, and Lydia Kessler and Frances Van Blarcom, 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

M. LEVY CO. INC. OF SHREVEPORT
TRADING AS M. LEVY, ET AL.

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

Docket C-1498. Complaint, Feb. 20, 1969—Decision, Feb. 20, 1969

Consent order requiring a Shreveport, La., retailer of ready-to-wear garments for men, women, children and infants to cease falsely advertising and invoicing its fur products and failing to maintain required records.

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 M. Levy Co. Inc., of Shreveport, a corporation, trading as M. Levy, and Albert N. Elmer, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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 M. Levy Co. Inc. of Shreveport is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana and trading under the name of M. Levy.

Respondent Albert N. Elmer is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are retailers of ladies' ready-to-wear, men's and boys' apparel and boys', children's and infants' wear with their office and principal place of business located at 429 Milam Street, Shreveport, Louisiana.

PAR. 2. Respondents are now and for some time last past have 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 have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively invoiced 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 show the true animal name of the fur used in such fur products.

PAR. 4. 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) 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.

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

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

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the Shreveport Times, a newspaper published in the city of Shreveport, State of Louisiana and having a wide circulation in Louisiana and in other States of the United States.

By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated thereunder by representing, directly or by implication, that the prices of such fur products were reduced from respondents' former prices and the amount of such purported reductions constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former prices were fictitious in that they were not actual, bona fide prices at which respondents offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and savings were not afforded purchasers of respondents' said fur products, as represented.

PAR. 6. In advertising fur products for sale, as aforesaid, respondents made pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations.

PAR. 7. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

(b) All parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder were not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of the aforesaid Rules and Regulations.

PAR. 8. 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 M. Levy Co. Inc. of Shreveport is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana and trading under the name of M. Levy, with its office and principal place of business located at 429 Milam Street, Shreveport, Louisiana.

Respondent Albert N. Elmer is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents M. Levy Co. Inc. of Shreveport, a corporation, and its officers, trading as M. Levy or any other name, and Albert N. Elmer, individually and as an officer of said corporation, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing 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. 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 fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

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

1. Represents, directly or by implication, that any price, whether accompanied or not by descriptive terminology is the respondents' former price of such fur product unless such price is the price at which such fur product has been sold or offered for sale in good faith by the respondents in the recent regular course of busi-

ness, or otherwise misrepresents the price at which any such fur product has been sold or offered for sale by respondents.

2. Falsely or deceptively represents that savings are afforded to the purchaser of any such fur product or misrepresents in any manner the amount of savings afforded to the purchaser of such fur product.

3. Falsely or deceptively represents that the price of any such fur product is reduced.

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

5. Fails to set forth all parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other.

C. Failing to maintain full and adequate records disclosing the facts upon which pricing claims and representations of the types described in subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations under the Fur Products Labeling Act are based.

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 FOOD, INC., ET AL.

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

Docket C-1499. Complaint, Feb. 25, 1969—Decision, Feb. 25, 1969

Consent order requiring a Washington, D.C., distributor of food freezers, freezer food plans and food to cease using false pricing and savings claims and failing to disclose that its sales contracts may be sold 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 Consumers Food, Inc., a corporation, and George Sharkey, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Consumers Food, Inc., 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 6234 3rd Street, NW., Washington, D.C.

Respondent George Sharkey is an individual and president-treasurer of Consumers Food, Inc. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of food freezers, freezer food plans, and food as the term "food" is defined in the Federal Trade Commission Act.

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 District of Columbia to purchasers thereof located within the District of Columbia and in various

States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning freezers, freezer food plans, and food, in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products; and have disseminated, and caused the dissemination of, advertisements concerning said products by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

11th ANNIVERSARY SALE SPECIAL
72¢ lb. *SIDE OF BEEF*
APPROXIMATELY 285 LBS. 72¢ lb.

* * * * * * *

150 LB. HINDQUARTER BEEF * * *
79¢ lb.

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, and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. Respondents' products are being offered for sale at special or reduced prices, and that savings are realized by respondents' customers because of a reduction from respondents' regular selling price.

2. Meat prices set forth in advertisments are based on net weight after trimming.

PAR. 6. In truth and in fact:

1. Respondents' products are not being offered for sale at a special or reduced price and savings are not realized by respondents' customers because of a reduction from respondents' regular selling price.

2. Meat prices set forth in advertisments are based on gross weight before trimming.

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 further course of respondents' business, and by means of advertisements disseminated as aforesaid, and by the oral statements of sales representatives, respondents have represented, directly or by implication that:

1. Purchasers of respondents' freezer food plan can buy their usual food requirements and a freezer for the same or a lesser amount of money than they have been paying for food alone.

2. Purchasers of respondents' freezer food plan can buy meat and other food products at prices significantly lower than the prices which they have been paying for such products.

3. Purchasers cannot participate in the food plan unless a freezer is purchased from the respondents.

PAR. 8. In truth and in fact:

1. Purchasers of respondents' freezer food plan cannot buy their usual food requirements and a freezer for the same or a lesser amount of money than they have been paying for food alone.

2. Purchasers of respondents' freezer food plan cannot buy meat and other products at prices significantly lower than the prices which they have been paying for such products.

3. Food can be purchased from respondents without the necessity of purchasing a freezer from respondents.

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

PAR. 9. 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, or 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.

PAR. 10. 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 or practice.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of freezers, food and freezer food plans.

PAR. 12. 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 representations were and are true, and into the purchase of substantial quantities of freezers, food and freezer food plans from respondents by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of the respondents as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act, and in violation of Sections 5 and 12 of said 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. Respondent Consumers Food, 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 formerly located at 2951 V Street, NE., Washington, D.C., and presently located at 6234 3rd Street NW., Washington, D.C.

Respondent George Sharkey is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

PART I

It is ordered, That respondents Consumers Food, Inc., a

corporation, and its officers, and George Sharkey, individually and as an officer of said corporation, 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 freezers, freezer food plans, food or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of terms such as "ANNIVERSARY SALE SPECIAL" or in any other manner, that any price is a special or reduced price unless such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

2. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise, or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

3. Representing, directly or by implication, in any manner, that the price per pound of meat is a net weight price when in fact the price per pound of meat is based on the weight of the meat before trimming.

4. Failing to clearly and conspicuously disclose, in the body of any advertisement for meat that is to be sold by gross weight, the average percentage of weight loss that results from trimming.

5. Representing, directly or by implication, that purchasers of respondents' freezer food plan can buy their usual food requirements and a freezer for the same or a lesser amount of money than they have been paying for said food requirements alone.

6. Representing, directly or by implication, that food prices charged by respondents are significantly lower than the prices which they have been paying.

7. Representing, directly or by implication, that purchasers cannot buy food under respondents' food plan unless a freezer is purchased from respondents.

8. Failing to disclose orally, prior to the time of sale,

and in writing with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

A. on any conditional sale contract, and

B. on a separate document presented to a purchaser of respondents' merchandise concurrent with the execution of any promissory note or other instrument of indebtedness executed by such purchaser,

that such conditional sale contract, promissory note or other instrument of indebtedness, 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.

PART II

It is further ordered, That respondents Consumers Food, Inc., a corporation, and its officers, and George Sharkey, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of food, or any purchasing plan involving food, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in Paragraphs 1 through 7 of PART I of this Order.

2. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any food or any purchasing plan involving food in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraphs 1 through 7 of this Order.

PART III

It is further ordered, That respondents Consumers Food, Inc., a corporation, and its officers, and George Sharkey, individually and as an officer of said corporation, do forthwith deliver a copy of this Order to cease and desist to each of its operating divisions

and to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and secure from each such salesman or other person a signed statement acknowledging receipt of said Order.

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

MRS. E. J. WAHLIE TRADING AS WAHLIE'S FLORET AND GIFT SHOP

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

Docket C–1500. Complaint, Feb. 25, 1969—Decision, Feb. 25, 1969

Consent order requiring a Lima, Ohio, operator of a gift shop to cease marketing dangerously flammable fabric including wood fiber chips.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mrs. E. J. Wahlie, an individual trading as Wahlie's Floret and Gift Shop, hereinafter referred to as respondent, has violated the provisions of said Acts and Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mrs. E. J. Wahlie is an individual trading as Wahlie's Floret and Gift Shop. She is engaged in the sale of various consumer goods, including, but not limited to, wood fiber chips. The business address of the respondent is 74 Public Square, Lima, Ohio.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and offering for sale, in commerce, and in the importation into the United States, and has introduced, de-

livered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, fabrics, as the terms "commerce" and "fabric" are defined in the Flammable Fabrics Act, as amended, which fabrics failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such fabrics mentioned hereinabove were wood fiber chips.

PAR. 3. The aforesaid acts and practices of respondent were, and are in violation of the Flammable Fabrics Act, as amended, 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; 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 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 Mrs. E. J. Wahlie is an individual trading as Wahlie's Floret and Gift Shop under and by virtue of the laws of the State of Ohio, with her office and principal place of business located at 74 Public Square, Lima, Ohio.

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 the respondent, Mrs. E. J. Wahlie, individually and trading as Wahlie's Floret and Gift Shop, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any fabric as "commerce" and "fabric" are defined in the Flammable Fabrics Act, as amended, which fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That the respondent herein shall within ten (10) days after service upon her of this Order, file with the Commission an interim special report in writing setting forth the respondent's intention as to compliance with this Order. This interim special report shall also advise the Commission fully and specifically concerning the identity of the fabric which gave rise to the complaint, (1) the amount of such fabric in inventory, (2) any action taken to notify customers of the flammability of such fabric and the results thereof and (3) any disposition of such fabric since August 2, 1968. Such report shall further inform the Commission whether respondent has in inventory any fabric, product or related material having a plain surface and made of silk, rayon or cotton or combinations thereof in a weight of two ounces or less per square yard or made of cotton or rayon or combinations thereof with a raised fiber surface fabric. Respondent will submit samples of any such fabric, product or related material with this report.

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

IN THE MATTER OF

BROADWAY-HALE STORES, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

Docket C–1057. Complaint, Apr. 14, 1966—Decision, Mar. 5, 1969

Order modifying an earlier consent order dated April 14, 1966, 69 F.T.C. 601, which prohibited for 5 years any acquisition by the respondent of any department or GMAF (General Merchandise, Apparel and Furniture) store without prior Commission approval, by extending the ban for an additional three years.

IN THE MATTER OF

BROADWAY-HALE STORES ACQUISITION OF NIEMAN-MARCUS COMPANY

STATEMENT OF THE COMMISSION

MARCH 5, 1969

The Commission has approved the request of Broadway-Hale Company, a West Coast-based department store chain, to acquire Neiman-Marcus, a Texas-based department store.[1] This approval was granted because a majority of the Commission concluded that the acquisition did not eliminate either actual or potential competition between the two firms and was not anticompetitive. The Commission was unable to conclude on the basis of the available evidence that this acquisition would unduly enhance or contribute to existing levels of industry concentration.

Broadway-Hale ranks 13th in sales in the overall department store field with 46 stores (as of late October, 1968) in California, Arizona and Nevada. It had annual consolidated sales (as of

[1] The Commission's approval was required under the terms of Broadway-Hale's consent agreement of April 14, 1966, under which it agreed not to acquire any department store or other GMAF stores other than the Emporium-Capwell Company for the five year period from 1966 to 1971 without Commission permission.

1967) of approximately $457 million. Neiman-Marcus with four stores in Houston, Dallas, and Fort Worth had 1967 sales of $63 million. Together the combined firms will continue to rank 13th in sales in the department store industry.

Broadway-Hale and Neiman-Marcus operate in two different markets separated geographically by over 1000 miles. Neiman-Marcus is not a conventional department store but falls into the department store classification of specialty store. Its methods of sale and the price lines of its merchandise are substantially different from those of Broadway-Hale. A minority of the products sold by both involve some overlapping characteristics. Nevertheless, in the main, Broadway-Hale does the bulk of its merchandising in products of middle price range while Neiman-Marcus does the bulk of its business in the highly specialized, high-priced, luxury items catering primarily to a different segment of customers. Further, Broadway-Hale offers typical salesperson service in conventional department store surroundings while Neiman-Marcus offers intensely individualized and personalized sales service in a very decorous sales atmosphere.[2]

Since Broadway-Hale and Neiman-Marcus are in different geographic markets and sell basically different products in dissimilar marketing circumstances, there was never any suggestion that actual competition between the two firms would be eliminated.

The issue confronting the Commission in determining whether the merger could or might have anticompetitive elements, therefore was to proceed on a consideration of whether overall department store knowhow, management, and other skills are transferable and potentially interchangeable between the two types of stores in such a way that the two could be regarded as potential competitors of each other. In other words, the question before the Commission was whether there was a realistic possibility that either store independently would expand its product line and geographic market boundary in such a way as to offer competition to the other.

After considering the known facts respecting this industry and these two firms, the Commission concluded that the two firms could not be regarded as potential competitors and that the merger would not therefore eliminate potential competition.

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[2] One factor illustrating that department stores do in fact have relatively distinct groups of customers and lines of merchandise is that a number of department store owners operate these two types of stores separately, and in some cases the middle price range department store and the specialty store are even located side by side in the same city.

Internal expansion by conventional department stores such as Broadway-Hale into markets as geographically separated as Texas and California is economically and technically difficult because of the need to recruit an entire department store marketing organization sensitive to regional and local styles, trends and tastes. Moreover, the use of central management to supervise such branch outlets is also difficult because of the need to make decisions quickly and preferably on the spot. Conventional department stores today, therefore, consider such territorial leaps and product expansion by internal means over widely separated areas to be generally unfeasible.[3]

Aside from this general aspect of the nature of potential department store internal expansion which the Commission, of course, recognizes may be influenced by current thinking among department store specialists and would be subject to change and to error, the Commission in the instant case had before it affirmative evidence that the actual expansion programs of these two companies which had been formulated well before this merger was in the works excluded any consideration of exploiting the geographic market areas here involved.

Broadway-Hale had long-announced growth plans of attaining $1 billion in sales by 1976. Projecting a modest normal increase of 8 percent in its sales a year, Broadway-Hale could be expected to reach $900 million of this goal by 1976 by internal growth, thus leaving only an additional $100 million to be obtained through internal expansion of outlets or acquisition (not even including sales of a mail order firm acquired in 1968, which was not an acquisition under order). Given such modest needs, Broadway-Hale apparently envisaged adding this $100 million in sales through the addition of two to four stores per year within its existing markets. It seemed unlikely and unrealistic for the Commission to assume that under these expansion plans, Broadway-Hale had any intention or indeed could have expected to jump the 1000 miles or so from the growing markets of the Far West to the Texas market and establish a department store there, especially in the light of the current thinking of conventional department stores as to the difficulties of such internal expansion.

Internal evidence from Neiman-Marcus' files made it equally clear that Neiman-Marcus would not have expanded into the Broadway-Hale markets of the West Coast, *i.e.*, California and

[3] Such leaps are more feasible for specialty stores such as Neiman-Marcus, since among other things tastes in specialty items such as designer clothes, quality glassware, etc., are basically "national" rather than local or regional.

Arizona. In numerous memoranda, written long before the proposed merger, Mr. Marcus is quoted as rejecting California and Arizona as suitable locations. In one such memorandum, discussing the desirability of expansion into Florida vis-a-vis California, he stated:

> In many ways Florida today reminds me of California twenty years ago in its method of growth and its speed of growth. The one advantage which a store here would have over a store in California is that there is less competition from a large specialty store. All of the competition basically is in the form of small specialty shops which are formidable individually and collectively but there is no one big specialty store such as you would run into in quantity in the Los Angeles area.

Over and above the absence of potential competition and foreclosed entry, in this situation, the Commission found no evidence that this merger might possibly entail the other anticompetitive consequences envisioned to flow from increased concentration, *i.e.*, the imposition of price discipline for price competition, the deterioration in competitive vigor of national firms facing each other's local markets, or the destruction of competition from the buying side. Only four of the hundred largest dollar volume suppliers of each firm are common suppliers to both Broadway-Hale and Neiman-Marcus. Three of those four tended to be in different lines or different price ranges of the same line. Further, an essential condition of the merger agreement between the two companies was a stipulation that management of Neiman-Marcus is to remain autonomous within the Marcus family. Thus the Marcus interests will continue to exercise their own independent price, buying and selling conduct in an operation separate in locale and in merchandising techniques from that of Broadway-Hale.

No standard of approval has ever been laid down in the orders entered by the Commission which have required companies to obtain the Commission's approval before making certain types of acquisitions. Since these orders do not contain outright bans on future acquisitions, the approval requirement must of necessity contemplate some circumstances under which some department store acquisitions would be approved by the Commission. The issue before the Commission, therefore, was whether the acquisition of Neiman-Marcus was within the class of acquisitions which the ban had contemplated would be unacceptable or did it fall within that group which the ban had contemplated might be permissible and hence would be approved.

The Commission had before it two possible bases on which to

determine whether approval of the merger would or would not be consistent with the public interest underlying Section 7 of the Clayton Act: its own prior actions in the department store field, and its rulings on similar applications for approval in the analogous food retailing field in which the Commission had also sought to challenge mergers in an industry which had evidenced substantial increases in concentration levels.

Testing the acquisitions in the light of its continuing merger concern in the department store field, the Commission concluded that this acquisition did not have any of the aspects of elimination of actual or potential competition found in the prior department store matters. The merger most closely related to the Broadway-Hale—Neiman-Marcus acquisition in terms of its exclusive reliance on increased concentration and the elimination of potential competition as the basis for the alleged illegality was the acquisition in 1963 by Federated Stores of Bullock's, Inc. Federated in 1963 ranked number one in the conventional department store industry with annual sales then of approximately $933 million. Bullock's ranked second in 1963 in its market among the major conventional department store chains on the West Coast with 24 outlets including seven large stores and 1963 sales of about $200 million. Despite the allegations that overall concentration levels were increasing in the department store industry, the fact that Federated had already established a small operating base of its own on the West Coast, and the contention that the merger of these two substantially and directly competitive department store chains would likely result in significantly increased purchasing power, the Commission without dissent agreed that the allegedly anticompetitive impact of this merger did not require that the merger be undone and decided that a ban on future acquisitions without prior Commission approval was sufficient. If the Commission's case against Federated did not demand divestiture, it was difficult for the Commission to conclude that is should disapprove the much smaller acquisition here not involving direct competitors and not having any potential anticompetitive aspects so far as the Commission could determine.[4]

The Commission was confronted with a somewhat comparable request for its approval of a purchaser by a West Coast-based regional food chain of a midwestern-based group of food chain

[4] Indeed the staff upon later evaluation of the Federated merger in the context of comparing it in perspective with other merger cases in the department store industry, advised the Commission that in its view the potential competition aspect of the case as alleged was sufficiently "weak" to warrant the acceptance of the order limited to the acquisition ban.

stores required to be divested under a Commission order. Concentration levels in the food distribution industry have also been of substantial concern to the Commission as has its concern for department store concentration. Again the Commission had to determine whether this purchase was likely to eliminate potential competition between the two firms, and this in turn depended largely on whether it was likely that the West Coast chain would or could have expanded internally into the midwest area. In this case, the Commission was confronted with the fact that the purchaser had an internal expansion program which had involved one prior geographic internal expansion jump of some 700 miles. Nevertheless, after first disapproving the purchase, the Commission changed its mind and unanimously approved the purchase because it was convinced that the merger did not eliminate competition.[5]

If the public interest was not endangered by these market extension mergers between competitors dealing in the same product lines in the department store and food retailing fields, the Commission majority did not believe that the instant merger, which cannot be clearly classified as either a market of product extension merger since the firms are in separate geographic markets and deal for the most part in dissimilar lines, should be disapproved.

The Commission still remains concerned with the continuing problem of concentration levels in this department store field. Its approval of this merger is not intended to suggest any major reversal in policy. Even in light of the aforementioned evidence indicating virtually no lessening of potential competition, the Commission determined nevertheless not to grant approval to this merger unless Broadway-Hale would agree to a three year extension of its existing ban on department store acquisitions which only had two years remaining under the original consent order.

All requests for approval of department store acquisitions under the outstanding orders which the Commission has entered will continue to be examined under the criteria as to whether they impair actual or potential competition. Such criteria include questions of whether the acquisitions involve stores in the same or new geographic markets which carry the same general product lines and employ comparable merchandising techniques, whether they represent backward or forward integration among suppliers

[5] *Consolidated Foods Corporation*, Dkt. C-1024, Commissioner MacIntyre not participating.

and marketers, and whether they result in extension of the acquiring firm's business into new product lines in the same geographic market area. When a company under a merger ban requests permission to make an acquisition which falls into one of these categories, or which otherwise appears on its face to have possible anticompetitive consequences, such request will probably not be granted unless the parties can demonstrate that the possibility of such anticompetitive consequences is remote. Mergers, such as the instant one, which are not in any of the above categories and which are not otherwise found to threaten actual or potential competition will, in the opinion of the majority of the Commission, be permitted.

IN THE MATTER OF

BROADWAY-HALE STORES ACQUISITION OF NIEMAN-MARCUS COMPANY

SEPARATE STATEMENT

BY MACINTYRE, *Commissioner:*

A factor involved in the disposition of this matter but glossed over by the dissents, is the fact that the parties have agreed to the entry of a further order banning future acquisitions by Broadway-Hale for an additional period of five years unless the Federal Trade Commission approves. As a result, within the next five years such mergers may be prohibited if the consent of the Commission is not secured irrespective of whether they are held in violation of law.

This matter, I agree, should be considered in the context of this agency's previous actions in the department store field. One of the dissents, however, by implication at least, seeks to distinguish this case from the Commission's disposition of the *Federated-Bullocks* matter, both on procedural and substantive grounds. As far as the practical results reached are concerned, however, there is no meaningful distinction in the disposition of this matter and the *Federated* case. In both proceedings, the Commission permitted the acquisition to stand after consent to a ban on future acquisitions unless they are approved. The real difference is that the evidence of illegality in *Federated,* contrary to this case, was substantial. The fact that a *de novo* complaint and consent order issued in one case and not the other is a meaningless quibble. Orders to cease and desist were issued in

both cases. The modified order in this case providing the additional ban for five years will, of course, be on the public record.

The dissent does raise some questions about the Commission's procedures but again the issues go beyond the confines of this case. There are a number of other merger proceedings on our docket where the Commission failed to follow "the built-in procedural safeguards" which the dissent has contended should be applied here.

For example, in the *Federated* case, the crucial decisions were made in the course of and pursuant to oral presentations to the Commission by respondents on an off-the-record basis. A vital part of the decision-making process in that proceeding, as a practical matter, was simply unreviewable. The fact that the Commission's complaint and consent order subsequently went on the public record did not cure that defect. Moreover, while the Commission agreed to listen to an informal presentation by Federated, it refused over my objection to extend a similar opportunity to one of the parties most directly concerned, the Chief Executive Officer of Bullocks, the acquired concern, who opposed the merger. Perhaps, and there is no way of telling now, had the Commission had the benefit of his views, its perspective might have been quite different. My motion to hear that official lost because of a failure of the majority of the Commission to vote for it. Perhaps in light of the dissent's attack on the procedures in this matter, it would be a healthy thing for the Commission to make public its minutes, including all motions and the votes thereon in both of these matters.

Who is for secrecy here? I am not. My record on such matters is clear. In keeping with my position, I think we should consider making available to the public for inspection the motions and votes of each of the Commissioners not only on this matter but also on all similar matters in similar situations. I did not invent *ex parte* proceedings at the Federal Trade Commission. Indeed, unsuccessfully I have opposed non-public proceedings in a large variety of situations which appeared to be clothed with the public interest.

On reflection, I have come to the conclusion that nonpublic *ex parte* proceedings involving informal conferences of Commissioners and respondents should be avoided in those cases where the question is whether complaint should issue, what should the terms of an order be, or in cases such as this, whether approval should be granted or withheld for a merger where the respond-

ent is subject to a ban on future acquisitions. Also, it is my view that investigational hearings on matters clothed with wide public interest should not be held in secret. In view of the current interest both here at the Commission and elsewhere for making available more information on the administrative process, it is to be hoped that the Commissioners will be able to agree on a modification of these procedures to achieve these objectives.

BROADWAY-HALE STORES, INC.

(ACQUISITION OF NEIMAN-MARCUS COMPANY)

DISSENTING STATEMENT

BY ELMAN, *Commissioner:*

This is an extremely important and troubling case. Important not only because of the rank and significance of the firms involved but also because of the deleterious consequences that can be expected to ensue from the Commission's action. Having stopped in the mid-1960's the merger movement that threatened to transform the structure of the retail department store industry, the Commission now invites a new and potentially irreversible merger movement. What is particularly disturbing is that this significant action has been taken in an unreviewable, essentially secret, *ex parte* proceeding in which no evidence was taken, no cross-examination permitted, no record made, and no opportunity afforded interested parties to intervene.

That the Commission itself has belatedly recognized the large public importance of this case is manifest in its determination to issue a statement concerning this matter in response to a dissenting statement circulated by me in early February. Ordinarily, requests by a party subject to an order requiring prior approval of merger transactions are disposed of in a simple letter sent to the requesting party and his counsel. This procedure is followed even when a member of the Commission dissents, with or without opinion, from the Commission's decision. Such a letter was prepared by the staff in this case. The Commission's subsequent determination to prepare and issue an elaborate statement of justification in response to my dissent is unusual. Although it has gone to great lengths to find reasons for its action, the statement provides no adequate grounds for the Commission's decision and dispels none of the concerns raised by the Commission's disposition of this matter.

I

This case reflects serious defects in the process followed by the Commission in approving the legality of a merger proposed to be made by a company under an order prohibiting it from making acquisitions for a specified period without securing the Commission's prior approval.

Where a challenged acquisition is made by a company *not* under such a ban, the Commission, before finding the acquisition to be lawful, is required to follow procedures containing built-in safeguards for the protection of the public. A complaint is issued by the Commission which is a matter of public record and the subject of a press release. The complaint initiates a formal, adversary proceeding which is fully public. The respondent's answer and other pleadings are public. A public hearing is held before an examiner, where evidence is taken and a record is made on the basis of which the examiner makes findings of fact and renders an initial decision—all of these actions being public. The appeal to the Commission, including briefs and oral arguments, is public; and, by statute and rule, *ex parte* communications with Commissioners are strictly forbidden. Interested third parties (including the Attorney General) may seek to intervene or file amicus submissions, on the public record. If the Commission finally decides that the merger is lawful, its conclusion is based on the record made, and the correctness of its findings of fact, decision, and opinion can be judged in the light of the evidence and arguments in the public record.

In sharp contrast is the procedure followed by the Commission in approving the legality of a merger proposed to be made by a company, like Broadway-Hale, which is under an order containing a ban on future acquisitions. The processing of such an application for Commission approval is *ex parte,* non-adversary, and secret. The application and supporting materials are "confidential" and not available for public inspection. Interested third parties (who may not even be aware of the pendency of the application) have no opportunity to present any comments or opposition. If the staff supports the application, there is no one to oppose it. On the other hand, if the staff opposes the application, its reasons for recommending disapproval are kept tightly secret. No evidence is taken; there is no public record, no findings, and no decision or opinion of the Commission. Nor is there any specific prohibition against *ex parte* communications with Commissioners.

Such a process contains built-in dangers to the public interest. It is always necessary that public confidence be maintained in the efficiency and integrity of an agency's procedures, especially where, as here, the stakes are so high, measured not merely in terms of the financial interests of the private parties involved, but, more importantly, the large public interest in preventing mergers which, because they may substantially lessen competition, violate the antitrust laws.

II

On the merits, this would appear to be an open-and-shut case of a merger which is unlawful because, in the words of Section 7 of the Clayton Act, "the effect of such acquisition may be substantially to lessen competition" in the department and specialty-store industry. In putting its stamp of approval on the merger, the Commission treats the self-serving *ex parte* assertions and contentions of the parties as if they were findings of fact based on evidence of record in an adversary proceeding. Some of these findings and conclusions seem to be most extraordinary.

It is immaterial, of course, that Broadway-Hale and Neiman-Marcus are not now direct competitors in the same geographical markets. That is not the basis for urging disapproval here. The reasons underlying the unanimous staff recommendation for disapproving the merger of Broadway-Hale and Neiman-Marcus run deeper and broader. In essence, the staff's legal and economic analysis support the conclusion, which seems clearly correct both on the facts and on the law, that this merger (1) would eliminate potential competition between the parties, which is real and not merely theoretical, (2) would unduly increase industry and market concentration, and (3) would trigger a new merger trend in the industry, defeating the very purpose of the bans on future acquisitions contained in consent orders issued by the Commission in 1965 and 1966 against five major department store chains, including Broadway-Hale.

In assessing the implications of this merger, it is important to bear in mind the structure and recent history of the department store industry. Substantial increases in concentration have taken place in the past two decades, and the large number of significant mergers undertaken by leading chains has been a primary factor in this trend. Between 1951 and 1965 the 20 largest department store companies (in 1967) acquired 73 companies operating 168 department stores. It was to stop this merger movement, which threatened a drastic restructuring of the

retail department store industry, that the Commission entered orders prohibiting further acquisitions by Broadway-Hale and four of its principal competitors. Four of these firms, excluding Spartan Industries, Inc., acquired 36 department store chains between 1951 and 1965 operating 87 stores and having combined preacquisition assets of approximately $892 million. From 1951 to 1965 merger activity by the leading department store firms showed no signs of abating, but from 1966 to the present their merger activity has substantially subsided. There is no doubt that the Commission's orders have been the primary factors in stemming the merger movement. There is also no doubt that approval of this merger will probably trigger a new and undesirable merger trend in this industry.

The Commission can approve this merger only by ignoring these facts and by devising a market definition and a conception of potential competition that can best be described as contrived and fanciful. The Commission implies that if Broadway-Hale and Neiman-Marcus were in the same geographical market they would not be competitors because Neiman-Marcus carries a somewhat higher price line than Broadway-Hale. The short answer to this contention is that it was flatly rejected by the Supreme Court in the *Brown Shoe* [1] case. Moreover, an analysis, prepared by the Commission's Bureau of Economics from data submitted by Broadway-Hale and Neiman-Marcus, of the kinds of merchandise and the price lines carried by the two companies indicates substantial product and price overlap—apparently greater than that found in the *Brown Shoe* case and *a fortiori* enough to justify treating this as a horizontal merger if the two firms were in the same geographical market.

III

The Commission's conclusion that the Broadway-Hale, Neiman-Marcus merger does not eliminate significant potential competition is even more flimsy.

Broadway-Hale has been one of the most rapidly growing conventional department store chains. Between 1965 and 1967, Broadway almost tripled its sales from $233 million to $638 million,[2] and has expressed a sales goal of $1 billion by 1976. Broadway now operates stores in Phoenix, Arizona. While Phoe-

[1] *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962).

[2] It is important to note that a sizeable part of this increase resulted from its acquisition of Emporium-Capwell—a firm which had pre-acquisition sales of approximately $166 million—which led the Commission to enter its ban on future acquisitions.

nix is over 1,000 miles from Dallas, the closest city in which Neiman now operates, there are very few large cities between Phoenix and Dallas. A strong possibility exists that Broadway will expand further in the southwest region of the United States, quite possibly into the Dallas-Fort Worth area. Neiman has expressed a similar desire to expand. It has initiated a $50 million ten-year development program to expand its operations by building ten stores outside of Texas designed to increase its sales from $69 million to $190 million.

These facts concerning the two firms make internal expansion objectively probable. Conditions in the California and Texas markets make the inference that Broadway-Hale and Neiman-Marcus were significant potential competitors virtually inescapable. As the Supreme Court has made clear, narrow geographical or product limits are not the test of whether a substantial company is a likely potential entrant into another market. The real test, particularly in the retail department store industry, is whether the market in question shows great growth prospects.

It is also undeniable that California and Texas are among the most rapidly growing markets in the country. If the merger route were closed, substantial department store chains like Broadway-Hale and Neiman-Marcus, each on the periphery of the other's marketing area, would be likely to enter these burgeoning markets by internal expansion. Moreover, the department store business is very highly concentrated on a local basis with the four largest firms accounting for anywhere from 47 percent to 100 percent in a sample of eight major markets in California, Texas, and Oregon. If oligopoly is not to become entrenched, if concentration is not to increase and if prospects for deconcentration are to remain alive, it is doubly important that large retail department stores in adjacent markets not be permitted to enter such dynamic growing markets by acquiring other substantial firms already there.

The Commission's conclusion that Neiman-Marcus would not have entered the California market internally is based on a self-serving memorandum from Neiman-Marcus' files. This finding ignores a long line of court and Commission procedents, based on elementary economic concepts, holding that proof of subjective intent to enter the market is not essential to show that a firm was a potential competitor in that market.[3] Near-

[3] See, *e.g.*, *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158 (1964); *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651 (1964); Brodley, *Oligopoly Power Under the Sherman*

ness of the firm to the market, its resourcefulness, its financial situation, and the economic incentives to entry—for example, the attractiveness of the market in terms of profit, risk and its growth prospects—all bear on whether the firm is a potential entrant.[4] By all these criteria the two firms involved in this case were each potential entrants in the other's market. In view of Neiman-Marcus' ten-year development and expansion plans, there is no question that it was at least an important potential competitor and a likely entrant into the rapidly growing West Coast markets in which Broadway-Hale now operates.

The Commission's contrary finding also lays bare the procedural deficiencies in this case. Like the Commission's extraordinary conclusion, discussed below, that internal expansion by firms in the retail department store industry is impossible, the finding concerning Neiman-Marcus' subjective intent is not based on materials presented in a litigated record. No investigation was made by the Commission, no documents subpoenaed. The Commission's findings generally, and this one in particular, are predicated solely on materials submitted by the parties in an *ex parte* non-adversary proceeding, with no opportunity for cross-examination. The Commission has no way of knowing whether there are other materials bearing on subjective intent, on Neiman-Marcus' expansion plans or on the other issues; it must rely on the self-serving materials and information submitted by Broadway-Hale and Neiman-Marcus.

Perhaps the most vulnerable finding made by the Commission rests in its conclusion that internal expansion by department store chains is practically impossible. It is inconceivable that this "finding," or perhaps "assertion" is more accurate, would be upheld by a court if the finding had been made in an adjudicative proceeding, even under the limited standard of reviewability applicable to factual determinations of the Commission. The finding that retail department store chains are unable to jump from one geographical area to another will come as quite a surprise to Sears, J.C. Penney, Montgomery Ward, and other chains which have grown almost exclusively by internal expan-

and Clayton Acts—From Economic Theory to Legal Policy, 19 Stan. L. Rev. 285, 357–59 (1967); Turner, *Conglomerate Mergers and Section 7 of the Clayton Act*, 78 Harv. L. Rev. 1313 (1965).

[4] See, *e.g.*, *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp 576 (S.D. N.Y. 1958). In that case the court rejected the argument of the parties that neither alone could have entered the Chicago market and that the subjective intention of each was not to enter the market. These arguments were found to be "not persuasive in light of their prior activities and history, their financial resources, their growth and demonstrated capacity through the years to meet the challenge of a constantly growing economy." *Id.* at 616.

sion.[5] The experience of other conventional department stores—like Allied Stores, whose Jordan Marsh division, headquartered in Boston, recently opened new stores in Miami, Fort Lauderdale, and Orlando, Florida, and Rhodes Western, a west coast chain which expanded from Oregon and California to Texas, New Mexico, and Arizona—belies the Commission's assertion that such jumps are impossible.[6] Discount department store companies, which are most like the conventional department store group in which the Commission puts Broadway-Hale, have expanded substantially by internal means. The Commission would have to look no further than the Washington suburbs to discover that S. Klein and E. J. Korvette have made the move from New York to Washington without having to merge to get here.[7] The same quick look will disclose that Lord & Taylor and Saks Fifth-Avenue have also expanded from New York to Washington, despite the geographical, emotional and psychological separation from headquarters that the Commission finds so overwhelming. The short of it is that what Sears, J.C. Penney, Wards, Rhodes, Allied, S. Klein, Korvette, Lord & Taylor, Saks, and other smaller chains have managed to do, should not be impossible for Broadway-Hale and Neiman-Marcus to do. The Commission's finding to the contrary is merely jerry-built to support the conclusion that this particular merger should be approved.

The Commission's finding also represents a self-fulfilling prophecy. The Commission says, in essence, "since, historically, many department stores have chosen to enter new markets by merger and not internal expansion, we conclude that internal expansion is difficult or impossible and we will allow mergers." There is no

[5] A brief review of the annual reports of these firms discloses that since 1957 Sears has built 257 new stores, 123 of which were completely new operations on new sites and 134 of which were built on sites formerly occupied by smaller Sears stores. In the same period J. C. Penney has built 515 stores, 223 of which were entirely new, and Montgomery Ward has built 189 entirely new stores. In sum, these three firms alone have built at least 535 brand new stores, on new sites, many of them in markets far removed from their headquarters and from their previous marketing area. To accomplish this expansion they had to hire additional managerial, clerical and other personnel, and perform all the other tasks that according to the Commission make internal expansion impossible.

[6] These are not isolated examples. Others include Broadway-Hale's jump from California, to Las Vegas, Nevada, R. H. Macy's expansion within California, and various jumps by other divisions of Allied Stores besides Jordan Marsh. Even relatively small regional conventional department stores have grown by internal growth. For example, J. B. Ivey, Charlotte, North Carolina, has reportedly expanded into Greenville, South Carolina, and Jacksonville, Florida. Other smaller companies reportedly growing into new metropolitan markets include Millers, Knoxville, Tennessee; L. S. Ayres of Indianapolis; and Goldblatt's of Chicago.

[7] Since 1956 Korvette's has built over 30 new stores, many of them, as the Commission well knows, in new marketing areas. This expansion too was managed internally. Stores involved in the E. J. Korvette-Spartan Industries merger are not included in this count.

doubt that department store chains, if allowed to do so, will prefer the easier course of entering new markets by merger rather than internal expansion.[8] History will thus of necessity "bear out" the Commission's conclusion. On the other hand, if firms operating in this dynamic, rapidly changing industry were told, as they were by the Commission in 1965 and 1966, that the trend of expansion through making substantial acquisitions must be halted, there can be little doubt that they would expand into desirable new markets through internal growth, a view borne out by developments in the industry since the Commission's orders were entered.

It bears repetition here that Section 7 does not require proof to a statistical certainty that a merger will substantially lessen competition, although reading the Commission's statement in this matter one might think so. The Commission's view is that since it cannot say with positive certitude that either Broadway-Hale or Neiman-Marcus would in the immediate future enter the other's market, the merger must be approved. But, in accordance with its purpose of preserving a competitive economy, Section 7 requires application of a standard based on long-term probabilities, not short-range certainties. The test is not whether, but for the merger, Broadway-Hale or Neiman-Marcus was planning to move into the other's market next week or next month. It is whether, measured by the objective criteria laid down by the Supreme Court and the Commission in cases like *El Paso, Penn-Olin, Clorox,* and others, there was a reasonable prospect that they would expand and grow into competitors confronting each other in the same market—a genuine prospect of potential competition that this merger will eliminate.

IV

The Commission's action here cannot be reconciled with a long and unbroken line of court and Commission precedents. The quotations in the footnote reveal the extent of the break with

[8] This preference for growth by merger is not unlike that expressed by the parties in the landmark *Bethlehem Steel* case, 168 F. Supp. 576 (S.D.N.Y. 1958), where, as Judge Weinfeld observed, "Each defendant in urging the merger takes a dim view of its ability to undertake, on its own, a program to meet the existing and anticipated demand * * * in the Chicago [market]." In rejecting these arguments, Judge Weinfeld concluded that these were expressions of business "preference" as to how best to expand, rather than matters of economic necessity. See note 5, *supra*. Experience bore out the wisdom of Judge Weinfeld's decision. After Bethlehem was prevented from making a market extension merger into the Chicago market, it decided that it would enter by internal growth.

established precedents which is here being made.[9] This disregard for precedent indicates another disturbing aspect of the Commission's decision to approve this merger. The Department of Justice and the FTC have concurrent jurisdiction to enforce Section 7 of the Clayton Act. Under the existing liaison arrangement, this case has been "cleared" to the Commission. However, if the Antitrust Division were to have asserted jurisdiction here,

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[9] *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 315–16, 323, 346 (1962):

"The dominant theme pervading Congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy. * * * Congress used the words '*may* be substantially to lessen competition' (emphasis supplied), to indicate that its concern was with probabilities, not certainties. * * * We cannot avoid the mandate of Congress that tendencies toward concentration in industry are to be curbed in their incipiency. * * *" See also *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 362, 367 (1963); *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 659 (1964); *United States* v. *Continental Can Co.*, 378 U.S. 441, 465 (1964); *United States* v. *Von's Grocery Co.*, 384 U.S. 270 (1966); *United States* v. *Pabst Brewing Co.*, 384 U.S. 546, 552 (1966).

Foremost Dairies, Inc., 60 F.T.C. 944, 1050, 1051, 1082, 1083, 1084 (1962) (Opinion of the Commission by Chairman Dixon):

"* * * We are well aware that it is during times of economic change that many industries have been transformed via mergers from relatively competitive ones to oligopolistic ones because public understanding was not alerted in time to curb such developments. * * *

"The legislative history further indicates that Section 7 was designed to intervene in the 'cumulative process' by which a competitive industry may be completely transformed as a result of successive mergers. * * *

"It is our opinion that the cumulative effect of a prior series of acquisitions by a respondent is an important element in determining the legality of a particular acquisition under consideration. * * * It is equally clear from the legislative history that Section 7, as amended, is intended to embrace all types of acquisitions regardless of their designations. Therefore, the question of whether a particular conglomerate or market extension merger violates Section 7 must be answered, just as in the case of horizontal mergers, by a showing that the merger may have the effect of substantially lessening competition or tend to create a monopoly. * * * We think it clear that the cumulative effect of a series of mergers is of importance and has a direct bearing on . . . [the] market power and possible competitive advantage of an acquiring firm even though a later acquisition takes place in a market in which that firm did not already operate."

National Tea Co., Docket No. 7453, concurring opinion of Commissioner Jones, pp. 5, 8, 12 (March 4, 1966) [69 F.T.C. 226, 302, 304, 306, 307]:

"The legislative history of the amendment to Section 7 of the Clayton Act makes clear that one of the major objectives of Congress in enacting the amendment was to arrest the rising tide of economic concentration by coping with monopolistic tendencies in their incipiency and to prevent the elimination from any given market of substantial independent units. * * * [T]he Commission's congressional mandate is not to wait until concentration has become undue, but rather to act when a movement towards oligopoly is discernible. * * * [T]here is an incipient trend towards concentration discernible in this industry and I believe that the Commission is acting within the intent and spirit of the Act in calling a halt to these acquisitions before the present market structure ceases to exist.

"The desire to stem this increasing concentration in its incipiency is enhanced by the realization that the mergers challenged in this proceeding are but part of a definite trend towards expansion through acquisition present in the industry as a whole as well as in respondent's business philosophy. Consequently, the probable anticompetitive effects resulting from these acquisitions are increased when viewed as part of a trend. As part of a trend, the movement towards concentration resulting from these acquisitions is clearly accelerated." See also, *National Tea Co.*, Docket No. 7453, pp. 5, 6, 7–8, 15 (March 4, 1966) (Opinion of the Commission by Chairman Dixon, concurred in by Commissioners MacIntyre and Jones) [69 F.T.C. 226, 265, 268, 269, 270–271].

it is inconceivable that the merger would not have been challenged in court, and successfully. It comes clearly within the established precedents and the Merger Guidelines released by the Department of Justice on May 30, 1968.

The weakness of the Commission's position in this matter is perhaps best evidenced by its reliance, as the closest precedent for its action here, on the consent order issued by the Commission in *Federated-Bullock's*. That was the first of the cases in which the Commission undertook, by the issuance of consent orders which included "containment" provisions banning future acquisitions, to halt the merger trend in the department store industry. It was soon followed by the issuance of similar orders against Broadway-Hale and other large department store chains which had been growing not through internal expansion but via the acquisition route. The rationale of these orders was, as Commissioner Nicholson points out, that "the Commission was willing to grant respondents one-bite-at-the-apple in return for containment of a demonstrated trend toward concentration, not only within local markets but also national."

In none of these cases did the Commission approve the legality of the acquisitions challenged in the complaint. It seems to me that any member of the Commission who approved the acquisitions challenged in the complaints in those cases and considered them to be lawful should not have voted either for the issuance of complaints or the orders to cease and desist. If a merger is lawful, it should neither be challenged by the Commission nor be made the basis of an order.

We are told now, however, that since these various consent orders "merely" provided for only a "containment" of the status quo by banning future mergers, the Commission was thereby "approving" the legality of the acquisitions challenged in those cases. This is nonsense. Carried to its logical conclusion, this would mean that whenever a company is under an order prohibiting future acquisitions, the Commission would have to approve any proposed merger if it were no worse than those challenged in the original complaint. Thus, the Commission, having entered such an order against Federated for its acquisition of Bullock's, would be obliged to approve every application by Federated (or any other company under order) to merge with another department store like Bullock's. The absurdity of this argument is obvious. If taken seriously, it would mean that all of the consent orders containing prohibitions on future acquisitions, in every

industry where the Commission has followed that approach,[10] would have no effect whatsoever in halting industry merger trends. If the new merger is no worse than those challenged in the original complaints, it would automatically be approved by the Commission.

The significance of the three-year extension of the ban on future acquisitions by Broadway-Hale is thus put in proper perspective. So long as the Commission is willing to approve mergers like the one now before us, Broadway-Hale might just as well be under such a ban in perpetuity for all the difference it would make.

The public interest has been ill-served by the Commission's action in this matter, and I must dissent.

BROADWAY-HALE STORES, INC.

(ACQUISITION OF NEIMAN-MARCUS COMPANY)

DISSENTING STATEMENT

BY NICHOLSON, *Commissioner:*

I have reason to believe that the *Neiman-Marcus* acquisition violates Section 7, but, under the prevailing circumstances, do not agree that such a belief is necessary for disapproval of the questioned merger by the Commission.

The acquiring company, *Broadway-Hale Stores,* is no stranger to Section 7 inquiries by the Commission. In 1966, we charged that its acquisition of a large department store chain had the unlawful effects, *inter alia*: of eliminating substantial potential competition within the relevant product markets involved herein, and contributing to a trend toward national concentration in the same product markets. The complaint was settled upon respondent's agreement that it would make no further acquisitions within the industry without prior Commission approval.[1]

Apparently, the Commission was willing to grant respondents one-bite-at-the-apple in return for containment of a demonstrated trend toward concentration, not only within local markets but also national. As the Commission's Chief Economist reported to Congress, this policy of containment has effectively promoted

[10] For example, the same type of enforcement approach, entering consent orders with "containment" prohibitions on future acquisitions rather than requiring divestiture, as been followed in the retail food industry (*National Tea*) and the textile industry (*Burlington Industries*).

[1] Docket No. C–1057 (April 20, 1966).

the prophylactic aim of the Celler-Kefauver Act. Its "most important impact" has been "its deterrent effect." [2]

It is incorrect in my opinion, to say that we will judge future acquisitions by those already under order solely under the criteria as to whether the new acquisition violates Section 7. The standard is less. We should disapprove such acquisitions if: (1) the merger contributes to aggregated concentration; (2) there is a probability that the merger may renew or revitalize an industry trend toward concentration; and (3) approval of the merger will contribute to, instead of dispel, uncertainty concerning the government's approach to enforcement of the Celler-Kefauver Act.

With regard to the latter point, the business community is aware that the Commission and the Department of Justice have built their guidelines concerning conglomerate mergers of the product and market extension variety in the dairy, food retailing, and other industries, on the basis of Commission proceedings involving "containment" orders and the Commission's landmark conglomerate merger decisions in *Procter & Gamble,*[3] *Beatrice Foods,*[4] and *General Foods.*[5]

Approval of the Broadway-Hale/Neiman-Marcus coalition violates these guidelines, contributes to national and local market concentration; and offers the prospect of revitalization of a dangerous trend toward concentration, not only in the department store industry, but also in those other industries operating under merger bans.

I share Commissioner Elman's concern, as do other Commissioners, about the Commission's procedures for public disclosure of our actions. In this, as in similar proceedings over the years, the Commission has acted without any opportunity for public consideration of our action. The Commission has been considering, as it should, methods by which its actions may become more open to public scrutiny. In accordance with this view, we should act, with respect to any proposed merger involving a company under a merger "ban," *provisionally,* with *full* before-the-fact disclosure of the views of the majority and minority.[6]

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[2] Mueller, *The Celler-Kefauver Act: Sixteen Years of Enforcement,* Staff of Subcommittee No. 5, House Comm. on the Judiciary, 90th Cong., 1st Sess. (Comm. Print 1967). Dr. Mueller pointed out the decline in merger activity by the leading firms in the dairy and food retailing industries. Figures presently available to the Commission show a similar decline in merger activity in the department store industry since the Commission's orders of 1965 and 1966.

[3] Docket No. 6901 (Opinion of the Commission, November 26, 1963) [63 F.T.C. 1465, 1534].

[4] Docket No. 6653 (Opinion of the Commission, April 26, 1965) [67 F.T.C. 473, 697].

[5] Docket No. 8600 (Opinion of the Commission, March 11, 1966) [69 F.T.C. 380, 407].

[6] The Commission *provisionally* accepts consent settlements, permitting public comment

ORDER OF MODIFICATION

The Commission being of the opinion that the public interest requires that Part I of the Commission's order of April 14, 1966, should be reopened and modified and Broadway-Hale Stores, Inc., having by letter dated February 7, 1969, which will be treated as part of the record herein, and in lieu of any other procedure provided by a statute administered by the Commission or by the Commission's Rules of Practice for Adjudicative Proceedings, consented to the modification of said Part I of said order of April 14, 1966;

Now, therefore, it is hereby ordered, That Part I of the order of April 14, 1966, be, and it hereby is, modified as follows:

> *"It is ordered,* That, for five (5) years from the effective date of this modified order, respondent, Broadway-Hale Stores, Inc., shall cease and desist from acquiring, directly or indirectly, without first notifying the Federal Trade Commission and obtaining its consent, any department store or other GMAF store, or any interest in capital stock or other share capital, or any assets constituting a substantial part of all of the assets, of any concern engaged in the department store or other GMAF store business in the United States, other than The Emporium Capwell Company."

Commissioners Elman and Nicholson not concurring.

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for a period of 30 days. However, majority and minority statements are not usually issued in connection with the publication of the proposed settlement. They should be.

IN THE MATTER OF

GENERAL MILLS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

Docket C-1501. Complaint, Mar. 11, 1969—Decision, Mar. 11, 1969

Consent order prohibiting a large food processing corporation headquartered in Minneapolis, Minn., from acquiring any manufacturer or wholesaler of potato or corn chips and other food products for the next 10 years without prior approval of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that

General Mills, Inc. has acquired the assets of Morton Foods, Inc., a corporation, and Tom Huston Peanut Company, a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. Section 18), hereby issues this Complaint stating its charges in that respect as follows:

I

Definitions

1. For the purpose of this complaint, the following definitions shall apply.

(a) "Potato chips," a highly perishable and fragile food processed primarily from potatoes.

(b) "Corn chips," a highly perishable and fragile food processed primarily from corn.

II

Respondent

2. Respondent, General Mills, Inc. ("General Mills"), is a corporation organized and existing under the laws of the State of Delaware, with its offices and principal place of business at 9200 Wayzata Boulevard, Minneapolis, Minnesota.

3. Respondent was formed in 1928 for the purpose of acquiring several flour milling companies. Since that time, acquisitions and development of new products have played essential roles in the company's growth. This is evidenced by the fact that new products, either developed by General Mills or acquired by them within the past five years, accounted for about one-third of respondent's total sales in 1966. Other factors in the company's growth have been internal expansion and diversification.

4. Respondent possesses the ability to develop and establish new products. Indicative of this has been the successful introduction of "Bugles," "Whistles" and "Daisy*s" into the Nation's snack foods market by the company's Grocery Products Division. These products were introduced into the market on a limited basis in 1965, but it was not until the latter part of 1966 that they were distributed on a national basis. Sales of these products amounted to about $21 million in the first six months of 1967 or, about 6.9% of national snack foods sales.

At the same time, respondent has entered into the production and sale of additional food and snack food products by acquiring assets and stock of existing producers of said products. Among such acquisitions in recent years have been the following:

Year	Company	Product or activity
1964	Morton Foods, Inc.	Potato chips, corn chips and other snack foods.
1966	Tom Huston Peanut Co.	Potato chips, corn chips, peanuts, confectionery products and other snack foods.
1966	Toronto Macaroni and Imported Foods Limited [Canada].	Dough and food products.
1966–67	Smith's Potato Crisps [England].	Potato chips and other snacks.
1967	Cherry-Levis Food Products Corp.	Sausages and pickled meat products.
1967	Productor de Trigo S.A. [Mexico]	Cookies, crackers, pasta products and flour.

5. Respondent, directly and through various completely owned subsidiary corporations, is one of the largest flour milling companies in the United States, and is a leading producer of commercial flour, and packaged consumer foods. It ranks among the three largest companies in sales of breakfast cereals, is among the leaders in sales of cake mixes and other packaged convenience foods and is first by a considerable margin in sales of family flour.

Among its better known trade names and consumer products are the following:

"Betty Crocker" Bake and Other Food Products—

Cake Mixes
Pie Mixes
Brownie Mixes
Cookie Mixes
Frosting Mixes
Pound Cake
Muffin Mixes
"Masted Potato Buds"
Noodles Romanoff
Pancake Mixes
Gingerbread Mix
"SAFF-O-LIFE" Safflower Oil

"Bisquick" Mix—

Snacks—

"Bugles"
"Whistles"
"Daisys"
"Buttons"
"Bows"

Breakfast Cereals—

"Wheaties"
"Cheerios"
"Corn Kix"
"Trix"
"Sugar Jets"
"Frosty O's"
"Tutti-Frutti Twinkles"
"Total"
"Wheat Stax"
"Lucky Charms"
"Country Corn Flakes"
"Wheat Hearts"
"Cocoa Puffs"
"Goodness Pack"
"Wackies"

Flour—
"Gold Medal"
"Softasilk"
"Purasnow"
"Sperry Drifted Snow"
"White Deer"
"Red Band"
"La Pina"
"Red Star"

"*Toastwiches*"—refrigerated, prepared, fruit-filled sandwiches, designed for toaster heating.

Oat Products—
"Purity" Oatmeal
"Chief" Oatflakes
"Purity" Oat Flour

Sponges—
"O-Cel-O"
"Hired Hand"
"Fast Back"

6. Respondent markets its packaged consumer foods nationwide through its own sales organization, supported by intensive advertising and other promotional marketing activities. These products are distributed, in most cases directly, to chain stores, co-operatives, voluntary grocery chains and other wholesale outlets.

7. Respondent also manufactures a number of bakery mixes and other items which are marketed to members of the food service trade such as wheat gluten, wheat starch, guar and locust bean gums, wheat germ oil, spice base and multi-vitamin enrichment compounds. It also engages in grain merchandising and manufactures and markets a number of ingredient products for the dairy and other segments of the food processing industry. At the same time it operates facilities to supply its own flour requirements and for sale of flour to commercial users.

8. Respondent operates eight flour mills, having an aggregate daily capacity of approximately 56,300 hundred-weights of flour; a food service mix plant with a daily capacity of about 160,000 pounds; six cereal prepared mix and other packaged consumer food plants having an aggregate daily capacity of about 5,250,000 pounds; six plants for the manufacture of specialty chemical products with total floor space of about 420,000 square feet; five terminal grain elevators; one flour packaging plant and a number of warehouses. As of June 15, 1967, respondent employed approximately 10,100 employees.

9. For the year ended May 31, 1963, respondent and its subsidiaries' total assets were $266,693,648, sales totaled $523,946,000, and net earnings were $14,912,196. For the year ended

May 31, 1967, respondent and its subsidiaries' total assets were $366,841,000, sales $602,536,000 and net earnings $28,456,000. During this same period the company's consumer foods sales increased from about $288 million to where it now exceeds $458 million in annual sales. Further, there was a relative change in General Mills' product mix as consumer foods' sales increased from 55% to 76% of total company sales during the 1963 to 1967 period.

10. Prior to the acquisitions set out in this Complaint, respondent was engaged in internal research and development of snack foods such as potato chips. Further, General Mills is now test-marketing a new potato chip product under the name of "Chipos."

11. At all times relevant, herein, respondent sold and shipped its products in interstate commerce throughout the United States; hence, respondent was, and is, engaged in commerce as "commerce" is defined in the Clayton Act.

III

Morton Foods Inc.

12. Prior to February 28, 1964, Morton Foods, Inc. ("Morton"), was a corporation organized and existing under the laws of the State of Texas, with its offices and principal place of business at 6333 Denton Drive, Dallas, Texas.

13. Prior to February 28, 1964, Morton was, and for many years had been, engaged in manufacturing, processing, packaging, distributing and selling over 300 food and related items, its principal products being potato chips, corn chips, pickles, salad dressing and tea.

14. At the time of its acquisition by respondent, the products of Morton were distributed through 450 route salesmen and independent distributors to grocery stores and other retail and institutional outlets in Texas and Oklahoma and portions of Arkansas, Missouri, Louisiana, and New Mexico.

15. Prior to its acquisition, Morton planned to obtain nationwide distribution of its corn chips through a network of franchises.

16. Prior to February 28, 1964, Morton operated potato chip manufacturing plants in Dallas, Ft. Worth, Lubbock, El Paso and Corpus Christi, Texas, Albuquerque, New Mexico, and Tulsa, Oklahoma, and sales warehouses in Amarillo and Houston, Texas. The manufacture of corn chips took place in the Dallas plant and

the processing of pickles in Garland, Texas. At the time of the acquisition Morton Foods, Inc., had 850 employees.

17. As of December 31, 1963, Morton had total assets of $14,092,546, net sales of $24,568,581 and net income of $470,889. In 1963, its sales of potato chips were $8,990,000; sales of corn chips were $1,369,000.

18. In 1963, Morton was among the ten largest potato chip and corn chip producers in the nation. In its market area, in 1967, it was the second leading seller of potato chips with 26% of the market and second largest seller of corn chips with 3.8% of the market.

19. At all times relevant herein, Morton sold and shipped its potato chips and corn chips in interstate commerce; hence, Morton was, and is, engaged in commerce, as "commerce" is defined in the Clayton Act.

IV

Tom Huston Peanut Company

20. Prior to August 27, 1966, Tom Huston Peanut Company ("Tom Huston") was a corporation organized and existing under the laws of the State of Georgia, with its offices and principal place of business at 900-8th Street, Columbus, Georgia.

21. Prior to August 27, 1966, Tom Huston was, and for many years had been, engaged in the manufacture, processing, packaging and sale of some 300 food items, its principal products being potato chips, corn chips, confectionery products, and cracker sandwiches.

22. At the time of the acquisition, products of Tom Huston were distributed through some 450 independent distributors to grocery stores and other retail and institutional outlets throughout the United States with 83% of its sales being made in Texas, Oklahoma, Arkansas, Louisiana, Missouri, Mississippi, Alabama, Tennessee, Kentucky, Georgia, Florida, North Carolina, South Carolina, Virginia, Delaware and Maryland.

23. Prior to August 27, 1966, Tom Huston operated potato chip and corn chip manufacturing plants in Corsicana, Texas, Knoxville, Tennessee, and Salem, Virginia and confectionery and cracker sandwich manufacturing and processing plants in Columbus and Macon, Georgia. At the time of the acquisition, Tom Huston had 1,500 employees.

24. As of August 28, 1965, Tom Huston had total assets of $24,286,521, net sales of $43,283,872 and net income of $3,821,490.

In 1965, its sales of potato chips were $8,156,704; and sales of corn chips totaled $948,314.

25. At the time of its acquisition, Tom Huston was among the ten largest potato chip and corn chip producers in the nation and was a substantial seller of potato chips and corn chips in its market area.

26. At all times relevant herein, Tom Huston sold and shipped its potato chips and corn chips in interstate commerce; hence, Tom Huston was, and is, engaged in commerce as "commerce" is defined in the Clayton Act.

V

Trade and Commerce

27. The broad lines of commerce primarily relevant to the Tom Huston and Morton acquisitions are the manufacture, distribution and sale of potato chips and corn chips.

28. Sales of potato chips and corn chips are substantial and are increasing at an annual rate of about 10%. Between 1958 and 1963 inclusive, manufacturers' sales of potato chips increased from $263,326,000 to $355,016,000 and corn chips increased from $30,980,000 to $63,299,000.

29. The marketing of potato chips and corn chips is highly susceptible to product differentiation through advertising, promotions and merchandising, and acceptance of these products by retailers is conditioned to a large extent on promotional support of this nature. In 1966, General Mills spent a total of $47,751,273 on advertising all of its products in major media where it ranked fifteenth among all users and second among food companies.

30. Prior to 1955, the production of potato chips and corn chips took place in fragmented industries comprised of closely held single plant, single product companies which distributed their products regionally or locally through driver salesmen and independent multi-product distributors.

31. Between 1955 and the present a series of acquisitions by diversified national companies, primarily food concerns, has taken place in the potato chip and corn chip manufacture and distribution industries transforming their structure from one dominated by independent companies to one dominated by these diversified national food concerns. Since 1955, these acquisitions and mergers, as well as liquidations, have significantly reduced the number of competitors in these industries and disproportion-

ately increased concentration of production and sales in a small number of diversified national food concerns.

32. Whereas, prior to 1955, only one diversified national food concern was among the ten largest manufacturers of potato chips or corn chips, today, the ten largest potato chip producers and all but two of the ten largest corn chip producers are diversified national corporations. In this regard acquisitions were the most significant factor accounting for the present position of all but one of the large concerns manufacturing, distributing and/or selling potato chips and all of the manufacturers, distributors and/or sellers of corn chips. Further, respondent's acquisitions of Morton and Tom Huston have substantially increased this trend.

33. Similarly, more than fifty percent (50%) of the production and sale of potato chips and corn chips is concentrated in a dozen diversified national food concerns.

34. In 1957, the eight largest companies' combined share amounted to 44.0% of the potato chip market and 92.5% of the corn chip market. By 1961, the eight largest companies' combined share, most of whom were now diversified national companies, amounted to 51.9% of the potato chip market and 95.7% of the corn chip market.

35. Prior to and at the time of the acquisitions, Morton and respondent were substantial potential competitors and Tom Huston and respondent were substantial actual and potential competitors in the sale of potato chips and corn chips within the respective market areas served by Morton and Tom Huston and throughout the United States.

36. As a result of respondent's acquisition of Morton and Tom Huston, respondent is now one of the largest sellers of potato chips and corn chips in the United States.

37. The geographical markets (section of the country) relevant hereto are the United States as a whole and market areas and parts thereof in which General Mills, Morton and Huston did business.

VI

Violations of Section 7 of the Clayton Act

38. On or about February 28, 1964, respondent acquired substantially all of the assets and business of Morton in exchange for 512,975 shares of General Mills common stock having a market value of $19.4 million.

39. On or about August 27, 1966, respondent acquired substantially all of the assets and business of Tom Huston in exchange for 1,644,605 shares of General Mills cumulative convertible preference stock having a market value of $80.7 million.

VII

Effects of Violations Charged

40. The effect of respondent's acquisitions of Morton and Tom Huston has been or may be, substantially to lessen competition or tend to create a monopoly in the manufacture, distribution and sale of potato chips and corn chips in the United States, or sections thereof, thereby violating Section 7 of the Clayton Act, as amended, in the following ways, among others:

(1) Actual or potential competition between respondent and each acquired corporation in the manufacture, distribution and sale of potato chips, and corn chips has been eliminated;

(2) Potential competition by respondent as a manufacturer, distributor or seller of potato chips and corn chips has been, or may be lessened or eliminated;

(3) Each of the acquired corporations has been eliminated as a substantial independent competitive factor in the manufacture, distribution and sale of potato chips and corn chips;

(4) Each of the acquired corporations has been eliminated as an independent purchaser and user of raw materials, supplies and equipment used in the manufacture, distribution and sale of potato chips and corn chips;

(5) Former independent distributors of the acquired companies have lost independent sources of supply and may be foreclosed from outlets for potato chips and corn chips;

(6) Respondent's replacement of Morton and Tom Huston in the manufacture and marketing of potato chips and corn chips constitute significant elements in a series of major structural changes which may alter substantially the existing competitive relations between large and small firms in these industries;

(7) Industrywide concentration in the manufacture, distribution and sale of potato chips and corn chips has been substantially increased to the detriment of actual and potential competition;

(8) Previously existing industrywide concentration in the manufacture, distribution and sale of potato chips and corn chips has been, or may be, further accelerated in that respon-

dent's acquisitions may precipitate additional acquisitions, mergers and liquidations of other independent manufacturers;

(9) Entry into the potato chip and corn chip industries may be discouraged or inhibited;

(10) Respondent has potentially decisive competitive advantage over many of its competitors and has the financial resources and economic power to dominate or tend to monopolize the manufacture, distribution and sale of potato chips and corn chips in the sections of the country heretofore identified through its capacity to bargain for materials; absorb high raw material costs in times of shortage; effect product differentiation and demand through advertising, promotions and merchandising; and to obtain full coverage of outlets and prime shelf space.

41. Separately and together the acquisitions of Tom Huston and Morton by respondent, as alleged above, constitute violations of Section 7 of the Clayton Act (15 U.S.C. Section 18) as amended.

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 Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 7 of the Clayton Act, as amended; 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 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 General Mills, 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 9200 Wayzata Boulevard, Minneapolis, Minnesota.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

I

It is ordered, That for a period of ten (10) years from the date this order becomes final, respondent, General Mills, Inc., a corporation, shall cease and desist from entering, without prior approval of the Federal Trade Commission, into any arrangement with another party, corporate or noncorporate as a result of which respondent obtains, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock or other share capital, or the assets (other than products purchased or sold in the ordinary course of business), of any concern, corporate or noncorporate (other than respondent's distributors) engaged at the time of such acquisition in the United States in the manufacture or wholesale distribution of wheat or oat flour; ready-to-eat, or hot farina-type, breakfast cereals; hot casseroles or flour-based baking and dessert mixes; potato chips; corn chips; cereal-based or corn-based snacks of the "Bugles," "Whistles" and "Daisy*s" type; peanuts and cashews; salad dressing; tea; pickles; peanut, hard and moulded starch-processed candies; cracker sandwiches with white sugar or butter-based filling; crackers, peanut or cheese filled; cellulose sponges; ready-to-eat popcorn; porkskins; dry condiments; powdered soft drinks and prepared sandwiches of the fruit filled "Toastwiches" type, designed for toaster heating. As used in this paragraph, the acquisition of assets includes any arrangement by respondent with any other party, pursuant to which such other party discontinues manufacturing any of said products under a brand name or label owned by such other party and

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.