rights or privileges to be divested be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee or agent of, or under the control or direction of, Mississippi River Corporation or any of its subsidiaries or affiliates, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of voting stock of Mississippi River Corporation, or any of its subsidiaries or affiliates.

It is further ordered, That for a period of ten (10) years respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the share capital or other assets of any corporation engaged in the sale of ready-mixed concrete or concrete products within respondent's present or future marketing area for portland cement or which purchased in excess of 10,000 barrels of portland cement in any of the five (5) years preceding the merger.

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order and every sixty (60) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the divestiture provisions of this order, and fulfilling its objectives. All reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the stock, assets, properties, rights or privileges to be divested under this order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

Commissioner MacIntyre not participating.

IN THE MATTER OF

J. C. BEST, INC., ET AL.

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

Docket C-1535. Complaint, May 22, 1969—Decision, May 22, 1969

Consent order requiring a Braintree, Mass., retailer of rugs and carpeting to cease misbranding and falsely advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that J. C. Best, Inc., a corporation, and David S. Levine, 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 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 J. C. Best, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts.

Respondent David S. Levine is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent, including the acts, practices and policies hereinafter set forth.

Respondents are engaged in the retail sale of rugs and carpeting, with their office and principal place of business located at 845 Granite Street, Braintree, Massachusetts.

PAR. 2. Respondents are now and for some time last past have been, engaged in the introduction, delivery for introduction, manufacture 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. 3. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were numerous rolls of carpeting which contained no labels.

PAR. 4. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that in disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such required fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid Rules and Regulations.

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations under said Act.

Among such falsely and deceptively advertised textile fiber products, but not limited thereto, were carpets which were falsely and deceptively advertised in "The Boston Globe," "The Record American" and "The Boston Advertiser," newspapers published in the city of Boston, Commonwealth of Massachusetts, and having a wide circulation in said State and various other States of the United States, in that the said textile fiber products were advertised by means of the fiber trademark "Herculon" without the aforesaid required information being set forth.

PAR. 6. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations thereunder in the following respect:

1. In disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such required fiber content information related only to

the face, pile, or outer surface of the floor covering and not to the backing, filling, or padding, in violation of Rule 11 of the aforesaid Rules and Regulations.

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

3. A fiber trademark was used in advertising textile fiber products containing only one fiber and such fiber trademark did not appear at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

PAR. 7. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts 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 the 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 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 J. C. Best, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 845 Granite Street, Braintree, Massachusetts.

Respondent David S. Levine 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 the proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents J. C. Best, Inc., a corporation, and its officers, and David S. Levine, 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 introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to affix a stamp, tag, label or other means of identification to each such 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.

2. Failing to disclose on labels the required fiber

content information as to floor coverings, containing exempted backings, fillings, or paddings, in such manner as to indicate that it relates only to the face, pile, or outer surface of the floor covering and not to the exempted backing, filling or padding.

B. Falsely and deceptively advertising textile fiber products by:

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

2. Failing to set forth in disclosing fiber content information as to floor coverings containing exempted backings, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber product and not to the exempted backings, fillings, or paddings.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

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

ALBERT BELL'S MIDWEST APPLIANCE CO., ET AL.

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

Docket C-1536. Complaint, May 22, 1969—Decision, May 22, 1969

Consent order requiring a Kansas City, Mo., retailer of home appliances to cease using deceptive pricing and savings claims and failing to disclose the total purchase price and other interest and service charges.

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 Albert Bell's Midwest Appliance Co., a corporation, and Albert Bell and Harold A. Bell, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Albert Bell's Midwest Appliance Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 3300 Troost Avenue, in the city of Kansas City, State of Missouri.

Respondents Albert Bell and Harold A. Bell are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of various items of home appliances, including household furniture, television and stereo sets 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 Missouri 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, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers with respect to price, savings and lay-away or unclaimed merchandise.

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

1. Magic Chef Gas Range
$138 . . . . . Save $41.

* * * * * * *

Hotpoint Refrigerators
Your Choice
$246 . . . . . Save $51.

* * * * * * *

Save 35% on Food Freezers
Choose from
Gibson ● Hotpoint
15 Cu. ft. Chest
or Upright . . . . . $179.

* * * * * * *

2. SACRIFICED . . . . .
UNCLAIMED MERCHANDISE
LAYAWAYS Being Sold For
Balance Due . . . .
Just Take Over Payments
30%—50%—70% OFF
. . . . . RCA VICTOR STEREO
Balance Due . . . . . $117.

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, the respondents have represented, and are now representing, directly or by implication, that:

1. Purchasers of respondents' merchandise are afforded a stated dollar amount or percentage of savings from respondents' regular selling price of said merchandise.

2. Through the use of statements, "Unclaimed merchandise," "layaways being sold for balance due * * * $117," "Just take over payments," "30%–50%–70% OFF," and statements of similar import, that unclaimed merchandise was partially paid

for by a previous purchaser and left in lay-away and is being offered for the unpaid balance of the purchase price, thereby affording savings of 30–70% to purchasers on said merchandise.

PAR. 6. In truth and in fact:

1. Purchasers of respondents' merchandise are not afforded a stated dollar amount or percentage of savings from respondents' regular selling price of said merchandise. In fact, respondents do not have a regular selling price, but the price at which respondents' merchandise is sold varies from purchaser to purchaser depending upon the resistance of the prospective purchaser.

2. The advertised articles, in a substantial number of instances, are not unclaimed merchandise, partially paid for by a previous purchaser and left in lay-away and are not being offered for the unpaid balance of the purchase price, and the represented savings of 30–70% are not afforded to purchasers. In fact, said merchandise consists mostly of slow-moving merchandise from the general stock and is priced without regard for the balance due.

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 and conduct of their business, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

In a substantial number of instances and in the usual course of business, respondents and their salesmen or representatives fail to disclose the exact amount of the total purchase price of merchandise, including all interest, credit, insurance, service or other handling charges, at the time the contract for the sale of such merchandise is executed by the purchaser or purchasers.

Therefore, the acts and practices as set forth in Paragraph Seven hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 8. 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 various items of home appliances, including household furniture, television and stereo sets, of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, mis-

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

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

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 Albert Bell's Midwest Appliance Co. is a cor-

poration organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 3300 Troost Avenue, Kansas City, Missouri.

Respondents Albert Bell and Harold A. Bell 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 Albert Bell's Midwest Appliance Co., a corporation, and its officers, and Albert Bell and Harold A. Bell, 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 advertising, offering for sale, sale or distribution of household furniture, television, stereo sets or other home appliances or 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, that any savings, or stated amount or percentage of savings, are afforded to purchasers of respondents' merchandise unless the price at which such merchandise is offered constitutes a significant reduction, and a reduction equal to any amount or percentage, stated or otherwise, from an established selling price at which such merchandise has been sold in substantial quantities 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.

3. Representing, directly or by implication, that merchandise is offered for sale for the unpaid balance of the purchase price or for taking over the payments or on any other terms or conditions as unclaimed or lay-away merchandise or for any other reason unless such merchandise is of the represented kind and status and its purchase affords the

purchaser all of the reductions in price and advantages claimed for it.

4. Failing to disclose the exact amount of the total purchase price of merchandise and all interest, credit, insurance, service or other charges in writing at the time the contract for the sale of such merchandise is executed by the purchaser or purchasers.

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

BERNARD SPIVACK & CO., INC., ET AL.

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

Docket C-1537. Complaint, May 22, 1969—Decision, May 22, 1969

Consent order requiring a Chicago, Ill., manufacturer of fur trimmed ladies' garments to cease misbranding, falsely invoicing, and deceptively guaranteeing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bernard Spivack & Co., Inc., a corporation, and Bernard Spivack, 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 Bernard Spivack & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois.

Respondent Bernard Spivack 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 manufacturers of fur trimmed ladies' garments with their office and principal place of business located at 330 South Franklin Street, Chicago, Illinois.

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

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

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

Among such misbranded fur products, but not limited thereto, were fur products where the required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and decep-

tively 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, was a fur product covered by an invoice which failed:

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

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

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

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

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

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

PAR. 9. The aforesaid acts and practices of respondents, as set forth above, 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 Bernard Spivack & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 330 South Franklin Street, Chicago, Illinois.

Respondent Bernard Spivack is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Bernard Spivack & Co., Inc., a corporation, and its officers, and Bernard Spivack, 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 introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product

which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

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

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

B. Falsely or deceptively invoicing fur products by:

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

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

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

It is further ordered, That respondents Bernard Spivack & Co., Inc., a corporation, and its officers, and Bernard Spivack, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported or distributed in commerce.

It is further ordered, That the 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

PLAZA NINE, LTD., ET AL.

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

Docket C-1538. Complaint, May 23, 1969—Decision, May 23, 1969

Consent order requiring a Wichita, Kans., seller of textile and wool fiber products to cease misbranding its merchandise and failing to keep required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification 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 Plaza Nine, Ltd., a corporation, and Shirley M. Zakas, 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 Textile Fiber Products Identification 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 Plaza Nine, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas. Its office and principal place of business is located at 221 East William Street, Wichita, Kansas. Individual respondent Shirley M. Zakas is the principal officer of said corporation. She formulates, directs and controls the acts, practices and policies of said corporation. Her office and principal place of business is the same as said corporation.

Respondents are engaged in the sale of textile and wool fiber products, including but not limited to the sale of designer's samples of women's apparel.

PAR. 2. 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 had 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. 3. Certain of the textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were designers' samples of women's apparel with labels which failed;

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

(2) To disclose the true percentage of the fibers present by weight.

PAR. 4. 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 therefore labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 5. Respondents in substituting a stamp, tag, label or other identification pursuant to Section 5(b) have not kept such records as would show the information set forth on the stamp, tag, label or other identification that was removed and the name or names of the person or persons from whom such textile fiber products was received, in violation of Section 6(b) of the Textile Fiber Products Identification Act.

PAR. 6. The acts and practices of respondents, as set forth above were, and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated

thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 7. Respondents now and for sometime 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. 8. 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 Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

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

PAR. 9. Respondents, subsequent to the effective date of the Wool Products Labeling Act of 1939, and with the intent of violating the provisions of said Act, 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 wool products subject to the provisions of such Act, prior to the time such wool products were sold and delivered to the ultimate consumer, without substituting therefore labels conforming to Section 4(a)(2) of said Act.

PAR. 10. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Textile Fiber Products Identification 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 Plaza Nine, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 221 East William Street, Wichita, Kansas.

Respondent Shirley M. Zakas is an officer of said corporation and her 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 Plaza Nine, Ltd., a corporation, and its officers, and Shirley M. Zakas, 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 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 term "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to each such 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 Plaza Nine, Ltd., a corporation, and its officers, and Shirley M. Zakas, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4 of said Act and the Rules and Regulations promulgated thereunder and in the manner prescribed by Section 5(b) of said Act.

It is further ordered, That respondents Plaza Nine, Ltd., a corporation, and its officers, and Shirley M. Zakas, individually and as an officer 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 will 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 respondents Plaza Nine, Ltd., a corporation, and its officers, and Shirley M. Zakas, 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 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 such products by failing to securely affix to or place on, each such product a stamp, tag, label or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Plaza Nine, Ltd., a corporation, and its officers, and Shirley M. Zakas, individually and as an officer 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 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 wool product subject to the provisions of said Act 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 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

ISRAEL RETTINGER ET AL. DOING BUSINESS AS RETTINGER RAINCOAT MFG. CO.

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

Docket 6534. Complaint, March 22, 1956—Decision, May 27, 1969

Order modifying a consent order dated August 17, 1956, 53 F.T.C. 132, which prohibited a manufacturer of rainwear from misusing the word "Goodyear" by permitting the successor respondent to use the term "Goodyear–Made By Rettinger" and similar words.

DISSENTING OPINION

MAY 27, 1969

BY DIXON, *Commissioner:*

Commissioner Dixon dissents from that part of the modified order which would permit respondents to use such statements as "Goodyear–By Rettinger" and "Goodyear–By Lucky Rainwear" to designate rainwear manufactured by a firm other than respondent corporation. Commissioner Dixon believes that such statements are wholly inadequate to inform purchasers that the rainwear is not made by respondent corporation, and, in themselves, constitute a false representation that the goods are so made.

ORDER REOPENING MATTER AND MODIFYING ORDER TO CEASE AND DESIST

The parties named in the caption hereof having heretofore entered into an agreement containing consent order in this matter, which order became the order to cease and desist contained in the Commission's decision of August 17, 1956 [53 F.T.C. 132] ; and

Respondent David Rettinger having, on August 5, 1968, filed a motion for a stay order, and subsequent thereto having reconsidered said motion and having desired to have the motion considered as withdrawn and to present for the Commission's consideration in lieu thereof an agreement entered into between said respondent, and the Rettinger Raincoat Mfg. Co., Inc., a corporation, and their attorney, and counsel for the Commission,

whereby said respondent would consent to entry of a modified order to cease and desist in such matter; and

The said parties having entered into and executed such an agreement which recites, *inter alia,* that upon acceptance of the agreement by the Commission the aforesaid motion of August 5, 1968, is to be considered as having been withdrawn by respondent David Rettinger, and only thereupon is the agreement to become a part of the official record of the proceeding; that Israel Rettinger, heretofore also named as an individual and copartner respondent in the proceeding, is now deceased, and the partnership, Rettinger Raincoat Mfg. Co., has been dissolved; and that the Rettinger Raincoat Mfg. Co., Inc., a New York corporation, is the successor and assign of said partnership; and which agreement further provides that, if accepted by the Commission, the Commission may, without further notice to the parties thereto, issue its order reopening the proceeding and modifying the order to cease and desist contained in its decision of August 17, 1956, such order as modified to read in the form set out in the agreement; and

The Commission having concluded that the modification sought is warranted in the circumstances, and having accepted the agreement;

Now, therefore, it is ordered, That this proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist contained in the Commission's decision of August 17, 1956, be, and it hereby is, modified to read as follows:

It is ordered, That respondent David Rettinger, individually and as a former copartner in Rettinger Raincoat Mfg. Co., a partnership now dissolved, and as a former officer and active stockholder of Rettinger Raincoat Mfg. Co., Inc., a corporation, which corporation is the successor and assign of said partnership, and respondent's agents, representatives, employees, and successors and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rainwear, including rubber raincoats and rainsuits, and other similar kinds of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "Goodyear", or any other word or words of similar import, to designate or refer to such merchandise unless, in immediate conjunction with such word or words,

respondent affirmatively discloses, clearly and conspicuously, either that the Goodyear Tire and Rubber Company of Akron, Ohio, is not the manufacturer or source of such merchandise or that the manufacturer or source of such merchandise is a firm other than the Goodyear Tire and Rubber Company of Akron, Ohio: *Provided, however,* That with respect to merchandise manufactured by Rettinger Raincoat Mfg. Co., Inc., use in the foregoing manner of any of the following disclosure statements, which statements are illustrative but not all-inclusive, will be deemed by the Commission to constitute compliance with this order:

"Goodyear–Not Made by Goodyear of Akron, Ohio"

"Goodyear–Made by Rettinger"

"Goodyear–Made by Lucky Rainwear"

And provided, further, That with respect to merchandise manufactured by a firm other than Rettinger Raincoat Mfg. Co., Inc. but distributed by said company use in the foregoing manner of any of the following disclosure statements, which statements are illustrative but not all-inclusive, will be deemed by the Commission to constitute compliance with this order:

"Goodyear-Not Made by Goodyear of Akron, Ohio"

"Goodyear-By Rettinger"

"Goodyear-By Lucky Rainwear."

It is further ordered, That, for purposes of compliance, this order shall be considered inapplicable with respect to those articles of merchandise in inventory as of the date of service of this order which bear disclosure statements indicating that such merchandise is made or manufactured by the Rettinger Raincoat Mfg. Co., Inc., or by Rettinger or by Lucky Rainwear.

It is further ordered, That the order to cease and desist contained in the Commission's decision of August 17, 1956, be, and it hereby is, vacated as to decedent Israel Rettinger, a former copartner in the dissolved partnership, Rettinger Raincoat Mfg. Co.

It is further ordered, That respondent David Rettinger and Rettinger Raincoat Mfg. Co., Inc., a corporation, 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 to cease and desist.

Commissioner Dixon dissenting, and Commissioner MacIntyre abstaining.

Complaint

IN THE MATTER OF

BLAIR'S TELEVISION & MUSIC COMPANY, INC., ET AL.

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

Docket C-1539. Complaint, June 4, 1969—Decision, June 4, 1969

Consent order requiring a Chevy Chase, Md., appliance dealer to cease using bait and switch tactics, misrepresenting that offers to sell are limited, and using deceptive pricing in the sale of its TV sets.

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 Blair's Television & Music Company, Inc., a corporation, Blairs T.V.—Chevy Chase, Inc., a corporation, and C. Kemp Devereux, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Blair's Television & Music Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5422 Western Avenue, in the city of Chevy Chase, State of Maryland.

Respondent Blairs T.V.—Chevy Chase, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5422 Western Avenue, in the city of Chevy Chase, State of Maryland.

Respondent C. Kemp Devereux is an individual and an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of television sets and other merchandise to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their television sets and other merchandise, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of which the following are typical and illustrative, but not all inclusive thereof.*

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, the respondents have represented, and are now representing, directly or by implication that:

1. The offers set forth in said advertisements are bona fide offers to sell the advertised merchandise at the prices and on the terms and conditions stated.

2. By and through the use of terms such as "Television Sale!" and other terms of similar import and meaning, that respondents' television sets are being offered for sale at special or reduced prices, and purchasers thereby afforded savings from respondents' regular selling prices.

3. By and through the use of the words "Thursday Only" and other words of similar import and meaning, that respondents' merchandise was being offered for sale at the stated price for a limited period of time.

PAR. 6. In truth and in fact:

1. The offers set forth in said advertisements were not bona fide offers to sell the advertised merchandise at the prices and on the terms stated, but were made for the purpose of attracting prospective purchasers into respondents' place of business in order that respondents' salesmen might sell them other, more expensive merchandise. Respondents' salesmen made no effort to sell the advertised merchandise, but told prospective purchasers in

*Pictorial advertisements omitted in printing.

many instances that the advertised merchandise was not on hand to be demonstrated. When demonstrated, the advertised television sets were so out of adjustment that customers usually rejected them on sight due to the unacceptably poor picture quality. Concurrently, a higher priced television set, properly adjusted and with a clear picture, was demonstrated side by side with the advertised set, and by such comparison the advertised merchandise was disparaged and demeaned. By these and other tactics, purchase of the advertised merchandise was discouraged, and respondents through their salesmen attempted to and frequently did sell the higher priced merchandise.

2. Respondents' merchandise was not being offered at special or reduced prices, and purchasers were not thereby afforded savings from respondents' regular selling prices.

3. Respondents were not offering the advertised merchandise at the stated price for a limited period of time. The stated price was the usual and regular offering price advertised by respondents for such merchandise.

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 merchandise of the same general kind and nature as that sold by respondents.

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

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

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 Blair's Television & Music Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5422 Western Avenue, in the city of Chevy Chase, State of Maryland.

Respondent Blairs T.V.—Chevy Chase, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 5422 Western Avenue, in the city of Chevy Chase, State of Maryland.

Respondent C. Kemp Devereux is an individual and an officer of the corporate respondents and his address is the same as that of the corporate respondents.

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 Blair's Television & Music Company, Inc., a corporation, Blairs T.V.—Chevy Chase, Inc., a corporation, and their officers, and C. Kemp Devereux, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of television sets or any other merchandise or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services at the prices and on the terms and conditions stated.

2. Using any advertising, sales plan or procedure wherein false, misleading or deceptive representations are made to attract prospective purchasers to respondents' place of business or to induce the sale of merchandise or services.

3. Disparaging, in any manner, or discouraging the purchase of any merchandise advertised.

4. Advertising merchandise for sale which is not available in quantities sufficient to meet reasonably anticipated demand, unless such advertising clearly and conspicuously discloses the number of units in stock, the location of such units, and the duration of the offer.

5. Representing, directly or by implication, through the use of terms such as "Television Sale," or in any other manner, that any price is reduced from respondents' former price unless respondents' business records establish and show that 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.

6. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise, or misrepresenting, in any man-

ner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise.

7. Representing, directly or by implication, that respondents' merchandise is being offered for sale at a stated price for a limited period of time when such merchandise is being offered at the same or substantially the same price for a period of time different from that represented.

8. Representing, directly or by implication, that any offer of respondents is limited or restricted in any manner unless such offer is in fact limited or restricted in the manner represented and unless such limitation or restriction is in good faith adhered to by respondents.

9. 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' merchandise 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 corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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

IN THE MATTER OF

WAVERLY FASHIONS, INC., ET AL.

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

Docket C-1540. Complaint, June 4, 1969—Decision, June 4, 1969

Consent order requiring four affiliated New York City manufacturers of ladies' coats to cease misbranding the fiber content of its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade

Commission, having reason to believe that Waverly Fashions, Inc., a corporation, Petite Town, Inc., a corporation, Lady Janet, Inc., a corporation, Miss Janet, Inc., a corporation, and Samuel Sosne, Jacob Sosne and Philip Sosne, individually and as officers of Waverly Fashions, Inc., and Petite Town, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Waverly Fashions, Inc., Petite Town, Inc., Lady Janet, Inc., and Miss Janet, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their office and principal place of business located at 247 West 37th Street, New York, New York.

Respondents Samuel Sosne, Jacob Sosne and Philip Sosne are officers of Waverly Fashions, Inc., and Petite Town, Inc. They formulate, direct and control the policies, acts and practices of said corporations and their address is the same as that of the corporate respondents.

Respondents are engaged in the manufacturing of ladies' wool coats. They ship and distribute such products to various customers throughout the United States.

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

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

Among such misbranded wool products, but not limited thereto, were wool products, namely ladies' coats, containing interlinings, stamped, tagged, labeled, or otherwise identified as "85% Reprocessed Wool, 15% Other Fibers," whereas in truth and in fact,

such wool products contained substantially different fibers and amounts of fibers than represented.

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

Among such misbranded wool products, but not limited thereto, were wool products, namely ladies' coats, containing interlinings with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

Also among such misbranded wool products, but not limited thereto, were wool products, namely ladies' coats, containing interlinings with no labels attached.

PAR. 5. Certain of said wool products were misbranded 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:

1. Samples, swatches or specimens of wool products used to promote or effect sales of such wool products in commerce, were not labeled or marked to show the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in violation of Rule 22 of the aforesaid Rules and Regulations.

2. The fiber content of the 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. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

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

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

1. Respondents Waverly Fashions, Inc., Petite Town, Inc., Lady Janet, Inc., and Miss Janet, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 247 West 37th Street, New York, New York.

Respondents Samuel Sosne, Jacob Sosne and Philip Sosne are officers of Waverly Fashions, Inc., and Petite Town, Inc., and their address is the same as that of said corporations.

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

ORDER

It is ordered, That respondents Waverly Fashions, Inc., a corporation, and its officers, Petite Town, Inc., a corporation, and

its officers, Lady Janet, Inc., a corporation, and its officers, Miss Janet, Inc., a corporation, and its officers, and Samuel Sosne, Jacob Sosne and Philip Sosne, individually and as officers of Waverly Fashions, Inc., and Petite Town, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

3. Failing to affix labels to samples, swatches or specimens of wool products used to promote or effect the sale of wool products, showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(a)(2) of the Wool Products Labeling Act of 1939.

4. Failing to set forth separately the fiber content of interlining as part of the required information on stamps, tags, labels or other marks of identification on such garments.

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

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

Complaint

IN THE MATTER OF

GREATER KANSAS CITY GAS FURNACE AND AIR CONDITIONING COMPANY, INC., ET AL.

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

Docket C-1541. Complaint, June 6, 1969—Decision, June 6, 1969

Consent order requiring a Kansas City, Missouri, distributor of furnaces and other heating equipment, to cease making false representations to prospective customers that the condition of their furnace is defective, unsafe, or hazardous.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., a corporation, and Dennis G. Svejda, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 3315 Troost, Kansas City, Missouri.

Respondent Dennis G. Svejda is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of furnaces, heating equipment and parts therefor to the purchasing public, and in the repair and servicing of heating equipment.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their principal place of

business in the State of Missouri to purchasers thereof located in the States of the United States other than the State in which the shipments originated. In the course of the repairing of furnaces, heating equipment or the parts thereof, respondents have sent their employees to repair and service such furnaces, heating equipment and the parts thereof at the homes of customers located in States of the United States other than the State in which the principal office and place of business of the corporate respondent was located, and at all times mentioned herein respondents have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of selling their products or services, respondents, directly and through representatives, employ many unfair and deceptive practices. Among and typical of such practices are the following:

(1) Respondents through phone solicitations and otherwise offer low cost cleaning services, thereby gaining access to home owners' heating plants or equipment.

(2) Respondents' salesmen and servicemen falsely represent to the owner of a furnace or heating equipment that the said furnace or heating equipment is defective, is not repairable, or is dangerous to use, to the extent that continued use will result in asphyxiation, carbon monoxide poisoning, fires or other damage.

(3) The employees and representatives of respondents, by misrepresenting the condition of furnaces to the owners, and misrepresenting the danger inherent in continued use of such furnaces, have caused the furnace owners to purchase furnaces or parts from respondents, which they would not have otherwise purchased.

PAR. 5. In the course and conduct of their business at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale, repair and servicing of furnaces, heating equipment and the parts thereof of the same general kind and nature as sold, repaired or serviced by respondents.

PAR. 6. The use by respondents of the aforesaid acts and practices in connection with the conduct of their business has had, and now has, the capacity and tendency to mislead and deceive a substantial number of the public, to cause many owners

of furnaces and heating equipment, through fear of continuing to use such equipment, to discard such furnaces and heating equipment before the completion of the useful life of such products and to purchase furnaces, heating equipment and parts thereof sold by respondents, or to contract for extensive but unnecessary repairs of existing furnaces and heating equipment. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 7. The aforesaid acts and practices of 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 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 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 Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 3315 Troost, Kansas City, Missouri.

Respondent Dennis G. Svejda is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Greater Kansas City Gas Furnace and Air Conditioning Company, Inc., a corporation, and its officers, and Dennis G. Svejda, 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 sale, repair or servicing of furnaces, heating equipment or the parts thereof, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Respondents will clean a prospective customer's furnace or heating equipment for a nominal fee unless, as a matter of fact, such offer is a bona fide offer to inspect or to clean such furnace or heating equipment;

(b) Any furnace, heating equipment or parts thereof are defective, not repairable or repairable only at extensive cost, unless such are the facts;

(c) The continued use of any furnace, heating equipment or parts thereof is dangerous or hazardous to the health of the owner thereof or his family, due to escaping carbon monoxide, fire or other causes, unless such are the facts;

(d) A furnace which has been inspected by respondents' employees cannot be used without danger of asphyxiation, gas poisoning, fires or other damage, when such is not a fact;

2. Misrepresenting in any manner the condition of any

furnace, heating equipment or the parts thereof which have been inspected by respondents or their employees.

It is further ordered, That respondents:

a. 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 secure from each such salesman or other person a signed statement acknowledging receipt of said order.

b. Distribute a copy of this order to each of their operating divisions.

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

IN THE MATTER OF

YOUNG HERITAGE, INC., ET AL.

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

Docket C-1542. Complaint, June 10, 1969—Decision, June 10, 1969

Consent order requiring a New York City clothing manufacturer to cease misbranding and falsely guaranteeing its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Young Heritage, Inc., a corporation, and David Freedman, Harold Steinberg and Sheldon Raywood, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Young Heritage, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents David Freedman, Harold Steinberg and Sheldon Raywood are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers of wool products, with their office and principal place of business located at 225 West 37th Street, New York, New York.

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

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

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

(a) Labeled or tagged by respondents as 60 percent wool, 25 percent nylon, 15 percent other fibers, when, in truth and in fact, said products contained substantially different fibers than as represented.

(b) Labeled or tagged by respondents as 80 percent wool, 8 percent nylon, 12 percent silk, when in truth and in fact, said products contained substantially different fibers and amounts of fibers than as represented.

PAR. 4. 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, namely women's coats, 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. 5. 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 that 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 of Rule 23(b) of the aforesaid Rules and Regulations.

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

PAR. 7. The acts and practices of the respondents as set forth in the paragraphs 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 which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set

forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Young Heritage, 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 225 West 37th Street, New York, New York.

Respondents David Freedman, Harold Steinberg and Sheldon Raywood are officers of said corporation and their address is the same as that of the 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 Young Heritage, Inc., a corporation, and its officers, and David Freedman, Harold Steinberg and Sheldon Raywood, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or

amount of the constituent fibers contained therein.

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

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.

It is further ordered, That respondents Young Heritage, Inc., a corporation, and its officers, and David Freedman, Harold Steinberg and Sheldon Raywood, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any wool product is not misbranded under the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder when there is reason to believe that any wool product so guaranteed may be introduced, sold, transported or distributed in commerce, as the term "commerce" is defined in the aforesaid Act.

It is further ordered, That the 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

TEXAS REFINERY CORP., ET AL.

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

Docket C-1543. Complaint, June 10, 1969—Decision, June 10, 1969

Consent order requiring a Fort Worth, Texas, marketer of protective coating products to cease using exaggerated earning claims to recruit salesmen and misrepresenting its assets.

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 Texas Refinery Corp., a corporation, and Adlai M. Pate, Jr., and Hal B. Brooks, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Texas Refinery Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 830 North Main Street, in the city of Fort Worth, State of Texas.

Respondents Adlai M. Pate, Jr., and Hal B. Brooks are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of protective coating products to members of the buying public.

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

PAR. 4. In the course and conduct of their business as aforesaid, respondents employ agents and salespersons who canvass, solicit and sell respondents' products to members of the buying public. For each sale made said agents and salespersons are paid a commission, or percentage of the sales price paid by the purchaser.

PAR. 5. In the course and conduct of their aforesaid business, it has been and is the practice of respondents, as an integral part of the sales promotion program employed by them, to advertise for and solicit the services of agents and salespersons through

and by means of newspapers and other advertising media and in the course thereof to make representations as to monies which will be realized by such agents and salespersons through employment by respondents.

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

GOOD MAN OVER 40 for short trips surrounding Independence. Man we want is worth up to $16,500 in year, plus regular cash bonus * * *.

$17,000 PLUS REGULAR CASH BONUS for man over 40 in McKeesport area. * * *

* * * * * Earn $12,000 to $25,000 commission and more yearly right in this area. * * * *

IF $1,500 IN A MONTH—Interests you * * * you interest us. We have opening for man over 39 in Allentown area. * * * *

Earn $12,000 to over $50,000 a year! Work right in the Rapid City area! * * * *

KEEP YOUR JOB EARN 25% MORE Big money-making business you can have in PART TIME. Worth up to $600 in a month for the right man over 40 in Lexington area. * * * *

EXTRA INCOME PART TIME Up to $600 in a month for man over 30. * * * * *

DON'T READ FURTHER IF UNDER AGE 60! E. A. Montgomery, age 74, earned $9,654.42 in one year! Other Senior Citizens earned even more. Their ONE YEAR earnings were.

$16,338.74—Norman Huhn
$25,676.56—D. L. Dippert
$15,683.53—Roy Parker
$20,233.19—P. G. Buker
$12,126.86—M. O. Trindel

* * * * We need two more men * * * * in Huntsville area to enjoy similar earnings. * * * *

* * * Texas Refinery, a * *, $50,000,000 organization * * *.

PAR. 6. 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, respondents have represented, and are now representing, directly or by implication:

1. That respondents' agents or sales persons will be employed on a salary basis.

2. Each and every agent or salesperson employed full time by respondents may expect to earn and has a reasonable probability of earning the aforestated higher amounts.

3. Each and every agent or salesperson employed part time

by respondents may expect to earn and has a reasonable probability of earning $600 a month.

4. That Texas Refinery Corp. has assets of $50,000,000.

PAR. 7. In truth and in fact:

1. Respondents' agents or salespersons are not employed on a salary basis but work on a commission basis, or receive a percentage of the sale price paid by a purchaser.

2. Each and every agent or salesperson employed full time by respondents may not expect to earn and does not have a reasonable probability of earning the aforestated higher amounts. Only a very small percentage of such persons ever enjoy such favorable incomes. The majority of such agents and salespersons receive substantially less than one-half of such amounts.

3. Each and every agent or salesperson employed part time may not expect to earn and does not have a reasonable probability of earning $600 a month. Only a very small percentage of such persons ever enjoy such favorable income. The average earnings of such agents and salespersons is less than one-half such amount.

4. The assets of Texas Refinery Corp. are substantially less than $50,000,000.

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

PAR. 8. In the course and conduct of their 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 products of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid statements and representations in connection with the recruitment of personnel to sell their products has had, and now has, the capacity and tendency to mislead prospective employees into the erroneous and mistaken belief that such statements and representations were, and are, true and to induce them to respond to such advertisements and to enter into respondents' employment in reliance thereon.

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

unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Texas Refinery Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 830 North Main Street, in the city of Fort Worth, State of Texas.

Respondents Adlai M. Pate, Jr., and Hal B. Brooks 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 Texas Refinery Corp., a corporation, and its officers, and Adlai M. Pate, Jr., and Hal B. Brooks, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any

corporate or other device, in connection with the offering for sale, sale or distribution of protective coating products or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that an agent or salesperson whose earnings will consist of commissions or a combination of salary and commissions will be employed solely on a salary basis; or misrepresenting, in any manner, the basis of remuneration or the terms or conditions of employment of respondents' agents, salespersons or employees.

2. Representing, directly or by implication, that either full-time or part-time agents or salespersons will earn any stated or gross or net amount; or representing, in any manner, the past earnings of either full-time or part-time agents or salespersons unless in fact the past earnings represented are those of a substantial number of such agents or salespersons and accurately reflect the average earnings of such agents or salespersons under circumstances similar to those of the person to whom the representation is made.

3. Representing, directly or by implication, that Texas Refinery Corp. has assets of $50,000,000 or any other amount in excess of its actual assets; or misrepresenting, in any manner, the assets of any business owned, operated or controlled by respondents.

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

It is further ordered, That the 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

BRAEBURN MFG. CO., ET AL.

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

Docket C-1544. Complaint, June 11, 1969—Decision, June 11, 1969

Consent order requiring a Lowell, Mass., manufacturer of men's and boys' outerwear to cease misbranding the fiber content of its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Breaburn Mfg. Co., a corporation, and John Marcus, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act 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 Braeburn Mfg. Co. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 95 Bridge Street, Lowell, Massachusetts.

Respondent John Marcus is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of the corporate respondent.

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

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

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

Among such misbranded wool products, but not limited thereto, were wool products, namely coats, labeled as containing "85% wool, 15% camel hair" whereas, in truth and in fact, the said products contained substantially different amounts and types of fibers than as represented.

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

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

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, in the following respects:

(a) The generic names of manufactured fibers, established in Rule 7 of the Regulations promulgated under the Textile Fiber Products Identification Act were not used in naming such fibers in required information, in violation of Rule 8 of the Rules and Regulations under the Wool Products Labeling Act of 1939.

(b) The name of a specialty fiber, namely Camel hair, was used in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products when certain of the fibers so described were not entitled to such designation, in violation of Rule 18(a) of the aforesaid Rules and Regulations.

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished

thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

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

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

1. Respondent Braeburn Mfg. Co. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 95 Bridge Street, Lowell, Massachusetts.

Respondent John Marcus is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Braeburn Mfg. Co., a corporation, and its officers, and John Marcus, 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 introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in com-

merce, 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 such products by:

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

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

3. Failing to set forth the generic names of manufactured fibers established in Rule 7 of the Regulations promulgated under the Textile Fiber Products Identification Act, in naming such fibers in required information on stamps, tags, labels or other means of identification attached to wool products.

4. Using the name of a specialty fiber permitted in Section 2(b) of the Wool Products Labeling Act in lieu of the word "wool" in setting forth the required information on labels affixed to wool products unless the fibers so described are entitled to such designation and are present in at least the amount stated.

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

SCOTT FINKS CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(c) OF THE CLAYTON ACT

Docket C-1545. Complaint, June 13, 1969—Decision, June 13, 1969

Consent order requiring a Kansas City, Mo., produce wholesaler to cease making unlawful brokerage payments.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (15 U.S.C. § 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Scott Finks Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 203 Merchants-Produce Bank Building, Kansas City, Missouri 64106.

Respondent Scott Finks Co., Inc., has been and is engaged in business primarily as a wholesale seller, buying and reselling produce. This respondent purchases its produce from a number of suppliers located in Montana and Idaho. Its volume of business in the purchase and sale of such products is substantial, estimated to be in excess of $1 million annually.

PAR. 2. Respondent W. S. Finks is the president and a director of Scott Finks Co., Inc., and together with his wife Mildred G. Finks, owns two thirds of the capital stock of said corporate respondent. Respondent W. S. Finks formulates, directs and controls the acts, practices and policies of said corporate respondent. His address is the same as that of the corporate respondent.

PAR. 3. In the course and conduct of their business for the past several years, respondents have purchased substantial quantities of produce in commerce, as "commerce" is defined in the Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Missouri in which respondents are located. Said respondents transport or cause such produce to be transported from the places of business of suppliers located in various other States of the United States to respondents who are located in the State of Missouri or to respondents' customers located in other States of the United States. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase and resale of said produce by said respondents.

PAR. 4. Respondents sell their produce to purchasers through brokers and pay said brokers a brokerage fee or commission for their services in arranging such sales. In many instances respondents have also paid a brokerage fee, or granted an allowance in lieu thereof, to brokers purchasing for their own account.

PAR. 5. The acts and practices of respondents, in granting brokerage or a commission, or an allowance or discount in lieu thereof, to brokers buying for their own respective accounts, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman 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 Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of subsection (c) of Section 2 of the Clayton Act, as amended; 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 subsection (c) of Section 2 of the Clayton Act, as amended, 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 Scott Finks Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 203 Merchants-Produce Bank Building, in the city of Kansas City, State of Missouri 64106.

Respondent W. S. Finks is president and a director 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.

ORDER

It is ordered, That respondents Scott Finks Co., Inc., a corporation, and its officers, and W. S. Finks, individually and as President and a Director of Scott Finks Co., Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the sale of produce in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of produce to such buyer for his own account.

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.

Commissioner Elman not concurring.

IN THE MATTER OF

O.K. WOOL COMPANY, INC., ET AL.

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

Docket C-1546. Complaint, June 16, 1969—Decision, June 16, 1969

Consent order requiring a Worcester, Mass., processor of wool and synthetic fiber yarns to cease misbranding and falsely invoicing its wool products.

COMPLAINT

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

of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that O.K. Wool Company Inc., a corporation, and Oscar Kazarnovsky, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act 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 O.K. Wool Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 744 Millbury Street, Worcester, Massachusetts.

Respondent Oscar Kazarnovsky is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of the corporate respondent.

Respondents are engaged in the business of purchase and sale of wool and synthetic stock and yarns. They also sort, blend and pick said stock and have commission garnetting and spinning performed by outside commission garnetters and spinners. Respondents bale and ship such products to various dealers and yarn manufacturers throughout the United States.

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

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

Among such misbranded wool products, but not limited thereto, were wool products, namely bales of stock and yarns, which contained substantially different amounts and types of fibers than as represented.

PAR. 4. Certain of said wool products were further misbranded

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

Among such misbranded wool products, but not limited thereto, were wool products, namely bales of stock and yarns, with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. Certain of said wool products, namely bales of stock and yarns, were misbranded in violation of the Wool Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder, in that in disclosing the required information words or terms were abbreviated in violation of Rule 9 of the aforesaid Rules and Regulations.

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. Respondents are now and for some time last past have been engaged in the offering for sale, sale and distribution of certain products, namely bales of fibrous stock and yarns. 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 Commonwealth of Massachusetts to purchasers 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. 8. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices to their customers, misrepresenting the fiber content of certain of their products.

Among such misrepresentations, but not limited thereto, were statements setting forth the fiber content thereof as "100% Wool wstd. shet.," thereby representing the product to be composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland, whereas, in truth and in fact, the product was not 100% Shetland, but contained substantially different fibers and amounts of fibers than represented.

Also among such misrepresentations, but not limited thereto, were statements setting forth the contents thereof as "100% Wool," "50% Wool," "50% Acrylic," and "95% Wool, 5% Nylon," whereas in truth and in fact, in each instance, the products were not as represented, but contained substantially different fibers and amounts of fibers than represented.

PAR. 9. The acts and practices as set forth in Paragraph Eight have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 10. The aforesaid acts and practices of respondents, as set forth in Paragraph Eight were and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent O.K. Wool Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 744 Millbury Street, in the city of Worcester, Commonwealth of Massachusetts.

Respondent Oscar Kazarnovsky is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents O.K. Wool Company, Inc., a corporation, and its officers, and Oscar Kazarnovsky, 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 introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

3. Setting forth information required under Section 4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on labels affixed to wool products.

It is further ordered, That respondents O.K. Wool Company, Inc., a corporation, and its officers, and Oscar Kazarnovsky, 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 bales of fibrous stock and yarns, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Shetland," or any simulation thereof, either alone or in connection with other words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland: *Provided however,* That in the case of a product composed in part of wool of the aforesaid Shetland sheep and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection therewith, with at least equal conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

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 of their compliance with this order.

IN THE MATTER OF

DISTRICT CREDIT CLOTHING & FURNITURE, INC., ET AL.

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

Docket C-1547. Complaint, June 16, 1969—Decision, June 16, 1969

Consent order requiring a Washington, D.C., retailer of clothing, furniture and appliances to cease misusing the word "free," inducing customers

representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of bales of fibrous stock and yarns, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Shetland," or any simulation thereof, either alone or in connection with other words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland: *Provided however,* That in the case of a product composed in part of wool of the aforesaid Shetland sheep and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection therewith, with at least equal conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

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 of their compliance with this order.

IN THE MATTER OF

DISTRICT CREDIT CLOTHING & FURNITURE, INC., ET AL.

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

Docket C-1547. Complaint, June 16, 1969—Decision, June 16, 1969

Consent order requiring a Washington, D.C., retailer of clothing, furniture and appliances to cease misusing the word "free," inducing customers

to sign partially completed contracts, misrepresenting finance charges and conditions, and failing to disclose the legal effect of installment payment default.

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 District Credit Clothing & Furniture, Inc., a corporation, and Sidney Gimble, 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 District Credit Clothing & Furniture, 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 707 7th Street, NW., Washington, D.C.

Respondent Sidney Gimble is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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 clothing, furniture, appliances and other items of merchandise at retail 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 merchandise to be sold, to purchasers located within the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, the respondents have made, numerous statements and representations in advertisements inserted in newspapers of which the following are typical and illustrative, but not all inclusive thereof:

DISTRICT CLOTHING CO.

707 7TH ST., N.W. ST 3-0120

JUST ARRIVED!
114-PC.
DINNER ENSEMBLE
Complete Service for 8
Including Matching Glassware
Also . . . New Serving Platter
& Vegetable Bowl.

[Picture of dinner ensemble]

$19.95
No Money Down
Only $1.00 wkly.
On Approved
Credit

FREE:
During this great sale, extra 32-pc. chrome stainless steel table ware.

ORDER BY MAIL—COME IN—PHONE IN

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, the respondents have represented, directly or by implication that the 32 piece chrome stainless steel tableware set is given "Free" of cost with the purchase of their 114 piece dinner ensemble.

PAR. 6. In truth and in fact, the 32 piece chrome stainless steel tableware set is not given "Free" of cost with the purchase of respondents' 114 piece dinner ensemble, as the cost of both such items is included in the price of the combination offer, and the item required to be purchased has never been sold separately in substantial quantities.

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 and conduct of their aforesaid business and for the purpose of inducing members of the public to purchase four year subscriptions to various magazines such as Tan, Jet and Ebony, and to purchase pictures of various nota-

ble people such as Martin Luther King, Jesus Christ and Mr. & Mrs. John F. Kennedy, respondents employ door-to-door salesmen who offer a "package deal" to consumers at a price of $69.95. The aforesaid salesmen represent to the consumer either that one of the aforementioned pictures would be received free with a purchase of the aforementioned magazine subscriptions, or that the aforementioned magazine subscriptions would be received free with the purchase of one of the aforementioned pictures.

PAR. 8. In truth and in fact, pictures of either Martin Luther King, Jesus Christ or Mr. & Mrs. John F. Kennedy or subscriptions to magazines such as Tan, Jet and Ebony are not given free with the purchase of either items, as the selling price of $69.95 includes the cost of both the magazine subscriptions and the pictures, and the magazine subscriptions purchased have not been sold by respondents separately in substantial quantities.

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

PAR. 9. In the further course and conduct of their aforesaid business, and for the purpose of inducing the purchase of sets of aluminum pots and pans, respondents' door-to-door salesmen represented to consumers that a picture of either Martin Luther King, Jesus Christ or Mr. & Mrs. John F. Kennedy would be received free with the purchase of the set of aluminum pots and pans at the price of $59.95 plus tax and 10 percent carrying charges.

PAR. 10. In truth and in fact, a picture of either Martin Luther King, Jesus Christ or Mr. & Mrs. John F. Kennedy is not given free with the purchase of the set of aluminum pots and pans at the price of $59.95 plus tax and 10 percent carrying charges, as the cost of both items is included in the aforesaid price.

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

PAR. 11. In the course and conduct of respondents' business, respondents have represented in newspaper advertisements that an amount appearing in conjunction with an article of merchandise is the full price of said merchandise and that the price of the merchandise can be paid at a specific weekly rate, such as one dollar per week.

In truth and in fact, the represented price is not the full price of the advertised merchandise. Respondents add on to the ad-

vertised price a 10 percent carrying charge for all items financed for more than 90 days. Further, it is respondents usual and customary practice to arrange installments for their customers in amounts in excess of one dollar per week.

Therefore, the aforesaid representations were and are false, misleading and deceptive.

PAR. 12. In the course and conduct of respondents' business, respondents have engaged in the following unfair and deceptive acts and practices.

1. Respondents have induced purchasers of their merchandise to sign blank or partially complete sales contracts which respondents later complete as to price. In some instances, the customer later receives a bill for the merchandise for a substantially greater amount than requested by respondents' salesmen and understood by the purchaser at the time of the execution of the contract.

2. Respondents have failed to provide their customers with a copy of their executed contracts at the time of consummation of the sale or at any time thereafter.

3. Respondents have caused purchasers of their merchandise to execute conditional sale contracts without disclosing the material fact that respondents regularly and systematically enforce such contracts by obtaining judgments in courts of law after purchasers have defaulted in payment of an installment and then have failed to tender full payment of the outstanding debt as required in said contracts. Further, respondents have in numerous instances sought satisfaction of the judgments through institution of garnishment proceedings against judgment debtors.

PAR. 13. 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 clothing, furniture, appliances and other items of merchandise at retail of the same general kind and nature as that sold by respondents.

PAR. 14. 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 re-

spondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 15. 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 District Credit Clothing & Furniture, 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 707 7th Street, NW., Washington, D.C.

Respondent Sidney Gimble is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents District Credit Clothing & Furniture, Inc., a corporation, and its officers, and Sidney Gimble, 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 clothing, furniture, appliances, and other items of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any article of merchandise is being given free or as a gift, or without cost or charge, in connection with the purchase of other merchandise, unless the stated price of the merchandise required to be purchased in order to obtain said article is the same or less than the customary and usual price at which such merchandise has been sold separately by respondents for a substantial period of time in the recent and regular course of their business.

2. Inducing or causing purchasers of respondents' merchandise to sign blank or partially completed sale contracts or any other contractual instruments which are not fully completed at the time such instruments are executed.

3. Representing, directly or by implication, the rate of a finance charge, the amount of downpayment, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment unless respondents clearly and conspicuously disclose, in immediate conjunction with such representation, all of the following items:

(a) The cash price.

(b) The time price, consisting of the sum of the cash price, all finance charges, and any other extra charges before deducting any downpayment or allowance for a trade-in or otherwise.

(c) The downpayment, if any.

(d) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(e) The rate of the finance charge expressed as an annual percentage rate.

4. Representing, directly or by implication, that a specific periodic consumer credit payment or installment payment can be arranged unless the respondents usually and customarily arrange credit payments or installments for that period and in that amount.

5. Failing to disclose orally and in writing to each customer who executes a conditional sale contract, or who otherwise purchases merchandise or services from respondents on credit, *before* such customer obligates himself to make any such credit purchase, all of the following items:

(a) The cash price of the merchandise or service purchased.

(b) The sum of any amounts credited as down-payment (including any trade-in).

(c) The difference between the amount referred to in paragraph (a) and the amount referred to in paragraph (b).

(d) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(e) The total amount to be financed (the sum of the amount described in paragraph (c) plus the amount described in paragraph (d)).

(f) The amount of the finance charge.

(g) The finance charge expressed as an annual percentage rate.

(h) The total credit price (the sum of the amounts described in paragraph (e) plus the amount described in paragraph (f) and the number, amount, and due dates or periods of payments scheduled to pay the total credit price.

(i) The default, delinquency, or similar charges payable in the event of late payments as well as all other consequences provided in the sales or credit agreements for late or missed payments.

(j) A description of any security interest held or to be retained or acquired by respondents in con-

nection with the extension of credit, and a clear identification of the property to which the security interest relates.

For purposes of paragraphs 3 and 5 of this order, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under [§ 106 and § 107 of] Public Law 90–321, the "Truth in Lending Act," and the regulations promulgated thereunder.

6. Failing to provide purchasers of respondents' merchandise with a copy of the executed sales contract or any other agreement at the time of execution by the purchaser.

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

Any such instrument at respondents' option after a default in installment payments may be enforced in a court of law.

8. 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' merchandise, 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

ALLEGHANY PHARMACAL CORP., ET AL.

ORDER DISMISSING AN AMENDED COMPLAINT AND REINSTATING AN ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 7176. Amended Complaint, November 15, 1965—Decision, June 17, 1969

Order dismissing an amended complaint issued November 15, 1965, 68 F.T.C. 1221, and reinstating the suspended order of November 7, 1958,

55 F.T.C. 705, which prohibited a New York City distributor of drugs from deceptively advertising its weight-reducing preparation, "Hungrex * * * with P.P.A."

Mr. Richard Whittington Whitlock for the Commission.

Mr. Solomon H. Friend of *Bass & Friend,* New York, N.Y., for respondents.

CERTIFICATION OF RECORD BY JOHN B. POINDEXTER, HEARING EXAMINER

MARCH 16, 1967

PRELIMINARY STATEMENT

This matter arises out of an amended complaint issued by the Federal Trade Commission on November 15, 1965 [68 F.T.C. 1221], in amendment of, and in substitution for, its original complaint issued on June 27, 1958, in Docket No. 7176, wherein Alleghany Pharmacal Corp., a corporation, and Harry Evans, and Vincent J. Lynch, individually and as officers of said corporation, were charged with falsely advertising a so-called "reducing" preparation called "HUNGREX * * * with P.P.A.," in violation of the Federal Trade Commission Act.

The original complaint alleged, among other things, that, typical of respondents' advertisements, were the following:

A Very Powerful
Yet Safe Reducing Drug
Now Released for Public Use!

* * * * * * *

Imagine the thrill of overweight men and women who lost up to 5 lbs. the very first week * * * 10 pounds in 2 weeks * * * up to 20 lbs. the very first month * * *.

The complaint further alleged that, through the use of said advertisements, respondents represented that:

1. The preparation is safe to use by all obese persons;
2. Obese persons can expect the preparation to cause a weight loss of five (5) pounds in one week, ten (10) pounds in two weeks, and twenty (20) pounds in one month.

Whereas, in truth and in fact, it was alleged, said advertisements were false and misleading in that (1) the preparation is not safe to use by all obese persons having heart disease, high blood pressure, diabetes, or thyroid disease; and (2) no specific

predetermined weight reduction can be achieved by using respondents' preparation for a prescribed period of time. Thus, it is seen that the thrust of the original complaint was directed toward respondents' advertisements with respect to (1) the *safety* of the drug, and (2) claims of *predetermined* weight reduction during a prescribed period of time. The *effectiveness* of the drug preparation as an appetite depressant and weight-reducing agent was not questioned.

The complaint further alleged that the dissemination by respondents of said false advertisements constituted an unfair and deceptive act and practice within the intent and meaning of the Federal Trade Commission Act.

Thereafter, under date of September 3, 1958, the corporate respondent and the individual respondents entered into a written agreement with complaint counsel for a consent order to be entered in the proceeding in accordance with the form of order contained in the agreement, which purported to dispose of all the issues in the proceeding as provided by Section 3.25 of the Rules of Practice of the Commission then in effect. The agreement was approved by the Bureau of Litigation.

On September 25, 1958, the then hearing examiner, Everett F. Haycraft, accepted the agreement and issued an initial decision which contained an order to cease and desist in the form which had been agreed to by the parties, and set out below. Thereafter, on November 7, 1958 [55 F.T.C. 705], the Commission adopted as its own the initial decision of the hearing examiner, which required respondents, in connection with the offering for sale, sale or distribution of the preparation HUNGREX * * * with P.P.A., or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, to 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 represents, directly or indirectly:

(a) That said preparation is safe to use by all obese persons;

(b) That any predetermined weight reduction can be achieved by the taking or use of said preparation for a prescribed period of time.

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 in commerce, as "commerce" is defined

in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

Pursuant to said consent order to cease and desist, respondents revised their advertisements for HUNGREX . . . with P.P.A. by removing therefrom those aspects of the advertisements which were prohibited by said consent order to cease and desist, to wit, all representations that HUNGREX * * * with P.P.A. was safe to use by all obese persons or that any predetermined weight reduction could be achieved by the taking or use of said preparation for a prescribed period of time. Thereafter, respondents filed with the Commission the required reports indicating the manner in which respondents had complied with such consent cease and desist order. By letter dated August 10, 1959, the Acting General Counsel of the Commission advised respondents that, upon the basis of the information contained in said reports, respondents were in compliance with the order (RX 18). Since that time, respondents have continued to sell and advertise said drug preparation HUNGREX * * * with P.P.A., which present advertisements represent, directly or indirectly, that HUNGREX * * * with P.P.A. is an effective appetite depressant and weight-reducing agent, and is adequate and effective in the treatment, control, and management of obesity, in reliance on the provisions of said consent cease and desist order issued by the Commission on November 7, 1958.

On June 10, 1965, the Commission issued an order to show cause why the proceeding in Docket No. 7176 should not be reopened upon the basis of a decision by the United States District Court for the District of New Jersey entitled *The United States of America* v. *60 28-Capsule Bottles, More or Less and 47 7-Capsule Bottles, more or less, of an article of drug labeled in part: "— UNITROL * * *"*, 211 F. Supp. 207 (1962), *aff'd.* 325 F. 2d 513 (1963), wherein it was held, among other things, that P.P.A. has no significant pharmacological value as a weight-reducing agent. In its order to show cause, the Commission stated that the above decision in the *UNITROL* case caused it (the Commission) to believe that, in truth and in fact, the said drug preparation HUNGREX * * * with P.P.A. has no significant pharmacological value as an appetite depressant or weight-reducing agent, and is not adequate or effective in the treatment, control or management of obesity, and, accordingly, that respondents' advertisements are thus misleading in material respects, and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

On July 12, 1965, respondents filed their answer denying the factual allegations contained in the order to show cause and opposed the reopening.

By order issued November 15, 1965, the Commission reopened the proceeding and simultaneously issued the instant amended complaint, charging respondents with misrepresenting, not only the effectiveness of their preparation HUNGREX * * * with P.P.A. as an appetite depressant or weight-reducing agent, but also the safety of the preparation. Harry Evans and Vincent J. Lynch, joined as respondents in the original complaint, were again named in the amended complaint, along with Chester Carity, individually and as an officer of corporate respondent. The order reopening the proceeding did not disturb the consent cease and desist order which had been issued on November 7, 1958, and left the vacation, amendment or modification of that order, if any, to the final disposition of this matter.

The order reopening the proceeding further provided that the matter should be assigned to a hearing examiner for hearings to be conducted in accordance with Subparts C, D, E, and F of the Rules of Practice; that, after conclusion of hearings, the hearing examiner should certify the record, together with a report of his findings, conclusions and recommendations with respect thereto, to the Commission for final disposition. The order further provided that the hearing examiner's report should be served upon the parties in the same manner as an initial decision, and the parties should have the same rights of appeal therefrom, in accordance with the provisions of Section 3.22 of the Rules of Practice.

Pursuant to said reopening order, the matter was assigned to the undersigned hearing examiner for hearing on the charges set forth in the amended complaint. These hearings have been held. Proposed findings of fact, conclusions of law, and recommendations were filed by respective counsel on January 30, 1967. These have been considered. All proposed findings and conclusions not specifically found or concluded herein are rejected.

Upon the basis of the entire record, the hearing examiner reports the following findings of fact, conclusions of law, and recommendations to the Commission for its final disposition.

FINDINGS OF FACT

1. Respondent Alleghany Pharmacal Corp. is a corporation organized and doing business under the laws of the State of

New York, with its office and principal place of business located at 16 West 61st Street, New York, New York (Amended Complaint; Answer).

2. Respondents Harry Evans and Vincent J. Lynch resigned as officers of the corporate respondent on March 4, 1958, prior to the issuance of the original complaint herein on June 27, 1958. Since their resignations, the said Evans and Lynch have had no connection with the corporate respondent (Affidavits attached to Agreement Containing Consent Order to Cease and Desist, dated September 3, 1958; Answer to Amended Complaint; Tr. 632–33).

3. The individual respondent Chester Carity is the president of the corporate respondent and sole stockholder thereof (Tr. 634). His activities, functions and duties as president of corporate respondent were and are performed in his capacity as an officer of said corporation and not in his individual capacity, including his supervision of advertising on behalf of corporate respondent, which is prepared by an advertising agency (Tr. 635, 641). His address is the same as that of the corporate respondent (Amended Complaint; Answer).

4. The corporate respondent is now, and for some time past has been, engaged in the advertising, sale, and distribution of a so-called weight-reducing preparation in tablet form designated on the label on the outside of the container package as "HUNGREX * * * with P.P.A.," each tablet containing "Phenylpropanolamine Hydrochloride, 25 mgm." as the active ingredient, with the following directions for use and cautionary warning printed on the outside of the package container:

Adults: 1 tablet 1/2 hour before each meal. To be swallowed with water or juices. Do not take more than 3 tablets in any 24 hour period.

* * * * * * *

CAUTION: Should not be used by persons with heart or thyroid disease, high blood pressure or diabetes except on medical advice (CX 10).

5. Typical of corporate respondent's present advertising of HUNGREX * * * with P.P.A. is CX 9 which, it was stipulated, is substantially identical to the proposed advertising copy which corporate respondent submitted to the Commission on April 9, 1959 in connection with one of its reports of compliance with the consent cease and desist order previously issued by the Commission on November 7, 1958 (Tr. 444), and approved by letter dated August 10, 1959 (RX 18). A copy of this advertisement (CX 9)

appeared on page 28 of the May 26, 1965 issue of the Westfield Suburban News, Westfield, New Jersey, as follows:

CX–9

May 26, 1965

WESTFIELD SUBURBAN NEWS PAGE 28

ORDER TODAY * * *

LOSE WEIGHT BY FRIDAY

Just take a tiny Hungrex table before meals * * and banish those hated extra pounds as you banish hunger! Why? Because Hungrex is the most powerful reducing aid ever released for public use without prescription! Suppresses hunger pangs so effectively, it actually limits the ability of your body to produce knawing hunger sensations! Result? You don't feel hungry * * * down goes your calorie intake and down goes your weight.

Lose Weight The First Day! Thousands now lose weight who never thought they could * * report remarkable weight losses of 7 * * 20 * * even 41 pounds in a short while. So if you're tired of half-way measures and want really effective help in reducing send for Hungrex today. Hungrex will simply amaze you! You'll be slimmer next week or your money back. No prescription needed.

Copr. 1959 Alleghany Pharmacal Corporation

Ask for HUNGREX with P. P. A.

The Most Powerful Reducing Aid Ever Released for Public Use!

BARON'S DRUG STORE
243 E. Broad St.
Westfield, N.J. * *

6. The amended complaint alleges that, through the use of said advertisements, respondents have represented, and are now representing:

1. That the preparation is safe to use by all obese persons;

2. That the preparation is an effective appetite depressant and weight-reducing agent;

3. That the preparation is adequate and effective in the treatment, control and management of obesity;

whereas, in truth and in fact:

1. The preparation is not safe to use by all obese persons having heart disease, high blood pressure, diabetes, or thyroid disease;

2. The preparation has no significant pharmacological value as an appetite depressant or weight-reducing agent;

3. The preparation is not adequate or effective in the treatment, control or management of obesity.

Therefore, the amended complaint alleges, the advertising is misleading in material respects and constitutes "false advertising" as that term is defined in the Federal Trade Commission Act. The dissemination by respondents of said false advertising constitutes unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

7. To establish the allegations of the amended complaint that HUNGREX * * * with P.P.A. has no significant pharmacological value as an appetite depressant or weight-reducing agent, and is not adequate or effective in the treatment, control or management of obesity, complaint counsel relies primarily on the written report of a so-called "study" entitled "Comparative Effectiveness of Phenylpropanolamine and Dextro Amphetamine on Weight Reduction," bearing the names of Joseph F. Fazekas, M.D., Washington, D.C.; Wilfred R. Ehrmantraut, M.D., Silver Spring, Maryland; Kenneth D. Campbell, M.D., Washington, D.C.; and Marie C. Negron, B.S., Laurel, Maryland, as authors. The written report of the "study" appeared in the June 27, 1959 issue of the Journal, published by the American Medical Association, at pages 1018 through 1021 thereof. During hearings, it was sometimes referred to as the "Fazekas" report, and is the basis upon which complaint counsel relies to show that HUNGREX * * * with P.P.A. is not an effective appetite depressant or weight-reducing agent. A copy of the Fazekas report was received in evidence at the hearings as CX 3.

8. In the presentation of his case-in-chief, complaint counsel called two witnesses, Kenneth D. Campbell, M.D., of College Park, Maryland, a coauthor of the Fazekas report (CX 3), and Frederick William Wolff, M.D., a clinical pharmacologist, of Takoma Park, Maryland. On direct examination, Dr. Campbell testified in corroboration of the Fazekas report (CX 3), and Dr. Wolff testified, among other things, that he had studied the report and agreed with the conclusions reached by the authors and considered its statistical design to be adequate. As a rebuttal witness, complaint counsel offered the testimony of Arthur Grollman, M.D., of Dallas, Texas.

9. Six witnesses testified on behalf of respondents: Edward

Settel, M.D., of New York, New York; Frederick B. Bohensky, M.D. of Brooklyn, New York; Raymond Healy, M.D., of Miami, Florida; Theodore Feinblatt, M.D., of Brooklyn, New York; E. L. Ladenheim, of New York, New York, a professor of mathematics and statistical analyst; and Harold Silverman, of West Orange, New Jersey, a research scientist. Doctors Settel and Healy testified concerning the efficacy of P.P.A. as an appetite depressant on their own patients; Doctors Feinblatt and Bohensky testified concerning studies they had made of the effects of P.P.A. on humans and dogs; Professor Ladenheim testified concerning the statistical study he had made of the Fazekas report (CX 3); and Mr. Silverman testified in general support of an article prepared by him and which was published in the American Journal of Pharmacy, dated February 1963, Volume 135, pages 45 to 54. The article is entitled "Phenylpropanolamine —Misused? Or Simply Abused?." A copy of this article was received in evidence as RX 7.

10. Dr. Kenneth Campbell, coauthor of the Fazekas report (CX 3), was the principal witness offered by complaint counsel. On both direct and cross-examination, Dr. Campbell testified concerning the arrangements for, and the details in connection with the Fazekas study (CX 3).[1] In view of the reliance by complaint counsel upon the study to establish the allegations of the amended complaint, the testimony of Dr. Campbell will be discussed in detail.

11. Dr. Campbell graduated from Boston University School of Medicine in 1940 with an M.D. degree, and since 1948, has been engaged in the part-time practice of general medicine. He is employed by the United States Food and Drug Administration, and is Medical Liaison Officer between that administration and the United States Post Office Department (Tr. 75). On direct examination, Dr. Campbell testified that the drug phenylpropanolamine hydrochloride, sometimes called "P.P.A.," was

[1] This hearing examiner rejects the "history" of the Fazekas study and its "protocol" as stated by complaint counsel on page 5 of his proposed findings. There, counsel says: "The history of this study, and its protocol, were noted in detail by the District Court in the Unitrol case, as follows," and counsel then purports to quote from the decision of that Court relating to the procedure used in the Fazekas study. The record made in the Unitrol case is not in evidence in the present proceeding, although complaint counsel offered the entire transcript of testimony taken in the Unitrol case in evidence in the present proceeding. Instead, the hearing examiner bases his findings of fact in the present proceeding upon the oral testimony of witnesses and documentary evidence received during hearings in this proceeding. Of course, the hearing examiner takes official notice of the decisions of the District Court and Court of Appeals referred to in the Preliminary Statement on page 993 hereof.

placed on the market 25 to 30 years ago under the trade name of "Propadrine" by Merck, Sharp & Dohme, a pharmaceutical house. He further testified that the Post Office Department decided that a study should be made of the effect of phenylpropanolamine hydrochloride in curbing appetite, as compared to a positive control, dextro amphetamine, known to be an appetite depressant, and with a placebo, a tablet or capsule composed of inert ingredients (Tr. 78–79).

12. Dr. Campbell identified CX 3 as being a copy of the Fazekas study, and stated that it was in the nature of a "quadruple blind" study, meaning that neither the investigators, patients, nor personnel connected with the study had knowledge of the contents of any of the capsules (Tr. 81). On direct examination, Dr. Campbell further testified concerning the study: Approximately 81 mentally deficient (idiopathic [2]) patients at an institution in Laurel, Maryland, called The Children's Center, which gives custodial care to the mentally deficient, were selected for the test. The patients are kept in cottages on the premises, supervised by attendants. About one hour before the patients were to go into the dining hall, a bell was rung and each patient proceeded to the room where he received the medication prescribed for that particular patient (Tr. 93). The 81 mentally deficient patients were divided into four units or divisions of approximately 20 patients each. The patients in the first unit were given phenylpropanolamine hydrochloride at a dosage level of 25 milligrams three times each day, as shown in Table 1 of CX 3. The patients in the second unit were given phenylpropanolamine at a dosage of 50 milligrams three times each day, as shown in Table 2 of CX 3. The patients in the third unit were given dextro amphetamine at a dosage level of 5 milligrams three times each day, as shown in Table 3 of CX 3. The patients in the fourth unit were given the placebo three times each day, as shown in Table 4 of CX 3 (Tr. 80; CX 3). There was no restriction on the caloric intake of any of the patients during the course of the six-week study. The object of the study was to determine if phenylpropanolamine depressed the appetite center in the central nervous system in such a manner that the anorexigenic or appetite-depressant effect was experienced by the patient, which then, in turn, would be reflected by loss of weight (Tr. 81–2). Dr. Wilfred R. Ehrmantraut, coauthor of the so-called "Fazekas" study, CX 3, was the doctor in charge

[2] By "idiopathic," it is meant that the cause of their mental deficiency was not known.

at The Children's Center in Laurel, and selected the patients included in the study (Tr. 82).

13. Dr. Campbell pointed out that in Table 1, under patient No. 6, in CX 3, there is a typographical error in the figures in the last column under the heading "Total Weight Change, Lb." of "+3.0." This figure should be "−1.0." This would change the "Mean values" at the end from "−0.9" to "−1.0." The difference in "Mean values" of one tenth of a pound is not enough to be of significance, in Dr. Campbell's opinion (Tr. 84–6). Dr. Campbell further testified that the three authors of the study decided to use mentally deficient patients because they wanted to obviate or prevent psychological factors that creep into a study when the person knows that it is intended to reduce weight or depress appetite, "so this was an ideal group for our purposes. They were not cognizant of why they were getting the medicine, so their responses were not tainted or tinged in any way by their knowledge of the drug or for what its purpose was, or the purpose of the study" (Tr. 87–8). Dr. Campbell further testified that, in Table 1, on page 1019 of CX 3, seventeen patients are listed, who purportedly were given 25 milligrams of phenylpropanolamine three times each day. One of these patients, No. 13, is listed as an idiot; the other 18 patients were imbeciles, morons, and mentally retarded persons (Tr. 89). Dr. Campbell testified that the "Mean weight loss" of these 19 patients should be "−1.0" for the six-week period (Tr. 91–2); that the "Mean weight loss" of the 18 patients in Table 2 of CX 3, who purportedly were given 50 milligrams of phenylpropanolamine three times each day, was "−0.8 lbs."; that the "Mean weight loss" of the 21 patients in Table 3 of CX 3, who purportedly were given 5 milligrams of dextro amphetamine three times each day, was "−4.6 lbs."; and that the "Mean weight change" of the 21 patients listed in Table 4 of CX 3, who purportedly were given the placebo three times each day, was a gain of "+0.3 lbs." (Tr. 91–2).

14. Dr. Campbell explained that the asterisk in the tables in CX 3 indicates that, at the two-week periods, the weight changes, if any, were not recorded because the patient was not available for weighing (Tr. 93–4). However, Dr. Campbell further testified that the nonrecordation of these weights in the four tables does not have any significant effect upon the conclusions drawn from the study because they are equally distributed throughout the four groups of patients, and they cancel each other out (Tr.

96). Dr. Campbell further testified that he went out to the Center once or twice a week to see if there were enough of the capsules on hand and if the patients were receiving them; he made unannounced visits to the various cottages to watch and see that the patients took the capsules, and conferred with Dr. Ehrmantraut concerning the progress of the study (Tr. 98). In concluding his direct examination, Dr. Campbell testified that, in a "double blind" study, such as the Fazekas study, neither the physician nor the patient knows what drug is used until the study is completed, and the code label removed and the identity of the drug disclosed; and that, as a result of the study, Dr. Campbell and Doctors Fazekas and Ehrmantraut concluded that phenylpropanolamine in a dosage of 25 milligrams three times per day has no significant value as a depressant of the appetite.

15. On cross-examination, Dr. Campbell testified as follows: In either June, July or August, 1958, Dr. Campbell called Dr. Fazekas on the telephone, and asked him if he (Fazekas) would be interested in undertaking an evaluation of phenylpropanolamine hydrochloride as an appetite-depressant agent, and Dr. Fazekas stated that he would be willing to undertake such a study (Tr. 133–34); and that he (Campbell) may have told Dr. Fazekas that he needed such a study in order to support his position in a case wherein the Government was trying to prove that P.P.A. was not effective as an appetite depressant (Tr. 135). The Fazekas study actually began around October 16, 1958 (Tr. 132).

16. Dr. Campbell further testified on cross-examination that, at the time he participated in the Fazekas study (CX 3), he was not "fully aware" of the position of the Food and Drug Administration as to the usefulness of P.P.A. as an appetite depressant, but he thought "their position was that it was suspect" (Tr. 173–74), and that he was not aware of the two letters from the Food and Drug Administration, dated July 5, 1957 (RX 4), and October 23, 1957 (RX 5), approving the following wording on labels for the use of phenylpropanolamine hydrochloride:

> PPA is useful as an appetite suppressant in the dietary management [control] of obesity (Tr. 175).

17. Dr. Campbell further testified on cross-examination: Effective (anorexigenic) appetite-depressant drugs are prescribed by physicians in conjunction with a weight-reducing diet. "These drugs are so potent that they are restricted to the prescription

legend." These drugs are used because they enable the patient to be satisfied with a fewer number of calories, and impart a feeling of well being to the patient, which is necessary when you limit his caloric intake (Tr. 181–82). Dr. Campbell admitted that one or two of the patients included in the study were epileptics, and some had marked brain damage due to cerebral palsy, could not feed themselves and required help to partake of food (Tr. 186). Nevertheless, Dr. Campbell testified that these brain injuries, which existed in these particular patients, were not important in an evaluation of the study (CX 3) because they did not affect the patients' "appetite control centers" of the brain, and, for this reason, were unimportant in the evaluation of the study (Tr. 187).

18. After testifying that these pre-existing brain injuries had no effect upon the action of appetite depressing drugs because the brain injuries did not affect or damage the patients' appetite control centers, and admitting that he was assuming that appetite depressing drugs work on the appetite control centers of the brain, Dr. Campbell was asked if he agreed or disagreed with a statement by Dr. Walter J. Modell in his book Drugs of Choice, 1962, page 308 (CX 6 for identification), where, in effect, Dr. Modell stated that the effectiveness of appetite depressing drugs is not due to any action on the appetite control centers, but is due to action upon a higher center, situated in an area different from the appetite control center, and whether, in referring to "appetite depressing drugs," Dr. Modell included phenylpropanolamine hydrochloride. Dr. Campbell stated he could not answer the question without also referring to another page of the book. At that point, counsel began arguing between themselves and the hearing examiner called for order in the hearing room, whereupon Dr. Campbell announced that he was leaving and didn't "have to take it either." Dr. Campbell began picking up his books and papers (Tr. 188–194). After a recess, and after Dr. Campbell had been requested to answer counsel's questions "Yes" or "No," unless he could not so answer without an explanation when he should so state, the hearing was resumed and Dr. Campbell finally answered, "yes, with an explanation," to the question previously asked by counsel. The question was whether Dr. Modell, in referring to "appetite depressing drugs" in the excerpt from his book referred to by counsel and which was read by Dr. Campbell, included "Phenylpropanolamine Hydrochloride" (Tr. 195–96).

19. Dr. Campbell further testified on cross-examination: Restriction of caloric intake is the basic requirement in the reduction of weight, but, in the Fazekas study, no dietary restriction was placed upon the 81 [3] patients; in fact, a minimum of 3000 calories was placed before each patient at each meal, which was well above the energy requirements for the patient, and he naturally would, in most cases, gain weight (Tr. 197). In answer to a question by counsel for respondents, Dr. Campbell stated that patient No. 14, shown in Table 1 of CX 3 to have gained 11 1/2 pounds during the test, was a compulsive eater who had a heart disease with fluid retention (Tr. 213). The patients were so mentally deficient that they responded to the "very pleasant tinkle" of a bell at mealtime; however, Dr. Campbell did not think that placing the 3000 calories of food in front of the patients, after their having been conditioned over a period of time to the tinkle of the bell, did not have any more effect on the will power of the mentally deficient patients than the effect on soldiers by blowing a whistle or bugle "during World War Two when they would let us known that chow was ready" (Tr. 197–201). After some equivocation, Dr. Campbell stated that the soldier or normal person responding to a bell at mealtime is not responding by way of a conditioned reflex in the same manner that the mentally deficient patient responded to the bell, and finally agreed that the soldier was exercising some judgment as to what he would eat and how much, whereas, the mentally deficient patients in the study were not in a position to make rational judgments (Tr. 201–204). Dr. Campbell further testified that "in most clinical studies with these drugs, they have been used in connection with a low calorie diet," and each person serves as his own control, that is, for a stated number of weeks, unknown to the patient, he is given a placebo. This is one of the recognized ways to eliminate psychological influences. This is called a "double blind cross-over" study (Tr. 206–207).

20. In spite of the statement in the right-hand column at the top of page 1019 of CX 3, that begins

> The 81 patients selected for the study were divided into four approximately equal groups, and each subject of each group was given one of the four preparations under investigation three times a day, one hour before meals, for a period of six weeks,

[3] Although the report (CX 3) states, and Dr. Campbell testified, that 81 mentally deficient patients were used in the study (Tr. 80), divided into four approximately equal units, the report also notes that one patient in Table 2 and one patient in Table 3 were dropped from the study after the first two weeks, leaving only 79 patients in the study.

Dr. Campbell admitted that a number of patients in each of the four units or tables of the study were allowed to go home on week-ends or at other times, at which times such patients were away from the cottage grounds and Dr. Campbell did not know whether such patients received the medication, as the report states (Tr. 220–223). According to Table 1, patients Nos. 8, 9, and 10 were not present for weighing at either the end of the four-week period or the six-week period, which was the end of the study; "They were home with their parents or their brothers or sisters or family" (Tr. 222). Therefore, Dr. Campbell testified, he did not know whether the patients did or did not receive the medication when they were off the premises on week-ends or at other times (Tr. 221–23). Under Table 2, three patients were not available for weighing at the end of either the four-week period or six-week period, and, while away from the premises, may not have received the medication; in Table 3, four patients were not weighed at the end of either the four-week period or six-week period; and in Table 4, five patients were not weighed at the end of either the four-week period or six-week period. Dr. Campbell stated that, similar to the patients in Table 1, while these patients were absent from the premises or at home or elsewhere, he was not able to say that these absent patients received the medication (Tr. 224–28; CX 3).

21. Counsel for respondents questioned Dr. Campbell concerning the second sentence of the paragraph in the upper right-hand column on page 1019 of the Fazekas report, CX 3, wherein it is stated,

> The drugs were administered by cottage supervisors (not aware of the identity of the drugs) who made certain of their ingestion by the subjects and were responsible for recording the weekly weights of all cottage residents participating in the investigation,

and inquired who wrote the sentence. Dr. Campbell answered that Dr. Fazekas actually wrote it, but that he (Campbell) had read three rough drafts of it (Tr. 229) and, at that time was aware from his examination of the cottage records during the course of the study that some of the patients had been allowed to go home on week-ends and at other times, but he did not notify the Food and Drug Administration or the Post Office Department about this (Tr. 223). Consequently, at such times when the patients were away from the premises, the cottage supervisors could not give them the medication, and Dr. Campbell could not be certain that the patients had taken the medication (Tr. 230–

33). Accordingly, it is found that, contrary to the statements in the report (CX 3), the drugs were not administered by cottage supervisors to each of the subjects "three times a day * * * for a period of six weeks," as stated in the said report (Tr. 229).

22. Dr. Campbell further testified on cross-examination that he did not have a court case in mind when he and his coauthors designed the Fazekas study (Tr. 236), and does not know, where an asterisk appears in the report (CX 3), whether the patient was actually getting the drug, but was just not available for weighing, or whether the patient was not getting the medication (Tr. 237). Dr. Campbell further testified on cross-examination that, according to Table 1 of CX 3, fourteen out of the nineteen patients who took 25 milligrams of P.P.A. three times a day lost anywhere from one to ten pounds in weight (Tr. 238–39); according to Table 3, seventeen of the twenty-one patients taking dextro amphetamine, the prescription drug, lost from one to ten pounds (Tr. 240); and, according to Table 4, thirteen of the twenty-one patients taking the placebo gained weight (Tr. 241). Dr. Campbell further testified that he had not read and had never seen the article by Doctors Fazekas, Ehrmantraut, and Kleh reporting a "Study of Effectiveness of Certain Anorexigenic Agents," referred to in footnote No. 2 at the bottom of page 1021 of CX 3 (Tr. 250); nor had he read the article by Dr. Harris reporting a study entitled "Clinically Useful Appetite Depressants," also referred to in footnote No. 2 (Tr. 250–51).

23. On cross-examination, Dr. Campbell also testified that dextro amphetamine, sometimes called "Dexedrine," is generally used as an adjunct to a low calorie diet (Tr. 253). Counsel then asked Dr. Campbell if it were not true that, in addition to the test substances that were given to these patients, some of the patients were given other drugs to retard epileptic seizures, and he answered:

A. Yes, but no drug was given that would interfere with this study.
Q. That is what we would like to find out. What drugs were given, Doctor, to these others.
A. Dilantin (Tr. 256).

* * * * * * *

Q. And isn't it true, sir, that some of these patients were also on phenobarbital?
A. Where are you getting that information from? Have I got it?
Q. I am not giving you any information. I am asking you a question (Tr. 256–57).

* * * * * * *

THE WITNESS: They were given tranquilizers, anticonvulsants, insulin, and what did you say, phenobarbital?

Q. Yes.

A. Yes, it could be (Tr. 257).

Dr. Campbell admitted that, at the time the 79 patients involved in the Fazekas study (CX 3) were being given the test drugs listed in Tables 1, 2, 3, and 4, twenty-eight of these patients were also being given one or more additional drugs, such as phenobarbital, meprobamate, anticonvulsants, "Miltown," etc., as follows: Of the 19 patients listed in Table 1 of CX 3 who were supposed to be receiving 25 milligrams of phenylpropanolamine hydrochloride three times each day, patients Nos. 5 and 6 were also receiving a tranquilizer Miltown, and phenobarbital; patient No. 12 was also receiving Miltown and phenobarbital, plus an anticonvulsant; patient No. 16 was also receiving insulin; patient No. 17 was also receiving insulin and a combination of meprobamate-phenobarbital (Tr. 263). In Table 2 of CX 3, of the 18 patients supposed to be receiving 50 milligrams of P.P.A. three times each day, patients Nos. 1, 3, and 8 were also receiving a meprobamate-phenobarbital combination; patients Nos. 12, 13, and 14 were also receiving anticonvulsants; and patient No. 15 was also receiving a combination of meprobamate-phenobarbital, and anticonvulsants (Tr. 264). Of the 21 patients listed in Table 3 of CX 3 who were supposed to be receiving 5 milligrams of dextro amphetamine three times each day, patients Nos. 1, 2, 5, 6, and 14 were also receiving the meprobamate-phenobarbital combination; patients Nos. 15, 16, 17, 19, and 20 were also receiving anticonvulsants (Tr. 264). Of the 21 patients listed in Table 4 of CX 3 who were supposed to be receiving the placebo three times each day, patients Nos. 1 and 5 were also receiving a combination of meprobamate-phenobarbital; patient No. 15 was also receiving a combination of meprobamate-phenobarbital, plus anticonvulsants; patient No. 17 was also receiving a combination of meprobamate-phenobarbital; patient No. 18 was also receiving anticonvulsants; and patient No. 21 was also receiving a combination of meprobamate and phenobarbital (Tr. 264).

24. Dr. Campbell further testified on cross-examination that dextro amphetamine acts to reduce appetite by working upon the central nervous system; that phenobarbital may neutralize the excitant or stimulative effects of dextro amphetamine; and that, ordinarily, the drugs phenobarbital and dextro ampheta-

mine are not combined when dextro amphetamine is being used along with a low calorie diet for weight-reducing purposes (Tr. 257–58). Dr. Campbell testified that an I.Q. of 70 is the beginning line of a mental defective, and the intelligence quotient level does not have any effect upon or relationship to the action of the drug on the central nervous system (Tr. 281). Dr. Campbell was asked on cross-examination if it were not true that the therapeutic effectiveness of a recognized pharmacologically potent anorexigenic agent may in mentally deficient subjects be neutralized by cortical or subcortical influences. Dr. Campbell answered, "I wasn't aware of that, and I don't believe it * * * . I don't believe it is true" (Tr. 282). Counsel for respondents then exhibited to Dr. Campbell page 1020 of the written report of the study of which he was coauthor, CX 3, where, in the last sentence of the paragraph immediately preceding the section in the right-hand column headed "Comment," is the statement:

> Thus, the therapeutic effectiveness of a recognized pharmacologically potent anorexigenic agent may, even in mentally deficient subjects, be neutralized, possibly by cortical or subcortical influences.

Counsel then asked Dr. Campbell which statement is true: The statement in CX 3 or the statement made by Dr. Campbell in his testimony. Dr. Campbell then said that counsel for respondents had used the word "will" in his question; counsel stated that he (counsel) had used "may" (Tr. 282–83). The hearing examiner then asked the reporter to read the question as counsel for respondents had asked it two times, successively, and as the reporter had reported it stenographically. The reporter read aloud the question which counsel had asked Dr. Campbell two times on cross-examination, and the word "may" was asked in the question both times by counsel for respondents (Tr. 284).

25. After repeated questioning, Dr. Campbell finally acknowledged that, in the quotation from CX 3 above set out, the authors of CX 3 were attempting to explain why it was that so many of the patients under Table 3 who were taking dextro amphetamine, the potent prescription appetite depressant, actually gained weight, whereas, a normal person would be expected to lose weight. In other words, the authors of CX 3 explained the unusual phenomenon of some of these mentally deficient patients actually gaining weight while taking dextro amphetamine, instead of losing weight, as would normally be the case, by saying that these mentally deficient patients had multiple variables which

influenced weight reduction, and that is why they gained instead of losing weight (Tr. 284–87).

26. Counsel for respondents then asked Dr. Campbell if it isn't true that the results of the study (CX 3) in which he participated do not preclude the possibility that P.P.A. would be effective in a receptive or susceptible population of normal intelligence when properly motivated to lose weight, and, after several unresponsive and unrelated answers, Dr. Campbell finally replied, "No, we did not" (Tr. 288). Dr. Campbell continued looking at papers and thumbing through papers in front of him, and counsel repeated the question by asking Dr. Campbell if it was his testimony that the study (CX 3) in which he participated

> does not leave open the possibility that PPA may be effective in a susceptible and normal population which is motivated to lose weight? (Tr. 289),

and Dr. Campbell replied: "PPA has no value as an appetite depressant" (Tr. 289). Counsel again asked the question a third time, if his study (CX 3) left open the possibility

> that the drug may be effective on a receptive and susceptible population that is sufficiently motivated and that is mentally alert, and not mentally deficient (Tr. 289),

and Dr. Campbell answered: "In my opinion, it doesn't" (Tr. 289). Counsel then asked Dr. Campbell if his report (CX 3) said anything about "leaving it open," and Dr. Campbell replied: "Yes, I have to find out if we said anything in here" (Tr. 289). Dr. Campbell was given time to re-read the report (CX 3), especially the statement in the left-hand column near the bottom of page 1021, as follows:

> * * * In view of the generally recognized effectiveness of psychological forces alone on appetite control, these results do not preclude the possibility of weight loss in a receptive or susceptible population when phenylpropanolamine, or even a placebo, is administered along with sufficient psychological motivation provided by a physician (Tr. 290),

and Dr. Campbell finally answered, "Yes," that he had made such statement in the report (CX 3; Tr. 291).

27. In testifying on direct examination that P.P.A. was not an effective appetite depressant but was one of the "do-nothing" drugs, Dr. Campbell testified on cross-examination that, in so testifying, he relied 50 percent on his study (CX 3) and 50 percent on the concurrence of informed medical thinking, such as "the up-to-date issues of Goodman and Gilman and other texts that you have available there" (Tr. 293–94).

28. Counsel then proceeded to cross-examine Dr. Campbell with reference to whether he agreed or disagreed with certain statements in specified medical texts concerning the use of P.P.A. as an appetite depressant. Dr. Campbell was asked whether he agreed or disagreed with the following statements on pages 1892–1893 of The Dispensatory of the United States of America, 25th Edition (CX 5), concerning phenylpropanolamine hydrochloride:

> Phenylpropanolamine is slightly less active than amphetamine in its effects on the circulation and apparently has little if any psychic stimulative action * * * . The advantages claimed for it are that it can be taken by mouth without producing the nervous symptoms characteristic of amphetamine, and with no other unpleasant symptoms * * *. Hirsh (*J. Med.*, 1939, 20, 84) reported that it is useful to kill the appetite in the treatment of obesity, as it does not produce nervous disturbances * * * .
>
> Dose.—The recommended oral dose is 25 to 50 mg. administered at 3- to 4-hour intervals as indicated.

Dr. Campbell agreed that phenylpropanolamine hydrochloride is used successfully in solution or tablet form for allergic and asthmatic conditions, but he did not agree with the statement that it is effective as an appetite depressant (Tr. 300–302).

29. Counsel for respondents then asked Dr. Campbell whether he agreed or disagreed with the statement in the textbook entitled Pharmacology and Therapeutics by Dr. Arthur Grollman, published in 1960 (RX 8), wherein, on page 291, it is stated:

> *Phenylpropanolamine hydrocholride* (propadrine), * * * .
>
> In action it resembles ephedrine closely. Like the latter it constricts the capillaries and shrinks the mucous membranes when applied locally. Its action is somewhat more prolonged than that of ephedrine. It is used in asthma and hay fever, to alleviate nasal congestion and to depress appetite in obesity.

Counsel then referred to two later editions of the same textbook by Dr. Grollman, page 306 of the Fifth Edition, published in 1962 (RX 9), and page 326 of the Sixth Edition, published in 1965 (RX 10), wherein the same statements with respect to P.P.A. as those contained in the 1960 edition (RX 8), quoted above, are repeated, and asked Dr. Campbell if he agreed or disagreed with the statements, and Dr. Campbell replied that he disagreed with the portion of each statement to the effect that P.P.A. depresses the appetite (Tr. 303–306).

30. Counsel for respondents then asked Dr. Campbell if he agreed or disagreed with the statement in a book entitled The

Merck Index, Seventh Edition, 1960 (RX 11), wherein, on page 805, is stated the following:

> Phenylpropanolamine Hydrochloride * * *
> Med. Use: Sympathomimetic agent employed in bronchial asthma and hay fever, as anorexant for control of obesity, antihypotensive agent during spinal anesthesia. Used topically as nasal decongestant. *Dose:* * * * 25 to 50 mg.

Dr. Campbell testified that he disagreed with the statement that P.P.A. is effective in the depression of appetite (Tr. 306–308).

31. Counsel for respondents then referred to a book entitled The Amphetamines by Professor Chauncey D. Leake, professor of pharmacology at The Ohio State University, Columbus, Ohio, copyright 1958, date of publication not given (RX 12), where, on pages 12 and 13, there is a chart or table with the heading "Table of the Amphetamines and Relatives," which lists the names of various amphetamines, their respective chemical names, their chief sympathomimetic action, and the ordinary dosage for each drug. Among the drugs listed on page 13 is phenylpropanolamine hydrochloride (Propadrine), and under the heading "Chief Sympathomimetic Action," it is stated "appetite depressant," and, under the heading "Ordinary Dosage" is listed 25 to 50 mgm orally." Dr. Campbell was asked whether he agreed or disagreed with the statement that P.P.A. is an effective appetite depressant, and he replied:

> I disagree with the statement as relates its efficacy of phenylpropanolamine as an appetite depressant (Tr. 309–310).

32. Counsel for respondents then referred to the Eighth Edition of a book entitled A Manual of Pharmacology And Its Applications To Therapeutics and Toxicology by Torald Sollmann, M.D., professor emeritus of pharmacology and materia medica, School of Medicine, Western Reserve University, Cleveland, Ohio, published in 1957 (RX 13). Counsel asked Dr. Campbell whether he agreed or disagreed with several quotations which counsel read from pages 509 and 510 of the book referring to the use of amphetamines for the control of obesity, including the following from the first paragraph at the top of page 510 thereof:

> * * * The d-isomer ("Dexedrine") is effective as well as the usual racemic form. Phenylpropylamine ("Propadrine") is less effective, but also less excitant (Tainter, 1944).

Dr. Campbell testified that he disagreed with that portion of the statement "relating to its efficacy in the treatment of obesity" (Tr. 311–13).

33. Counsel for respondents then questioned Dr. Campbell concerning the contents of a book entitled Pharmacology in Medicine by Victor A. Drill, Ph.D., M.D., lecturer in pharmacology, Northwestern University Medical School, Second Edition, 1958 (RX 14), and asked Dr. Campbell whether he agreed or disagreed with the following statements contained therein on pages 400–401:

> Phenylpropanolamine Hydrochloride is similar in action to ephedrine but is somewhat more pressor and slightly less stimulant. Propadrine is used principally as a topical nasal decongestant when given orally in doses of 25 milligrams. Although it is stated that this drug does not produce central stimulation to any great degree, it is active enough to be used for controlling the appetite. This action is the same as will be described below for amphetamine (Tr. 315).

Dr. Campbell replied that he disagreed with that portion of the statement to the effect that phenylpropanolamine hydrochloride is effective in the treatment of obesity (Tr. 314–16).

34. Counsel for respondents then referred to a book entitled Clinical Pharmacology by D. R. Laurence, M.D., M.R.C.P., Reader in Pharmacology and Therapeutics in the Department of Pharmacology, University College, and the Medical Unit, University College Hospital Medical School, London, England, published in 1963 (RX 15, and asked Dr. Campbell whether he agreed or disagreed with the following statement on page 285 thereof, under the heading "Remarks":

> * * * like ephedrine but sometimes used to reduce appetite (50 mg. daily).

Dr. Campbell replied that he disagreed with the statement that the drug was effective "to reduce appetite" (Tr. 316–17).

35. Counsel for respondents then referred to a book entitled Remington's Practice of Pharmacy by Martin and Cook, Twelfth Edition, 1916 (RX 16), and asked Dr. Campbell, among other things, whether he agreed or disagreed with the following statement contained on page 844 thereof with respect to the drug phenylpropanolamine hydrochloride:

> White powder, freely soluble in alcohol and water, forming a neutral aqueous solution. Uses: similar to ephedrine, in hay fever, bronchial asthma, obesity, and locally to shrink mucous membranes. Its action is more prolonged than that of ephedrine. Dose: locally, 1 to 3 per cent aqueous solution; orally, 25–50 mg. 3 times a day (Tr. 323).

Dr. Campbell replied that he disagreed with the reference "to its use in obesity" (Tr. 319–325). In reply to a further question by counsel, Dr. Campbell testified that he was not familiar with an article on obesity control by Dr. A. D. Jonas of New York, published in The American Practitioner and Digest of Treatment, Volume 1, September 1950, page 933, wherein Dr. Jonas states that:

> Patients selected for the study were not considered if they were mentally retarded, pre-psychotic and psychotic individuals (Tr. 332–33).

The quotation from this publication was not offered nor received in evidence at the hearing.

36. Continuing his cross-examination of Dr. Campbell, counsel for respondents asked the doctor whether, because a book on drugs does not recite on a particular page that the drug is not useful as an appetite depressant, he would thereby conclude that the drug is not useful as an appetite depressant, to which Dr. Campbell replied, in effect, that, when current knowledge comes to the attention of authors of books on Pharmacology and other medical tests, the authors revise the books periodically "to catch up with new indications for use or delete indications for use that have not been found valid" (Tr. 335–36). Counsel then referred to the Eighth Edition of A Manual of Pharmacology And Its Applications To Therapeutics and Toxicology by Dr. Torald Sollmann, page 507, a textbook previously referred to in paragraph numbered 32 above, wherein a reference was made to P.P.A., but nothing was said about its being useful as an appetite depressant. Counsel then asked Dr. Campbell whether, assuming the date of the book to be 1965, and that page 507 of the book refers to P.P.A. but on that page does not make any reference to P.P.A.'s being an appetite depressant in the dietary management of obesity, he (Campbell) would conclude that the drug was not useful for that purpose simply because there was no reference on that page to its usefulness, if any, as an appetite depressant. In answer to the question Dr. Campbell replied that he would conclude that any reference to P.P.A. as an appetite depressant had been deleted from the book for the reason that, in his opinion, the latest information

> had filtered finally into the text, and it was now known to the Medical Community at Large that phenylpropanolamine hydrochloride was not effective as an appetite depressant (Tr. 336–37).

Counsel for respondents then referred to a reproduced copy

of page 507 of Dr. Sollmann's book, which was marked for identification and received in evidence as RX 17. (Reproduced copies of pages 509 and 510 from said book were previously received in evidence as RX 13.)

37. The second witness offered by complaint counsel was Frederick William Wolff, M.D., a clinical pharmacologist, and, at the time of the hearing, director of research at the Washington Hospital Center, Washington, D.C., and professor of medicine at George Washington University School of Medicine, and director of the section of experimental Therapeutics, Department of Medicine at that school (Tr. 350–51). At complaint counsel's request, Dr. Wolff had previously examined a copy of the Fazekas report (CX 3), and stated at the hearing that he approves the statistical design thereof and agrees with the conclusions reached by the authors (Tr. 351). Dr. Wolff testified, among other things, that: He is familiar with the drug phenylpropanolamine hydrochloride; that it has been in use for more than 20 years (Tr. 351); and that it "was first used for obesity for a number of years, but to the best of my knowledge, it is now generally used as a nasal decongestant" (Tr. 354). In the course of his practice, Dr. Wolff stated that he has occasion to consult with obese patients, but he seldom prescribes drugs; if he has to prescribe a drug for a patient, it is dextro amphetamine. He does not prescribe phenylpropanolamine hydrochloride (Tr. 355). He generally does not prescribe any drug because:

> (1) the evidence is suggestive that they are effective only for a very limited period of time and (2) I know that all appetite depressants have considerable side effects and can also lead to barbiturate and even addiction. And it is my view that they are dangerous drugs, so I try not to prescribe them. If I have to prescribe them I prescribe dexedrine for a short period of not more than four weeks. Beyond six weeks, in all of these drugs, appetite depressants, they appear to lose their effect after four to six weeks (Tr. 356).

Replying to a question of complaint counsel as to whether the failure by the authors of the study to record the weights of three patients at the end of the four and six weeks periods (where the asterisks are shown in Table 1 of CX 3) would invalidate the study, Dr. Wolff replied that he thought "the figures that are missing probably do not really change the total result very much" (Tr. 358), because the weight loss during the "first two weeks is probably the most important one. As time goes on, all weight depressants begin to lose their effectiveness"

(Tr. 359). Dr. Wolff testified that his comments with regard to the missing weight figures in Table 1 also applied to Tables 2, 3, and 4, because, "in this particular study, at least, the majority of the data is tabulated. At least, you are sure that the patients have taken the pill. In this, of course, you never know in outpatients to be sure" (Tr. 359). He stated that it is "exceedingly important" that the patient take the pill during the study (Tr. 359).

38. Dr. Wolff was of the opinion that the choice of the 81 mentally deficient institutionalized patients was valid for the study, and the absence of any dietary restrictions during the six-week study period was also valid because the patients involved in this study (CX 3) were mentally deficient and, therefore, the usual patient-doctor relationship did not exist. In most clinical drug studies of appetite depressants, two things are used: a pill and a measure of diet restrictions. These mentally deficient patients did not have any personal physician nor any personal discipline. Therefore, "Whatever you think the result means, it must be due to the pills" (Tr. 360–61). Dr. Wolff testified that he did not consider phenylpropanolamine hydrochloride, given in dosages of 25 milligrams three times each day, to be adequate or effective in the treatment, control or management of obesity. Also, he did not consider phenylpropanolamine hydrochloride to be safe for use on an over-the-counter basis by obese persons, because:

> All drugs have a multitude of effects, not all of which are desired. Among the undesirable effects there are effects on the cardiovascular system; they may increase the heart rate; they may raise the blood pressure; they may cause nervousness; they may be dangerous in cases that are mentally imbalanced or that may have a prior disease, or that may have high blood pressure or amgina pectoris. In my own experience, with all of these agents, the most dangerous effect is the one of habituation or addiction (Tr. 362–63).

Dr. Wolff testified that phenylpropanolamine hydrochloride is currently being used by the medical profession as a nasal decongestant (Tr. 363).

39. On cross-examination, Dr. Wolff agreed that all of the nasal decongestant preparations are sold over-the-counter without prescription, and the food and drug laws presently require that the label contain a statement that the preparation should not be used by persons with thyroid, cardiovascular, or high blood pressure conditions (Tr. 364). Dr. Wolff testified that, in his opinion, for a weight loss to be "significant," it must be a

minimum of 5 lbs. over a period of one week among a group of 26 persons (Tr. 365). Individuals vary, so he considers a group of 26 persons, and he means "normal people" on a reducing diet, who are attempting to stick to a proper diet with proper instructions (Tr. 366). According to Table 3 in CX 3, twenty-one mentally deficient patients with no diet restrictions and who were supposed to be taking dextro amphetamine, a prescription drug, lost an average of minus 2.2 lbs., a total of about 34 ounces or about 1 1/2 ounces per patient over the first two-week period, whereas, Dr. Wolff considered a weight loss, to be significant, must be at least 5 lbs. per week among a group of 26 normal people (Tr. 365–66). According to Table 1 of CX 3, the 19 mentally deficient patients taking phenylpropanolamine lost an average of minus 0.9 lbs. during the first two-week period, but Dr. Wolff testified that he did not make a statistical evaluation of the two tables to compare the comparative effectiveness of P.P.A. and dextro amphetamine (Tr. 368).

40. Dr. Wolff further testified that he would be suspicious of any study which reported that pills were given patients when, in fact, they were not really given (Tr. 374). In his opinion, a written report of a clinical study should report what was actually done and that, if, in fact, certain drugs were not administered to patients by hospital attendants, a written report of that study should not recite that those certain drugs had been administered to such patients by hospital attendants (Tr. 375–76). Dr. Wolff also testified that he had had no personal experience with phenylpropanolamine, but that it is chemically related to the amphetamine family (Tr. 376). Dr. Wolff testified that, although he had read papers on studies which reported that phenylpropanolamine is an effective appetite depressant on persons of normal intelligence, he was not satisfied with the conclusions (Tr. 376–77). Dr. Wolff testified that the Fazekas study (CX 3) is not a "cross-over" study, where the patients are both on a placebo for a period and are then placed on the drug (Tr. 380).

41. Counsel for respondents questioned Dr. Wolff concerning statements in textbooks to the effect that phenylpropanolamine hydrochloride is used as an appetite depressant, including the statements in Dr. Grollman's book Pharmacology and Therapeutics, Fifth Edition, 1962 (RX 9), where, on page 306, he describes the action of P.P.A. and says:

> It is used in asthma and hay fever, to alleviate nasal congestion and to depress appetite in obesity.

Dr. Wolff observed that, in so stating, Dr. Grollman does not thereby recommend that it is used to depress the appetite; he merely says that P.P.A. is used "to depress the appetite in obesity"; he does not evaluate the drug (Tr. 398). According to Dr. Wolff, the fact that a medical textbook states that a certain drug is used for certain purposes does not mean that the drug works successfully for those purposes; "things get in textbooks that are completely misleading sometimes" (Tr. 399). Also, Dr. Wolff stated that he does not respect the judgment of other well regarded physicians in all situations, necessarily, because " * * * I have never found two doctors who could agree about everything, except what he should contribute to his favorite charity" (Tr. 394). Dr Wolff further testified that it is bad practice for a physician to select a drug from a list contained in a book, and one of the worst is entitled a "Physician's Desk Reference To Pharmaceutical Specialties and Biologicals," which had been previously offered in evidence as CX 4 but rejected by the hearing examiner (Tr. 400). Dr Wolff gave as his opinion that a really effective and active drug should not be sold "over-the-counter," because, if it does work, it has powerful side effects (Tr. 408–409); and that most drugs should be sold by prescription only (Tr. 411). He further testified that a tolerance, a refractoriness, develops in all persons given appetite-depressant drugs after a few weeks (Tr. 376).

42. The testimony of respondents' witnesses will now be discussed. The first witness for respondents was Edward Settel, M.D., of New York, New York, a specialist in internal medicine (Tr. 476). Dr. Settel has been practicing medicine in New York City and Brooklyn, New York, since 1938, is on the staff of several hospitals in Brooklyn, is a member of various medical societies, and has contributed articles to medical journals (Tr. 476–78). Dr. Settel has done at least 50 to 60 research studies in drug evaluation, of which 90 percent have been published in recognized medical journals. A statement of Dr. Settel's educational background and a list of published articles and his affiliations were received in evidence as RX 19. At the request of counsel for respondents, Dr. Settel conducted a study of P.P.A. as an appetite depressant (Tr. 481). The study was what Dr. Settel characterized as a "double-blind" study with a "cross over" of the drug, plus a placebo, for a period of six weeks, of 30 persons living in a middle-class urban community, who were at least 10 percent or more overweight according to the statistical

tables of the Metropolitan Life Insurance Company. In the opinion of Dr. Settel, these middle-class people most often go to a doctor seeking help to lose weight (Tr. 482). The report of his test was received in evidence as RX 20. In his test, neither the subjects nor the physician knew which tablet, "A" or "B," was the drug P.P.A. and which was the placebo (Tr. 482). In the cross over, the patients who had been taking tablet A for three weeks were switched without their knowledge, and without the knowledge of Dr. Settel, to tablet B, and the patients on tablet B were switched to tablet A, and the patients were placed on a "measured 900 calorie diet as the base line" (Tr. 483). In this manner, each patient served as his own control for the purpose of determining which tablet was more effective (Tr. 483). The patients were selected at random. At the conclusion of the study, Dr. Settel concluded that tablet A was a more effective anorexiant agent than tablet B. Subsequently, Dr. Settel learned that tablet A was the active drug P.P.A. (Tr. 483–84). Dr. Settel concluded from his study that P.P.A. was a relatively safe drug, and, while there was a total of some 1260 patient days of treatment, there was only one complaint from one patient who experienced a dryness of the mouth for a couple of days (Tr. 503).

43. Dr. Settel testified that he had examined the Fazekas report (CX 3), and did not consider it to be scientifically sound for several reasons: First, the patients in that study were mental defectives, including imbeciles and morons, with primary mental lesions (meaning that the cause of their mental deficiency was unknown), and he would not test a drug which works on the cortical and subcortical area of the brain on people who have primary mental lesions (Tr. 504); second, although the Fazekas study (CX 3) reports that it was a double blind study, it was actually a single blind study, meaning that Dr. Fazekas and his associates knew which drug was the placebo and which was dextro amphetamine, because persons associated with the study would naturally become aware of the patients who were receiving dextro amphetamine since its powerful effects would be readily observable by its action on the patients (Tr. 504); third, while the study (CX 3) reports that it was conducted on obese patients, Dr. Settel questioned whether some of the patients were really obese, according to the age, weight, and height of the patients which are shown in the tables in CX 3 (Tr. 505–506); fourth, Dr. Settel considered the Fazekas report (CX 3) to be unsound because Dr. Fazekas, according to the statements in the report,

used different standards in comparing the effectiveness of P.P.A. and dextro amphetamine. When referring to the purported effectiveness of dextro amphetamine, Dr. Fazekas used the words "statistically significant," but, when referring to the purported results from P.P.A., he did not use the words "statistically significant," but used only the word "significant" (Tr. 506–507). In the opinion of Dr. Settel, the same technique should be used in evaluating both drugs. Fifth, Dr. Settel called attention to the statement on page 1020 of CX 3 where Dr. Fazekas admits that "the therapeutic effectiveness of a recognized drug to control appetite in mentally deficient subjects can be neutralized by cortical and subcortical influence" (Tr. 507). Dr. Settel then explained that an anorexiant drug is supposed to improve appetite control, and appetite control is a summation of a pattern of cortical, or brain, influences, motivation, will power, and desire to lose weight. In mentally deficient people, subcortical influences are present in such a confused and low degree that it is impossible to evaluate a drug or a series of drugs on such a patient, because they do not represent the same cortical and subcortical influences that "you have in the normal cross-section of the population" (Tr. 507–508). In his study, Dr. Fazekas states that dextro amphetamine in those patients may be neutralized because of their mental condition. In answer to a question by the hearing examiner, Dr. Settel defined cortical and subcortical as follows:

> These are the influences of the higher level of the brain, the gray matter, the part of the brain involved in reasoning, cogitation, emotion. The subcortical influences are those in the lower level of the brain that have to do with subconscious or unconscious influences, and these, of course, also are bound up tightly with appetite, appetite control, hunger, loss of hunger, mood, euphoria, and other basic physiological processes such as respiration, heartbeat, and so forth (Tr. 508).

44. Dr. Settel further testified that P.P.A. was not intended for idiots, imbeciles, and morons. It was intended to be used by the normal population with normal desires to lose weight. If the drug is to be tested for its efficacy, it should not be tested in an area where it is not used nor intended to be used, that is, among the mentally deficient, "which can distort the actual effect of the drug" (Tr. 509). According to Dr. Settel, the use of mentally deficient persons in the Fazekas test (CX 3) could distort the comparative effectiveness of P.P.A. and dextro amphetamine, and render the study completely insupportable from a scientific standpoint (Tr. 510). Furthermore, Dr. Settel pointed out that

the patients involved in the Fazekas study were not selected at random, because the written report (CX 3) shows that the patients in Table 3, who were given dextro amphetamine, had an approximately 30 percent higher average I.Q. than those in Table 1 who were taking P.P.A. Therefore, other things being equal, it was to be expected that those patients receiving dextro amphetamine would show a greater weight loss (Tr. 510).

45. When the attention of Dr. Settel was directed to the right-hand column near the top of page 1019 of the Fazekas report (CX 3), where it is stated, among other things, that "the drugs were administered by cottage supervisors," and he was asked what effect, if any, it would have on the validity of the report, if, on some occasions, some of the patients went home on week-end passes and did not receive the drug from the cottage supervisors while at home, Dr. Settel replied that, if this were true, the entire report would be vitiated (Tr. 512). Dr. Settel stated that this was so, for the reason that it is important that the patient receive the drug, and the very fact of the patient's being at home in a different atmosphere, with relatives and friends feeling sorry for the patient, would affect the validity of the study (Tr. 512). Dr. Settel stated that he did not use dextro amphetamine in his study of P.P.A., because he was not evaluating the relative efficacy of the two drugs, but only wanted to know whether P.P.A. had any measurable and significant anorexiant effect (Tr. 518). On cross-examination by complaint counsel, Dr. Settel emphasized that the use of dextro amphetamine on the mentally deficient patients would produce reactions on such patients sufficient to show to the cottage personnel which patients were being given the drug (Tr. 521, 522). Dr. Settel stated that, if the patients in the Fazekas study (CX 3) suffered cerebral damage, from birth, injury, or palsy (as testified by Dr. Campbell), this would affect the demonstrable result of the use of P.P.A. and dextro amphetamine on such patients (Tr. 550). Dr. Settel further stated that his use of a 900 colorie diet on the patients in his study did not distort the conclusion he reached that P.P.A. was an effective anorexiant drug, because the use of the 900 calorie diet created a constant set of conditions for all 30 patients (Tr. 551).

46. Frederick B. Bohensky, M.D., of Brooklyn, New York, another witness for respondents, testified that, in his practice, he has treated several thousand patients for obesity since 1943 (Tr. 642, 645). Dr. Bohensky is familiar with the drug phenyl-

propanolamine hydrochloride, has used it in his practice, and has found it effective on patients as an anorexigenic agent (Tr. 646). Near the end of November 1959, Dr. Bohensky undertook an evaluation of P.P.A. as an appetite-depressing agent on healthy dogs. Dr. Bohensky selected dogs to use in his study, because he believed that a dog would be an "unbiased subject" and "would act closely and almost identically with its responses to the human being" (Tr. 647); and, in so doing, he would eliminate all psychological factors (Tr. 651); also, because the Food and Drug Administration, Department of Pharmacology, had, itself, utilized dogs to test the efficacy of amphetamine preparations (Tr. 651). In making this study, Dr. Bohensky used the following procedure: Dr. Bohensky obtained 20 healthy dogs from an animal hospital, and for a period of three weeks the dogs were given an adequate diet of food and fluid, according to their weight. The dogs were exercised and weighed daily by the same attendant at the animal hospital, and their weight was tabulated at each weighing (Tr. 648). After Dr. Bohensky had established what he considered to be a good nutritional status, each dog was given one quarter of a milligram of phenylenylpropanolamine per pound of body weight, which would be equivalent to 75 milligrams for a human being weighing 300 pounds. Dr. Bohensky said that P.P.A. in a dosage of a quarter of a milligram per pound of body weight per dog was an effective appetite depressant, and that the results from his study could be translated to human beings (Tr. 651). Upon the basis of his test and his personal experience with the use of phenylpropanolamine hydrochloride, Dr. Bohensky was of the opinion that P.P.A. is an effective anorexigenic and weight-reducing agent, and is effective in dosages of 75 milligrams per day, taken 25 milligrams before each meal, by human beings (Tr. 652).

47. Dr. Bohensky was of the opinion that the choice of subjects in the Fazekas study (CX 3) was unfortunate, for the reason that P.P.A. acts on the central nervous system and should not have been tested upon mentally deficient patients whose central nervous systems were impaired (Tr. 657). Dr. Bohensky did not agree with the stated conclusions of Dr. Fazekas that P.P.A. was not an effective anorexiant for several reasons: In the Fazekas report (CX 3), the subjects were not used as controls against themselves, in that each of the four units of patients were given different preparations and none of the patients were given all of the drugs; the patients in Tables 1 and 2 of CX 3

were given phenylpropanolamine hydrochloride; the patients in Table 3 were given dextro amphetamine; and the patients in Table 4 were given the placebo. Dr. Fazekas tested each drug on different individuals, and did not utilize the same people by giving one unit of patients dextro amphetamine for a stated period of time, then switching these same patients over to phenylpropanolamine for the same period of time, and later switching the same patients to the placebo for a like period of time. If Dr. Fazekas had followed such a procedure, said Dr. Bohensky, in spite of the unfortunate choice of subjects, Dr. Fazekas could have compared P.P.A. with dextro amphetamine and P.P.A. with a placebo on the same patients (Tr. 658, 659), and his failure to do so in this regard invalidates the study. Dr. Bohensky was of the opinion that a weight loss of 4.6 lbs. for the 21 patients in the Fazekas study (CX 3) taking dextro amphetamine is not a gratifying result, and, in his opinion, would have been more with normal patients (Tr. 659). Dr. Bohensky further stated that, if some of the patients in the Fazekas study were allowed to go home, contrary to the statement in the report that the drugs were administered by "cottage supervisors," the report would be inaccurate (Tr. 660).

48. Dr. Bohensky further testified that the mentally deficient patients in the Fazekas study reacted differently from normal patients, in that some of them even gained weight while taking dextro amphetamine, whereas, a normal patient would have lost weight (Tr. 673). If the mentally deficient patients in the Fazekas study were being given other drugs, such as barbiturates and "Dilantin," in addition to P.P.A. and dextro amphetamine, their reactions to dextro amphetamine and P.P.A. may have been contra-acted and unnoticed (Tr. 675). In conclusion, Dr. Bohensky stated that the fact that two dogs in his study died of starvation does not detract from his conclusions as to the usefulness and safety of P.P.A. in human beings as an appetite depressant, because normal human beings, for whom P.P.A. is intended, can stop taking it when they have attained the desired weight reduction (Tr. 684–85).

49. Raymond W. Healy, M.D., a practicing physician from Miami, Florida, was the next medical witness for respondents (Tr. 688). Dr. Healy graduated from St. Louis University School of Medicine in 1951, interned for one year at Jackson Memorial Hospital in Miami, and since that time has been practicing in Miami where he has treated from 5000 to 6000 patients for

obesity conditions (Tr. 690). Dr. Healy is a general practitioner in internal medicine and is primarily interested in obesity (Tr. 698–99). At the request of The Odrinex Company, he conducted a clinical study of the comparative effectiveness of P.P.A. and dextro amphetamine on 30 normal patients over an eight-week period (Tr. 690–93, 699). The patients were weighed each week. Dr. Healy testified that, in his clinical study, he had been giving his patients dextro amphetamine to reduce their appetities, while on a low calorie diet, along with vitamins, if necessary. In this study, Dr. Healy selected every third to fifth patient who came to his office to be treated for obesity, and gave that patient P.P.A. instead of dextro amphetamine. He continued giving each third or fifth patient P.P.A. in order to get a general sampling among all of his patients. Of the 30 patients on whom Dr. Healy made the study of P.P.A., 22 were persons who were already patients of Dr. Healy, and 8 were new patients. The patients visited Dr. Healy's office at the same approximate time each week, at which time the patients were weighed and their blood pressure and pulse taken; these were recorded (Tr. 691, 693). The P.P.A. was placed in envelopes and given to each patient with directions for their use during that week. Dr. Healy assumed that the patients took the pills, because he did not believe that the patients came to his office, paid his regular fees, and did not take the pills (Tr. 693–94). From his study, Dr. Healy concluded that P.P.A. was safe to use and effective in reducing the appetite in about 80 percent of his patients involved in the test (Tr. 698).

50. Dr. Healy testified that, in order to lose weight, the patient must be motivated and must eat less food, consume fewer calories; a study of the effectiveness of a appetite-depressing pill given by attendants at an institution to mentally deficient subjects, whose diet is not restricted but are allowed to eat as much food as is placed before them, some of whom were allowed to go home on week-ends, would be worthless (Tr. 694–95). He stated that "a person will lose weight if they eat less food than they burn up. If you start with somebody who wants to lose weight, they know they have to eat less. If they are given pills to take the edge off the appetite, they will stick to the diet and they will lose" (Tr. 695); the function of the pill is to help the patient resist food and make it easier to stick to his diet; if you put a lot of food in front of him, he can't stick to it (Tr. 696–97). Dr. Healy further testified that " * * * You can't run a test by putting a lot of food in front of people, especially mental de-

fectives that have no reason to not eat, and expect to kill the appetite" (Tr. 697).

51. The fourth medical witness for respondents was Theodore Feinblatt, M.D., of Brooklyn, New York, who has practiced in internal medicine since 1948, is a member of several medical societies, and author of articles published in medical journals. A written statement of his educational and medical background was received in evidence as RX 26. Dr. Feinblatt testified that he had conducted more than 50 clinical investigative studies, including a study of P.P.A. which he and his father, Henry M. Feinblatt, also a physician, made in 1957 (Tr. 780–81). His father, Dr. Henry Feinblatt, was a diplomate of the Board of Internal Medicine and a fellow of the American College of Physicians (Tr. 781). The study referred to was entitled "Safety and Anorexiant Action of Timed Disintegration Capsules 75 mg. for the Treatment of Obesity," and a copy thereof was received in evidence as RX 27. Although the study was conducted on 30 of their obese patients to determine the safety of the time-disintegrating factor of the preparation, the way the P.P.A. was released after it was taken by the patient (Tr. 793–94), they found, as a result of their study, that the treatment with the time-disintegrating capsule of phenylpropanolamine in a 75 milligram dose was effective as an anorexiant agent for the treatment of obesity, and that there were no toxic effects from it, such as insomnia, nervousness, or other objectionable side effects, or failure of the time-disintegrating factor in the capsule (Tr. 797–98, 807). Dr. Feinblatt further testified, on cross-examination, that he uses phenylpropanolamine hydrochloride today in his practice in the treatment of patients with obesity (Tr. 800, 809). Dr. Feinblatt testified that, if he were going to make a study of the efficacy of P.P.A. as an appetite depressant, he would use normal subjects, not mentally deficient subjects (Tr. 814). Dr. Feinblatt testified that the use of P.P.A. or any other drug as an appetite depressant depends on the stimulation of the higher centers of the brain and the patient's desire and cooperation to lose weight and, therefore, the use of mentally deficient subjects in the Fazekas study is "not too valid" as a test of the efficacy of P.P.A. as an appetite depressant (Tr. 816).

52. E. L. Ladenheim, of New York, New York, a professor of mathematics at the Polytechnic Institute of Brooklyn, New York, testified concerning a statistical analysis he had made of the Fazekas report (CX 3) and the conclusions that can properly be

drawn therefrom (Tr. 557–594). Professor Ladenheim received an A.B. degree in electrical engineering from City College of New York in 1940, graduated from the United States Naval Academy Postgraduate School in Annapolis, Maryland, in 1941, and received a Master's degree in electrical engineering from Brooklyn Polytechnic Institute in 1948. Professor Ladenheim has been associated with that institution since 1948, and has been a professor of mathematics there since 1952, teaching all undergraduate courses in mathematics and both graduate and undergraduate courses in probability and statistics (Tr. 557–58). A written statement of Professor Ladenheim's education and professional background, together with a list of his written articles and papers, was received in evidence as RX 21. In addition to his duties as a professor at Brooklyn Polytechnic Institute, he is currently engaged in doing statistical data analysis and evaluation in connection with the inertial navigational systems being supplied to the Apollo missile tracking ships for the Department of Defense, and teaches a course in graduate statistics to engineers employed at the Sperry Gyroscope Company (Tr. 559–560).

53. Professor Ladenheim testified that he had made an objective study of the Fazekas report (CX 3) at the request of counsel for respondents, and, from this study, he concluded that the conclusions in the report, itself, are erroneous and misleading (Tr. 564–565), because a double standard was used in evaluating the results and conclusions of the study with respect to the relative efficacy of phenylpropanolamine hydrochloride and dextro amphetamine. In evaluating the efficacy of P.P.A. in reducing the weights of the patients in the Fazekas study (CX 3), Dr. Fazekas used the word "significant," whereas, in referring to the efficacy of dextro amphetamine, he used the words "statistically significant" (CX 3, pp. 1020, 1021; Tr. 565–66). He testified that: In statistics, the words "significant" and "statistically significant" have entirely separate and unrelated meanings; the authors of the Fazekas report (CX 3) avoided the use of the words "statistically significant" in referring to the efficacy of P.P.A. as demonstrated from the data in Table 1; in other words, the authors of the Fazekas report (CX 3) cannot truthfully say that the results of the use of P.P.A. on the subjects in Table 1 "fail to demonstrate a statistically significant reduction in weight" of the patients in Table 1; and, "in the statistical sense, 'statistical significance' is a term used in connection with accepting or re-

jecting a given hypothesis at a given level of acceptance" (Tr. 566). Professor Ladenheim gave it as his opinion that the authors of CX 3 came to a conclusion and then worded the results in such a fashion as to substantiate this conclusion, because nowhere in the report (CX 3) is there any statement of the method or analysis used to reach the stated conclusion; it is just arbitrarily stated (Tr. 576). Professor Ladenheim stated that the statistical problem involved in the Fazekas report (CX 3) is almost identical to the standard problem that appears in the standard text that Professor Ladenheim uses, Elements of Mathematical Statistics, by Paul Hoel, professor of mathematics at the University of California in Los Angeles (Tr. 567–68).

54. Professor Ladenheim testified that he used what he called the "T" statistic method in his statistical analysis of the Fazekas report (CX 3; Tr. 569), which takes into account not only the mean, but the variants of the mean (Tr. 570). In the "T" statistic method, prior to the use of the "T" statistic, you first establish various hypotheses and test against these. For example, in order to test a statistical hypothesis by this method, you set up a statement or hypothesis that there is or is not a significant difference in the mean between two samples that are being tested. In this case, Professor Ladenheim first set up the hypothesis that there is no difference in the mean between P.P.A. and the placebo (Tr. 570), that there is no difference in the mean or weight change in the two dosages of P.P.A. in Tables 1 and 2, in other words, P.P.A. was tested against itself (Tr. 570), and that there is or is not a difference in P.P.A. and dextro amphetamine (Tr. 570–571).

55. Professor Ladenheim also tested the P.P.A. data in Table 1 in four different ways: First, by taking all the data; by taking the data without the two extreme points of an 11 1/2 lb. gain and a 10 lb. loss in patients Nos. 14 and 17, respectively; by taking the data without one of the extreme points; and then by taking the data without the other extreme point (Tr. 572). By the first method, he found that the results rejected the hypothesis that P.P.A. had no value with 84 percent confidence, meaning that the probability of making a mistake in rejecting that hypothesis is only 16 percent (Tr. 571). With both extreme points omitted (patients Nos. 14 and 17), he found that the hypothesis was rejected at the 96 percent confidence level (Tr. 572), and he rejected the hypothesis with one and then the other of the extreme points omitted at significant confidence levels (Tr. 574).

From these figures, Professor Ladenheim concluded that the results of the use of P.P.A. shown in Table 1 were "statistically significant," and that the authors of CX 3 studiously avoided use of the words "statistically significant" when referring to the weight loss from using P.P.A. shown in Table 1, because the authors could not, with all honesty, state that the results in Table 1 had no statistical significance (Tr. 574).

56. Professor Ladenheim applied a similar test to the results in Table 3 and found that they show statistical significance; he also applied the test to the results in Table 4 and found that the use of the placebo did not show statistical significance (Tr. 575). Furthermore, he concluded that there was an 88 percent to 92 percent difference between Tables 1 and 2 using P.P.A. and Table 4 using the placebo, and could not explain how Dr. Fazekas could have concluded that P.P.A. was equivalent to the placebo, or was not significant when compared to dextro amphetamine (Tr. 576).

57. Professor Ladenheim also ran a "T" statistic test on the results shown in Tables 1, 2, 3, and 4 of the Fazekas report (CX 3) for the first two weeks of that test (Tr. 577). (It will be noted that the weights of all patients in each of the four units were recorded in each of the tables for the first two weeks of the Fazekas study. Dr. Wolff, one of the witnesses offered by complaint counsel, testified that he considered the first two weeks of the Fazekas study the most important, because, as time goes on, "all weight depressants begin to lose their effectiveness" [Tr. 359], and also for the first two weeks, "you have all the figures" [Tr. 372].) In his statistical test of the data contained in Table 1 covering the first two weeks of that test where the 19 patients were taking 25 milligrams of P.P.A. three times a day, he found that the data rejected the hypothesis at a 93 percent confidence level, as compared to a 99 percent confidence level for the dextro amphetamine in Table 3, as compared to no rejection with the placebo (Tr. 577–78). From his statistical analysis, Professor Ladenheim concluded that the 25 milligrams of P.P.A. were more powerful as a weight-reducing agent than the placebo, but not as powerful as the dextro amphetamine (Tr. 578, 580).

58. Harold Silverman, a pharmaceutical chemist and pharmacologist, of West Orange, New Jersey, also testified for respondents (Tr. 716). He testified that he received a B.S. degree in 1951, an M.S. degree in 1952, and a Doctor of Science degree in 1956, all from the Philadelphia College of Science. Dr. Silverman

testified that he had formerly served as associate professor of pharmacy at Long Island University and professor of pharmacy at Brooklyn College of Pharmacy (Tr. 717), and was the author of several articles in the field of Pharmacy and Pharmacology, which were listed in a written statement of his educational background and received in evidence as RX 25. The testimony of this witness related to an article written by him entitled "Phenylpropanolamine—Misused? Or Simply Abused?," which was published in Volume 135, pp. 45–54, of the February 1963 issue of the American Journal of Pharmacy, Philadelphia, Pennsylvania, a copy of which was received in evidence as RX 7. Dr. Silverman testified that he prepared his article out of scientific interest occasioned from reading the copy of the Fazekas report (CX 3) which appeared in the June 27, 1959 issue of the Journal of the American Medical Association. Dr. Silverman testified that he believed that the Fazekas report (CX 3) maligned P.P.A., and out of sympathy for the drug P.P.A., he wrote the article in order to answer the Fazekas report (CX 3) and "* * * to put things into their proper perspective" (Tr. 724–25). Before writing the article, Dr. Silverman first reviewed medical textbooks and journals containing writings and articles dealing with anorexiants, including P.P.A., and interviewed scientists, pharmacologists, and physicians who were familiar with anorexiants, in order to obtain their views as to the effectiveness of P.P.A. as an appetite depressant (Tr. 723, 725). Dr. Silverman stated that he had reviewed the data contained in the Fazekas report (CX 3) and questioned the method and outline of the study, itself (Tr. 727). Dr. Silverman questioned the validity of the use of mentally deficient patients in the Fazekas study, and stated that, in the body of the report (CX 3), Dr. Fazekas, himself, indicated that he (Fazekas) had a reservation that mentally deficient patients should be used in a study of this type (Tr. 729). He stated that he interpreted the data in the Fazekas report (CX 3) to show that P.P.A. is effective, but that Dr. Fazekas phrased his conclusions in ambiguous language so as to indicate that the weight loss from the use of P.P.A. was not significant, whereas, the weight loss from the use of dextro amphetamine was statistically significant (Tr. 727–28).

59. Dr. Silverman also criticized the Fazekas study in its comparison of P.P.A. with dextro amphetamine. A more proper procedure would have been to compare P.P.A. with a placebo, using the double blind cross-over technique (Tr. 729). The use

of dextro amphetamine prevented the Fazekas study from being double blind, because the stimulating effect of the use of dextro amphetamine on the patient would be plainly evident to the attendants at the institution (Tr. 730).

60. As a rebuttal witness, complaint counsel offered the testimony of Arthur Grollman, M.D., an eminent physician, author, and, since 1944, a professor at Southwestern Medical School of the University of Texas, located in Dallas, Texas. Complaint counsel, in answer to a question by this hearing examiner as to what the nature of the testimony by Dr. Grollman would be, stated that Dr. Grollman would controvert the testimony given by respondents' witnesses, and is qualified in the design, study, and protocols of clinical studies to determine the efficacy of drugs (Tr. 839). Counsel further stated that " * * * I believe that Prof. Grollman is eminently qualified, among the half dozen men in the country most qualified to present our side of the statistical aspect of the Fazekas study, which is, of course, the key to this case" (Tr. 840). At the time of the hearing, Dr. Grollman was chairman of the Department of Experimental Medicine at that institution (Tr. 902–903). Dr. Grollman is the author of a textbook designed for physicians and students entitled Pharmacology and Therapeutics, excerpts from several editions thereof having been received in evidence herein as RX 8, 9, and 10 (Tr. 909–910). Dr. Grollman testified that he became familiar with phenylpropanolamine hydrochloride shortly before it appeared on the market for general use about 30 years ago (Tr. 911).

61. Dr. Grollman testified, among other things, that, at complaint counsel's request, he had re-examined a copy of the Fazekas report (CX 3), and accepts the language in the conclusions of the authors of that report to the effect that P.P.A. is not effective in its reducing action (Tr. 913); that he considers mentally deficient patients as valid subjects to test the drug P.P.A.; and that he does not believe that 25 milligrams of P.P.A. taken three times per day is an effective appetite depressant and weight-reducing agent, unless combined with caloric restriction (Tr. 957). Finally, he was asked if phenylpropanolamine hydrochloride, given in dosages of 25 milligrams three times daily, is adequate and effective in the treatment, control, and management of obesity, and Dr. Grollman replied:

> Not unless combined with caloric restriction. It might be helpful then, but certainly as a method of treatment alone I would say definitely no (Tr. 957).

In answer to a further question by complaint counsel, Dr. Grollman testified:

I don't think the doctor-personal relation can make you lose weight no matter how favorable you felt towards him. It might affect the way you carried out his orders, but it wouldn't affect your weight (Tr. 947).

62. On cross-examination, Dr. Grollman was asked by respondents' counsel how he was able to reconcile his testimony on direct examination with the statements in various editions of his textbook entitled Pharmacology and Therapeutics, such as on page 326 of the Sixth Edition (RX 10), wherein he states, among other things, that P.P.A. "is used in asthma and hay fever, to alleviate nasal congestion and to depress appetite in obesity." Dr. Grollman explained this by saying that he was merely stating the facts, that it is used by physicians for these purposes, that is, "in asthma and hay fever, to alleviate nasal congestion and to depress appetite in obesity," without indicating that it was good, bad, or indifferent (Tr. 958–962); that his recital of the use of P.P.A. was in the order of its more frequent use, that is, in his opinion, physicians use P.P.A. to depress appetite in the treatment of obesity less frequently than they use it for the treatment of asthma, hay fever, and nasal congestion (Tr. 963).

63. As a matter of fact, Dr. Grollman does not use any of the prescription drugs in the treatment of obesity because, in his opinion, they do more harm than good. This includes dextro amphetamine (Tr. 964–965), because, in some patients, these drugs cause nervousness, insomnia, etc. (Tr. 965–67). Dr. Grollman puts the amphetamine preparations and P.P.A. in the same category as anorexic agents. He defined an anorexic agent as one which causes a person to lose his appetite (Tr. 967). In reply to a question, Dr. Grollman further testified that, if he were designing a study for the purpose of testing the effectiveness of P.P.A. as an appetite depressant, he would test it on the type of people he was interested in testing, "the average patient, the average citizen, who is too fat" (Tr. 981–982).

64. Dr. Grollman further testified that he had not recently made a statistical evaluation of the Fazekas study (CX 3), using what he calls the "P value" method (Tr. 988), and accepted the statements and conclusions contained in the report as being correct (Tr. 988, 991). Dr. Grollman stated that a mathematical, statistical evaluation of data is not always necessary (Tr. 991); that "* * * statistics don't prove it, but merely give you some reference * * * . Likelihood either of error or your conclusion

being correct" (Tr. 987–88); "I took his word for what he quotes there. I didn't recalculate it" (Tr. 988); "* * * one often doesn't even need that. One can just judge from data to draw a conclusion" (Tr. 990). In reply to a further question as to whether it is first necessary to put "data through a statistical mill" before drawing a conclusion, Dr. Grollman stated that this is not always necessary; that, frequently, statistics have a tendency to mislead; that the statistics pretend to give data which common sense and observation would suffice to "show you was the case" (Tr. 991). Dr. Grollman further testified that: It is important that the patients receive the medication, because that is the basic part of the experiment (Tr. 995), and at the same time with respect to meals, because their effect is dependent upon the time of their administration (Tr. 994). He further testified that if, in the clinical study of a drug, it happened often in the course of that study that the patient did not actually receive the drug he was supposed to receive, a written report of the study should indicate any deviation from the claimed conditions of the procedure; otherwise, it would affect the conclusions to be drawn by the reader of the study (Tr. 996).

65. Dr. Grollman further testified that: The total weight change referred to in the extreme right-hand column of the tables in CX 3 purports to show the difference between the weight of the patient at the commencement of the study and his weight at the end of the study, the sixth week; and, from reading the report, he did not assume that some of the patients were not available for weighing at the end of the sixth week, or that some went home and came back a few days later and were weighed (Tr. 997). Dr. Grollman was then asked to examine Table 1 in CX 3, especially the next-to-last column under the heading "Weight Change" at the end of the sixth week and the asterisks for patients Nos. 8, 9, and 10 which indicate that, at the end of the sixth week, the weights for these three patients were not recorded (Tr. 997), and Dr. Grollman replied:

> That certainly is an incongruity. He would have to weigh them at the end of six weeks if he is going to say what change occurs over that period (Tr. 998).

66. Although the report purports to give the total weight change in each patient from the beginning to the end of the study under each of the four tables, the report does not say why the weights were not recorded for the patients where the asterisks appear (Tr. 999). Dr. Grollman agreed that, if any of the

patients went home, there would be no certainty that the patient received the medication, and, according to Dr. Grollman, "* * * that would be a poor experiment if you left it to a patient, particularly an idiotic patient" to take the medication; "You would want to insure * * * that they took the drug which you are testing" (Tr. 1000). Dr. Grollman was referred to the right-hand column near the top of page 1019 of CX 3 where the report states, among other things, that "The drugs were administered by cottage supervisors (not aware of the identity of the drugs) who made certain of their ingestion by the subjects," and asked the question if, in fact, the subjects were not available to receive the drugs and had been allowed to go home on week-end passes, the quoted statement would be "Misleading and incorrect," and Dr. Grollman answered that this would "certainly detract from the faith that you put in the integrity of the author" (Tr. 1002).

67. Aside from the general observations by several medical witnesses that appetite-depressing drugs should not be sold without prescription, over-the-counter,[4] or that appetite-depressing drugs should not even be used in weight-reducing programs because of their harmful side effects, such as nervousness, insomnia, etc., there was no evidence offered at the hearings to substantiate the allegation in the amended complaint that corporate respondent represents that P.P.A. is safe to use by all obese persons. An order of the Commission in this proceeding, issued November 7, 1958, adopting the initial decision of the hearing examiner, which ordered corporate respondent, its officers, and Harry Evans and Vincent J. Lynch, individuals, and respondent's agents and employees to cease and desist from representing that P.P.A. is "safe to use by all obese persons," is still in effect and outstanding. In the order of the Commission issued November 15, 1966, reopening this proceeding, that cease and desist order was not vacated, but was left in effect pending final disposition of this reopened proceeding. Pursuant to the above order of the Commission issued November 7, 1958, in which corporate respondent was ordered to cease and desist from representing that P.P.A. "is safe to use by all obese persons," corporate respondent revised its advertising by removing therefrom those aspects of the advertisements which were prohibited by the consent cease and desist order adopted by the Commission on November 7, 1958, to wit, all representations

[4] The propriety of the sale of appetite-depressing drugs without a physician's prescription is not in issue in this proceeding.

that HUNGREX * * * with P.P.A. is "safe to use by all obese persons" or that any predetermined weight reduction could be achieved by the taking or use of the preparation for a prescribed period of time. The label on the HUNGREX * * * with P.P.A. package now bears the following, among other, wording: "CAUTION: Should not be used by persons with heart or thyroid disease, high blood pressure or diabetes except on medical advice" (Finding 4 herein; CX 10).

68. Thereafter, corporate respondent filed with the Commission the required reports showing the manner in which it had complied with such consent cease and desist order adopted by the Commission on November 7, 1958. Among such reports filed with the Commission to show how corporate respondent had complied with such cease and desist order was an advertisement for HUNGREX * * * with P.P.A., which, it was stipulated at the hearing, was substantially identical with corporate respondent's present advertising (Tr. 444; CX 9). After the receipt by the Commission of the copy of this advertisement, along with the other reports showing corporate respondent's manner of compliance with the original cease and desist order, the Acting General Counsel of the Commission, by letter dated August 10, 1959, advised corporate respondent that it was in compliance with the cease and desist order (RX 18). So, it is seen that corporate respondent's present advertising (CX 9) is substantially identical to the advertising copy which respondent submitted to the Commission in April 1959 (Tr. 444).

69. A typical example or statement of respondent's advertising, which is alleged to be false and misleading, is purported to be set out and quoted in Paragraph Five of the amended complaint. The first line of this "typical" advertisement, as alleged in Paragraph Five of the amended complaint, reads as follows: "SAFE REDUCING DRUG * * *" This allegation in the amended complaint is not supported by the evidence. The only evidence offered by complaint counsel concerning corporate respondent's advertising representations was the label on the package containing respondent's preparation HUNGREX * * * with P.P.A. (CX 10), set out in Finding 4 herein, and the copy of respondent's advertisement (CX 9) set out in Finding 5 herein. Nowhere in either advertisement (CX 9, 10) does the statement "SAFE REDUCING DRUG" appear. All statements and representations by respondent as to the safety of the drug were eliminated in compliance with the original cease and desist order,

and respondent's present advertising omits any reference to the safety of the drug.

70. Also, the main body of the quotation in Paragraph Five of the amended complaint studiously omits material parts of the advertisements which refer to the efficacy of the drug to reduce appetite and thus help reduce calorie intake. The order reopening this proceeding and also the amended complaint rely on the Fazekas study (CX 3) to establish the allegations that P.P.A. is not an effective appetite depressant and weight-reducing agent, and is not adequate and effective in the treatment, control, and management of obesity. The undisputed testimony is that P.P.A. and all other anorexiant drugs are used by normal persons as appetite depressants, along with a reduction in the intake of food, a so-called diet program. The drug assists the patient in reducing his intake of food, making it easier for him to resist the desire for the usual amount of food he is accustomed to consuming. The amended complaint does not allege that respondent's advertising represents that HUNGREX * * * with P.P.A. is an effective appetite depressant and weight-reducing agent in and of itself, without a concomitant reduction of food intake by the person taking the drug. The evidence found herein establishes the premise that, if a normal person has a desire to lose weight, then P.P.A., taken in dosages of 25 milligrams, three times a day, along with a reduction in food intake by the patient, will be an effective appetite depressant in the treatment of obesity.

71. Since complaint counsel must carry the burden of proof and relies wholely on the Fazekas report (CX 3) to establish the allegations of the amended complaint that

1. HUNGREX * * * with P.P.A. is not safe to use by all obese persons having heart disease, high blood pressure, diabetes, or thyroid disease;

2. The preparation has no significant pharmacological value as an appetite depressant or weight-reducing agent;

3. The preparation is not adequate or effective in the treatment, control or management of obesity,

the hearing examiner has made detailed findings of the testimony of Dr. Campbell, one of the coauthors of the Fazekas study. These are set out in Findings 10–36 herein. His testimony, especially on cross-examination, raises serious questions as to the reliability of the so-called study. The stated purpose of the Fazekas study was to test the comparative effectiveness of P.P.A.

as an appetite depressant with dextro amphetamine on mentally deficient patients. The report of the study (CX 3) makes numerous affirmative statements of fact with respect to the procedures used and followed in the study. For example, the report (CX 3) states that each patient was given the stated medication three times each day by supervisory attendants who made sure of their ingestion by the patients. However, cross-examination of Dr. Campbell revealed that many of these statements were not true. Many of the patients were allowed to go home on week-ends and at other times. While the patients were at home, the supervisors at the institution could not have made sure that the patients ingested the medication three times a day, as the report states. Cross-examination of Dr. Campbell revealed other inaccuracies and misstatements in the report, which are set forth in the findings and will not be repeated here. The errors, misstatements, inaccuracies, and omissions in the Fazekas report (CX 3), as found herein, especially Findings 10–36, take from the study a considerable degree of credibility which might otherwise be given to it.

72. Several reputable physicians who testified for respondents questioned the objectivity of the Fazekas test. Some were of the opinion that mentally deficient patients were not valid subjects for the test; that reasonably accurate results cannot be obtained from testing the effects of P.P.A. on such patients, because the drug does not work the same on mentally deficient patients as on normal persons. Also, many of the patients in the Fazekas study were receiving other potent drugs in addition to P.P.A., as shown in Finding 23 herein. One drug may offset the effects of the other.

73. Several of the physicians who testified for respondents made clinical tests of P.P.A. and found it to be effective as an appetite depressant in the treatment, control or management of obesity, without any harmful effects. P.P.A. was found safe to use. One physician, who testified at the hearing, stated that he uses P.P.A. in his practice in the treatment of obesity in some of his patients. Dr. Grollman acknowledged that P.P.A. is used by some physicians as an appetite depressant in the treatment of obesity. Numerous recognized medical texts state that P.P.A. is used to depress the appetite in the treatment of obesity. Considering all of the evidence of record, it is found that the allegations of the complaint have not been established by a preponderance of the evidence.

74. With respect to the request for dismissal of the amended complaint against the individuals Harry Evans and Vincent J. Lynch, and Chester Carity, individually and as an officer of corporate respondent there is nothing in the record to indicate that these individual respondents might in the future violate Sections 5 or 12 of the Act in their individual capacities. To justify naming an officer as an individual, there must be something in the record suggesting that he would be likely to engage in the practices in the future as an individual; *The Lovable Company, et al,* Docket No. 8620 (1965). For these reasons, the individual respondents should be dismissed from the proceeding.

CONCLUSION

It is concluded that the amended complaint herein should be dismissed.

RECOMMENDATIONS

The hearing examiner respectfully recommends:

1. That the amended complaint [68 F.T.C. 1221] herein be dismissed.

2. That the order to cease and desist heretofore issued by the Commission on November 7, 1958 [55 F.T.C. 705], in this proceeding be continued in effect against the corporate respondent, but that said order be rescinded or amended so as to no longer apply to the respondents Harry Evans and Vincent J. Lynch in their individual capacities.

3. That no order should be issued against the respondent Chester Carity, named in the amended complaint, either as an officer of corporate respondent or in his individual capacity.

FINAL ORDER

The Commission having issued an order to cease and desist in this matter November 7, 1958; and

The Commission on November 15, 1965, having reopened this matter and having issued an amended complaint, having assigned the matter to a hearing examiner for the taking of evidence and certification of findings and recommendations to the Commission on a newly proposed cease and desist order, and having directed that the existing order to cease and desist remain in effect pending disposition of the amended complaint; and

The hearing examiner having filed his Certification of Record with the Commission on March 16, 1967, and

The Commission having determined, without expressing any opinion as to the accuracy of the findings and conclusions in the Certification of Record, that it would not be in the public interest to pursue this matter further:

It is ordered, That the amended complaint issued on November 15, 1965, be dismissed as to all respondents without prejudice to the right of the Commission to take such further action in the future as may appear to be appropriate.

It is further ordered, That the order to cease and desist issued by the Commission November 7, 1958 remain in effect as to all respondents named therein.

IN THE MATTER OF

NEEMCO IMPERIAL, LTD., TRADING AS VICTORIA GIFT SHOP, ETC.

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

Docket C-1548. Complaint, June 23, 1969—Decision, June 23, 1969

Consent order requiring a San Francisco, Calif., oriental gift shop to cease misbranding the fiber content of its textile fiber products and misrepresenting the location of its business.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Neemco Imperial Ltd., a corporation, trading as Victoria Gift Shop and Victoria Imperial Gift Shops Ltd., and Pearl L. Braha Mamiye and Mal Eli Mamiye, 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 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 Neemco Imperial, Ltd., trading as Victoria Gift Shop and Victoria Imperial Gift Shops Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 764 Market Street, San Francisco, California.

Individual respondents Pearl L. Braha Mamiye and Mal Eli Mamiye are officers of said corporate respondent. They formulate, direct and control the acts, practices and policies of said corporate respondent, including the acts and practices hereinafter referred to. The office and principal place of business of said individual respondent is the same as that of the corporate respondent.

Respondents are engaged in the operation of an oriental gift shop and in the importation of floor coverings, hankerchiefs and other textile products.

PAR. 2. Respondents are now and for some time last past have been engaged in the 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. 3. Certain of said textile fiber products were misbranded by the respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were floor coverings, which were falsely and deceptively labeled in that the respondents in disclosing the fiber content information as to floor coverings containing exempted backings, fillings or paddings, failed to set forth such fiber content informa-

tion in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor coverings and not to the exempted backings, fillings, or paddings.

PAR. 4. Certain of such textile fiber products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

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

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

2. To disclose the true percentage of such fibers;

3. To disclose the name, or other identification issued and registered by the Commission, of the manufacturer of said product or one or more persons subject to Section 3 of the said Act with respect to such product; and

4. To disclose the name of the country where imported textile fiber products were processed or manufactured.

PAR. 5. Certain of said textile fiber products were falsely and deceptively labeled in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder.

Among such textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively labeled in that the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, failed to indicate that such required fiber content information related only to the face, pile, or outer surface of the floor coverings and not to the backings, fillings, or paddings, in violation of Rule 11 of the aforesaid Rules and Regulations.

PAR. 6. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 7. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of products, namely floor coverings, hankerchiefs and other

textile products to retailers. The respondents' said business is the operation of an oriental gift shop and the importation of the aforesaid articles which are sold to consumers in the United States. The respondents maintain and at all times mentioned herein have maintained a substantial course of trade of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business in soliciting the sale of and selling the aforesaid products, respondents have done business under the following names: Neemco Imperial, Ltd., Victoria Gift Shop and Victoria Imperial Gift Shops Ltd. Respondents have used such names on the invoices together with the statement London, England—main office when selling the aforesaid products.

PAR. 9. By means of the aforesaid invoices and through the use of the above said names the respondents represent that the corporate respondent Neemco Imperial, Ltd., trading as Victoria Gift Shop is a British firm with its main office located in London, England and operating in the United States.

In truth and in fact, respondents do not have their main office or any office in London, England. Further the respondents maintain its sole place of business in San Francisco, California.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents as alleged in Paragraphs Eight, through Ten were, and are, to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the 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 Neemco Imperial, Ltd., trading as Victoria Gift Shop and Victoria Imperial Gift Shops Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 764 Market Street, San Francisco, California.

Respondents Pearl L. Braha Mamiye and Mal Eli Mamiye 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 Neemco Imperial, Ltd., a corporation, trading as Victoria Gift Shop and Victoria Imperial Gift Shops Ltd., or under any other name or names and its officers, and Pearl L. Braha Mamiye and Mal Eli Mamiye, 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

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:

A. Misbranding textile fiber products by:

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

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

3. Failing to set forth in disclosing the required fiber content information as to floor coverings, containing exempted backings, fillings, or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings, or paddings.

It is further ordered, That respondents Neemco Imperial, Ltd., a corporation, trading as Victoria Gift Shop and Victoria Imperial Gift Shops Ltd., or under any other name or names and its officers, and Pearl L. Braha Mamiye and Mal Eli Mamiye, 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 advertising, offering for sale, sale or distribution of floor coverings, handkerchiefs or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Directly or indirectly representing in any manner through the use of such words as "main office London, England" or any terms of similar import, either with or without such names as Neemco Imperial, Ltd., Victoria Gift

Shop and Victoria Gift Shops Ltd., that corporate respondent is a British firm or has offices in London, England.

2. Representing in any manner that corporate respondent is a foreign firm or that the corporate respondent has offices in England or in any other foreign country or misrepresenting in any manner the location of respondents' place of business.

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

BE-LEN MANUFACTURING CO., INC., ET AL.

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

Docket C-1549. Complaint, June 23, 1969—Decision, June 23, 1969

Consent order requiring a New York City manufacturer of men's and boys' wearing apparel to cease misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Be-Len Manufacturing Co., Inc., a corporation, and Samuel Ziegler and Arthur Ziegler, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Be-Len Manufacturing Co., 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 623 Broadway, New York, New York.

Respondents Samuel Ziegler and Arthur Ziegler are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of the corporate respondent.

Respondents are engaged in the manufacturing of men's and boys' apparel. They ship and distribute such products to various customers throughout the United States.

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

PAR. 3. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products, namely men's and boys' apparel without labels attached.

PAR. 4. Certain of said wool products were misbranded 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 that, samples, swatches or specimens of wool products used to promote or effect sales of such wool products in commerce, were not labeled or marked to show the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in violation of Rule 22 of the aforesaid Rules and Regulations.

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 methods of competition and unfair and deceptive acts and practices in

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

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

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

1. Respondent Be-Len Manufacturing Co., 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 623 Broadway, New York, New York.

Respondents Samuel Ziegler and Arthur Ziegler 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 Be-Len Manufacturing Co., Inc., a corporation, and its officers, and Samuel Ziegler and Arthur

Ziegler, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. 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.

2. Failing to affix labels to samples, swatches or specimens of wool products used to promote or effect the sale of wool products, showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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.