

IN THE MATTER OF
TRAVEL KING, INC., ET AL.

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

Docket 8949. Amended Complaint, May 17, 1974-Order, Sept. 30, 1975*

Order requiring four west coast travel agencies located in Seattle, Wash., and San Francisco, Calif., among other things to cease making false claims about "psychic surgery" and promoting tours for such surgery, which has been misrepresented as an actual surgical operation by which diseased tissue or disease-causing material is removed from the body using only the bare hands. The order further requires respondents to send notices to past purchasers and to those who inquire about such tours in the future warning them of the serious danger involved.

Appearances

For the Commission: *Gregory L. Colvin, Randall H. Brook, Barry E. Barnes and Rachel P. Goodisman.*

For the respondent: *David C. Stewart, DeGarmo, Leedy, Oles & Morrison, Seattle, Wash., Michael W. Palmer, Baker & McKenzie, San Francisco, Calif., Richard Kelleher and Douglas A. Baum, Kelleher, Murphy & Nelson, Jerry Kindinger, Ryan, Bush, Swanson & Hendel and Albert Hanan, Seattle, Wash.*

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that Travel King, Inc., d/b/a Travel King, Inc. & Ramble Tours, Phil-Am Travel Agency, Inc., Gem Travel Service, Inc., and Ramble Travel and Tours, Inc., corporations; Yuda Galazan and Nyla Ford, individually and as officers and directors of Ramble Travel and Tours, Inc.; Ronald Brown, individually and as an officer of Travel King, Inc.; Adeline C. Heredia and Emile H. Heredia, individually and as officers of Phil-Am Travel Agency, Inc.; and Laurence C. Marquez and Marian E. Butterfield, individually and as officers of Gem Travel Service, Inc., hereinafter referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint:

PARAGRAPH 1. Travel King, Inc., d/b/a Travel King, Inc. & Ramble Tours (hereinafter "Travel King"), is a Washington corporation, with its corporate office at 1200 - 153rd N.E., Bellevue, Wash., and a branch office at 1401 Seattle Tower Bldg., Seattle, Wash.

* Reported as amended by order of May 31, 1974 of the administrative law judge.

Phil-Am Travel Agency, Inc. (hereinafter "Phil-Am") is a California corporation, with its corporate office at 210 Post St., Suite 205, San Francisco, Calif. and another place of business at 407 Alaska Bldg., Seattle, Wash.

Gem Travel Service, Inc. (hereinafter "Gem") is a California corporation, with its office and principal place of business at 703 Market St., Room 405, San Francisco, Calif.

Ramble Travel and Tours, Inc. (hereinafter "Ramble"), is a Washington Corporation, with its corporate office at 1401 Seattle Tower Bldg., Seattle, Wash. Ramble was formed in December 1973 to succeed Travel King in the operation of the business located at that address.

Yuda Galazan is an individual and is presently managing and purchasing the business of the Travel King branch office located at 1401 Seattle Tower Bldg. He also is an officer, director, and the sole shareholder of Ramble Travel and Tours, Inc. He formulates, directs and controls the policies, acts and practices of Ramble and the aforementioned Travel King branch office, including those hereinafter set forth, and his business address is 1401 Seattle Tower Bldg., Seattle, Wash.

Nyla Ford is an individual and a former officer and principal shareholder of Travel King, and a present officer and director of Ramble. Together with Yuda Galazan, she formulates, directs and controls the policies, acts and practices of Ramble and the Travel King branch office including those hereinafter set forth, and her business address is 1401 Seattle Tower Bldg., Seattle, Wash.

Ronald Brown is an individual and an officer and principal shareholder of Travel King. He formulates, directs and controls the policies, acts and practices of Travel King, including those hereinafter set forth. His business address is 1200 - 153rd N.E., Bellevue, Wash.

Adeline C. Heredia and Emile H. Heredia are individuals and officers and the principal shareholders of Phil-Am. They formulate, direct and control the policies, acts and practices of Phil-Am, including those hereinafter set forth, and their business address is 210 Post Street, Suite 205, San Francisco, Calif.

Laurence C. Marquez and Marian E. Butterfield are individuals and officers and principal shareholders of Gem Travel Service, Inc. They formulate, direct and control the policies, acts and practices of Gem, including those hereinafter set forth, and their business address is 703 Market St., Room 405, San Francisco, Calif.

PAR. 2. Respondents Travel King, Phil-Am, and Gem each operate a general travel agency business, including the sale or arrangement of transportation, accommodations, and other services for travelers.

Allegations below of respondents' present acts or practices include past acts or practices.

PAR. 3. In the course of their businesses, respondents make arrangements for residents of Washington and other states to travel to the Philippines on the tours described below. Promotional materials, letters, contracts, business correspondence, monies and other documents are transmitted between respondents' offices and agents who refer customers to them, customers, common carriers, and other business organizations located in various States of the United States and in other nations of the world. Accordingly, respondents are engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents Travel King, Phil-Am, and Gem advertise, offer for sale and sell to the general public package tours to the Philippines so that customers may undergo "psychic surgery," purported to be a treatment by which the body is entered without surgical instruments, using only the bare hands. The treatment is also known as "psychic healing," "faith healing," and "spiritual" or "spirit healing" and is performed by persons not licensed in the Philippines or elsewhere to practice medicine.

PAR. 5. Respondents engage in written, oral and visual representations which have the tendency and capacity, directly or by implication, to lead members of the general public to believe that the "psychic surgery" performed in the Philippines is an actual surgical operation, that the body is thereby opened, and that diseased tissue or disease-causing material is thereby removed from the human body. Respondents do so by using, or causing to be used, some means of promotion, including but not limited to one or more of the following:

A. Public dissemination of brochures prepared, printed and paid for with the assistance of certain major international airline companies, specifically Northwest Airlines, Inc. and Pan American World Airways, Inc.

B. Public dissemination of other materials.

C. Newspaper advertisements.

D. Showing of films at public meetings.

PAR. 6. In truth and in fact:

A. The so-called "psychic surgery" performed in the Philippines is not an actual surgical operation, the body is not thereby opened, and neither diseased tissue nor disease-causing material is thereby removed from the human body.

B. Respondents lack a reasonable basis for representations leading members of the general public to believe that the "psychic surgery" performed in the Philippines is an actual surgical operation, that the

body is thereby opened, and that diseased tissue or disease-causing material is thereby removed from the human body.

Therefore, the acts and practices referred to in Paragraphs Four and Five are deceptive and unfair.

PAR. 7. Persons suffering from many types of ailments, including cancer, heart disease, multiple sclerosis, blindness, deafness, paralysis, diabetes and arthritis may be led to believe by respondents' promotions that "psychic surgery" is an actual surgical operation, that the body is thereby opened, and that diseased tissue or disease-causing material is thereby removed from the human body. Thus, respondents' promotions of Philippine psychic surgery prey upon and exploit the frustrations and hopes of people who are seriously ill, and their families. Respondents are travel agents, not licensed physicians, and therefore are not qualified to diagnose, advise or select patients for any operation. Further, respondents disclaim responsibility for any medical consequences to their customers during their travel to the Philippine Islands or afterwards. People who are seriously ill, and their families, are vulnerable to the influence of respondents' promotions which hold out a tantalizing hope which the medical profession, by contrast, cannot offer. Therefore, the acts and practices referred to in Paragraphs Four and Five are unfair.

PAR. 8. The result of the respondents' aforesaid misleading, deceptive and unfair acts and practices is that people who are seriously ill may be and are induced to forego conventional medical treatment, thereby worsening their condition and, in some cases, hastening death. Further, the aforesaid acts and practices cause people who are seriously ill and their families to spend large amounts of money and be subjected to the inconvenience of traveling for a nonexistent "operation."

PAR. 9. The respondents' acts and practices are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY DANIEL H. HANSCOM, ADMINISTRATIVE
LAW JUDGE

FEBRUARY 28, 1975

ALLEGATIONS OF COMPLAINT

An amended complaint issued May 17, 1974,¹ charging respondents with promoting, offering for sale and selling package tours to the

¹ The original complaint was issued Jan. 8, 1974, naming as respondents only the corporate travel agencies, Travel

(Continued)

Philippines so that customers could undergo "psychic surgery," purporting to be a treatment by which the body is entered without surgical instruments "using only the bare hands." According to the complaint, respondents engaged in written, oral and visual representations which had the tendency and capacity to lead members of the public to believe that "psychic surgery" performed in the Philippines is an actual surgical operation, that the body is opened, and that disease-causing material is thereby removed. The complaint further alleged that respondents had no reasonable basis for the representations made, and that persons suffering from many types of ailments including cancer, heart disease, multiple sclerosis, blindness, deafness, paralysis, diabetes and arthritis may be led to believe that "psychic surgery" is an actual surgical operation, that the body is opened and diseased tissue removed. According to the complaint, the frustrations and hopes of the seriously ill and their families were exploited, and the representations had the tendency and capacity to induce the seriously ill to forego conventional medical treatment worsening their condition and in some cases hastening death, or to cause them to spend large amounts of money and to undergo the inconvenience of traveling for a nonexistent "operation." The acts and practices of respondents were challenged as unfair, misleading and deceptive, and violative of Section 5 of the Federal Trade Commission Act.²

ANSWERS

The answers denied any violation of the Federal Trade Commission Act, denied the material allegations of the complaint, denied that respondents made any representations, directly or by implication, that "psychic surgery" was an actual surgical operation by which diseased tissue or disease-causing material was removed from the human body, and denied that respondents lacked a reasonable basis for any representations that were made. Most respondents raised affirmative defenses that the tours arranged to visit "psychic healers," "faith healers" or "spiritual healers" in the Philippines, insofar as the

King, Inc., Phil-Am Travel Agency, Inc., and Gem Travel Service, Inc. At a prehearing conference held Mar. 6, 1974, in Seattle, Wash., complaint counsel advised of their intention to amend the complaint to add a number of individual respondents, one additional corporate respondent, Ramble Travel and Tours, Inc., and to make certain substantive changes in the allegations. The motion to amend was certified to the Commission together with respondents' opposition on Apr. 5, 1974. The Commission granted the motion to amend and on May 17, 1974, issued an amended complaint which was served on all individual and corporate respondents between May 23 and June 3, 1974. Answers to the amended complaint were filed between June 18 and 26. A timetable for pretrial proceedings was issued by the undersigned on June 24, 1974, setting dates for the completion of discovery, exchange of lists of witnesses and documents, and setting Sept. 9, 1974, for commencement of hearings on the merits.

² In addition to a cease and desist order, and certain other relief, restitution for persons purchasing package tours from respondents was sought by complaint counsel. Restitution was not included in the "Notice Order" issued either with the original or the amended complaint. Complaint counsel advised of their intention to seek restitution at the pretrial conference of Mar. 6, 1974, and subsequently filed a "Notice of Intent to Seek Restitution from Corporate and Individual Respondents" on Mar. 22, 1974.

customer and the healers were concerned, were basically religious experiences or activities "imbedded in the religious doctrine of the Christian religion," and that the complaint amounted to an attempted regulation of religious action involving the "testing of the truth or falsity of the religious beliefs" of customers and "faith healers," "spiritual healers," or "psychic healers" in violation of the First Amendment. Travel King, Inc., further alleged that it had nothing to do with what took place between the "customers and the healers." Individual respondent Ronald Brown denied that he was ever actively involved in the operation of Travel King, Inc., and denied any responsibility for the "formulation, direction, arrangement, or administration" of package tours by that corporate respondent.

PROCEEDINGS

Hearings were held between Sept. 9, 1974, and Sept. 24, 1974. Forty-eight witnesses testified, 33 being called by complaint counsel and 15 by respondents. The exhibits received numbered 134, 131 being introduced by complaint counsel and the balance by respondents. The exhibits include promotional literature, advertisements, films, TV scripts, respondents' correspondence with tour members and prospective members, internal memoranda, newspaper articles and clippings which were reproduced and distributed by one or another of respondents, medical reports, and similar materials. The transcript numbers 2,388 pages.

The briefing schedule issued requiring proposed findings to be filed by Nov. 15, 1974, and replies by Nov. 27, 1974. On Nov. 6, 1974, complaint counsel requested an extension of time for findings to Dec. 13, 1974, and to Jan. 10, 1975, for replies. This was granted by the undersigned as to all parties provided an extension of time for filing the initial decision to Feb. 28, 1975, was granted by the Commission. Such an extension was granted on Dec. 17, 1974.

BASIS OF DECISION

This matter is now before the undersigned for initial decision based on the allegations of the complaint, answers, evidence, and the proposed findings of fact, conclusions and briefs filed by respondents and complaint counsel. All proposed findings of fact, conclusions and arguments not specifically found or accepted herein are rejected. The undersigned, having considered the entire record, and all the contentions of both sides, makes the following findings and conclusions, and issues the order set out at the end hereof:

FINDINGS OF FACT

RESPONDENTS

Travel King, et al.

1. Travel King, Inc., was incorporated in 1969 in the State of Washington. From September 1972 to February 1974, Travel King had its main office in Bellevue, Washington, a suburb of Seattle. From April 1973 to May 1974, a branch office was maintained in downtown Seattle which did business as Travel King, Inc. & Ramble Tours. Although Travel King still exists as a corporate entity, it has had no place of business since May 1974 and, according to its answer and that of Nyla Ford, it is no longer doing business.

2. Ramble Travel & Tours, Inc. (hereinafter "Ramble") was incorporated in the State of Washington on Dec. 7, 1973. Ramble's corporate offices were located in downtown Seattle, Wash., where Ramble did business from Dec. 7, 1973, until May 1974, using the trade names Travel King and Travel King & Ramble Tours. The business purpose of the formation of Ramble was to operate a travel agency and to succeed Travel King in the operation of the downtown Seattle business. Ramble continued using the same name as its predecessor in order to maintain name identification with its customers and also continued using the same travel brochures.

3. In 1971, Nyla Ford began purchasing the business of Travel King. In September 1972, Ronald Brown became half-owner of the business, Nyla Ford remaining owner of the other half. This dual ownership continued until February 1973, when Ronald Brown acquired Nyla Ford's interest, corporate respondent Travel King being in financial difficulties. Since Feb. 1, 1973, individual respondent Ronald Brown has been the sole owner of Travel King, Inc. Nyla Ford has been president of Travel King from September 1972 until the present. She was an incorporator. She also served as vice president and a director of Ramble Travel & Tours, Inc., from Dec. 7, 1973, until February 1974. However, she held no stock in Ramble.

4. Yuda Galazan has been president of Ramble Travel & Tours, Inc., from its incorporation on Dec. 7, 1973, to the present, owning 100 percent of its stock. Prior to the formation of Ramble, Mr. Galazan was active during the fall of 1973 in the management of the downtown Seattle office of Travel King, Inc., and engaged in the promotion of "psychic surgery" tours to the Philippines as later set out herein.

For the above see admissions and answers to interrogatories of Travel King, Inc., and individual respondents connected therewith; see also, CX 1, 3-4; Galazan, Tr. 882-83; Ford, Tr. 1786-1793, 1786-91.

Phil-Am, et al.

5. Phil-Am Travel Agency, Inc. is incorporated in the State of California with its corporate office and principal place of business in San Francisco. A branch office is located in Seattle, Wash., and is managed by Jesus Ma. (Jesse) Jose. Other branches are located in Los Angeles, San Diego, Stockton, San Jose, and Honolulu. Adeline C. Heredia and Emile H. Heredia each own 50 percent of the stock in Phil-Am. Adeline Heredia is the president of the corporation, and Emile Heredia is the secretary. Together they have authority over Phil-Am and its employees, and formulate, direct and control the policies, acts and practices of Phil-Am. See admissions and answers to interrogatories of Phil-Am and Emile H. and Adeline Heredia; see also Adeline Heredia, Tr. 1534.

Gem, et al.

7. Gem Travel Service, Inc., is a California corporation with its office and principal place of business in San Francisco. Laurence C. Marquez is president and chief executive officer, holding 50 percent of the outstanding stock. Marian E. Butterfield is secretary-treasurer of Gem and also owns 50 percent of the outstanding stock. Together they formulate, direct and control the policies, acts and practices of Gem. See admissions and answers to interrogatories of Gem, Laurence C. Marquez and Marian E. Butterfield.

Representations to the Public by Travel King

8. Travel King, Inc. disseminated travel brochures, advertisements and promotional literature, and sponsored promotional meetings, including film showings in hotels and similar places in the Seattle metropolitan area, to market tours to the Philippines. Representations were made to members of the public in connection with the promotion of such tours that "healers" in the Philippines, variously known as "psychic surgeons," "psychic healers," "faith healers" and "spiritual" or "spirit healers," or the like, would open bodies with their bare hands, remove diseased tissue or disease-causing material, and that thereby many persons were cured of serious, even terminal illnesses, as well as of chronic conditions of a troublesome, painful, or incapacitating nature.

9. "RAMBLE TOURS TO THE PHILIPPINES" is the tour brochure used by Travel King to describe the Philippine tour. Travel King requested Northwest Orient Airlines to distribute this brochure widely. The schedule provides for "Visit to Famous Spiritualist of The Philippines," and contains a release to be signed by the tour member for any "responsibility regarding any treatment or treatments administered by the Faith Healers" (CX 2). "TOUR TO THE PHILIPPINES" (CX 5) is a single sheet which sets out the cost of the tour, and also contains a summary of the basic information provided in CX 2. The reservation application form (CX 6), which Travel King, and

also Mr. Galazan, used for a time during the beginning of these group tours, likewise provides for a release for any treatment or treatments by "Faith Healers." Mr. Galazan testified that CX 2, 5 and 6 were sent in the mail to interested customers and to past tour customers for them to pass on to other people (see admissions of Travel King and Galazan; Galazan, Tr. 820, 830-35, 867-68).

10. "QUESTIONS YOU MAY HAVE" (CX 7A-B) is a description issued by Travel King and Mr. Galazan in the promotion of its tours to the Philippines describing "psychic surgery," stating that it is not connected with any one church but that "people of all faiths" are healed, that "anyone" can be helped, and that "upward of 70% are happy with the results." The leaflet lists major and minor ailments which may be treated, guarantees appointments, and states that many doctors go to the Philippines "for treatment themselves," and that other doctors are "researching" the phenomenon. The leaflet was prepared in the fall of 1973 when the travel agency became involved in answering questions about health, so that those who worked in the office could answer questions. It was distributed to those inquiring about the tours, and was mailed to those who signed up as tour members prior to departure. The printing was paid for either by Mr. Galazan directly or by Travel King, Inc., with Mr. Galazan eventually reimbursing the travel agency (Galazan, Tr. 815-18; Tr. 1830-31).

11. "QUESTIONS YOU MAY HAVE" was distributed to the public, as stated, in connection with the promotion of tours to the Philippines by Travel King. Among other statements in this leaflet were the following (CX 7A-B): There are men in the Philippines who have (or claim to have) the powers to heal and/or operate on persons without instruments of any kind. They do this with no sanitation, and no pain, entering the body with their hands, operating in a matter of minutes, and with prayer closing the body leaving no scar.

* * * * *

WHAT TYPE OF CURES? Cancer, coronary, multiple sclerosis, blindness, deafness, tumors, diabetes, blood clots, arthritis, etc.; these are some ailments people have claimed were cured. Some have been told they only have months to live and others who have minor ailments.

* * * * *

HOW DOES OUR AMERICAN MEDICAL ASSOCIATION FEEL ABOUT THIS? Most doctors due to their training are sceptical, and yet we have many doctors going for treatment themselves, as well as others around the world who are now in the process of researching all available information.

12. CX 8A-H is a series of photocopied newspaper, news letter, and magazine articles conveying the impression that the human body is opened with the bare hands, that diseased tissue or disease-causing material is removed curing serious or terminal illnesses. Numerous references are made to actual surgery with the bare hands, the body being opened, and diseased tissue or disease-causing material being removed.

13. Hundreds of copies of the foregoing newspaper articles were printed by Mr. Galazan and distributed at various public film showings sponsored by Travel King held during the fall of 1973. Ms. Hasson, the Travel King office manager, recalled delivering multiple copies of CX 8A-H in bulk to one of the film showings held during September or October of 1973 (Galazan, Tr. 830-33, Hasson, Tr. 1901).

Public Film Showings and Advertising Thereof

14. Travel King sponsored a number of public meetings, announced by advertisements in major Seattle newspapers, at which films depicting Philippine "healers" were shown to the public. The advertisements were placed during the fall of 1973 in the Seattle Post-Intelligencer, the Seattle Times, and other papers such as the Aberdeen Daily World (CX 9, 10, 14-16, 192, 193 AND 197). The advertisement of Oct. 6, 1973, in the Seattle Post-Intelligencer was as follows (CX 10):

NOTICE TO PUBLIC

DUE TO OVERWHELMING REQUEST
THERE WILL BE ANOTHER SHOWING
OF ASTOUNDING FILMS ON

PHILIPPINE PSYCHIC HEALING

SUNDAY, OCT. 7th, 1 P.M.

HOLIDAY INN

BELLEVUE, WN.

FREE TO PUBLIC

15. The public meetings were held in Seattle, Bellevue, Bellingham, and Everett, and several hundred people attended each of them. Ms. Ford and Mr. Galazan attended representing Travel King, with Mr. Galazan acting as master of ceremonies at at least one of them. At these meetings, individuals known as Tom Muchlinski, Elaine Shinn, or both, spoke concerning "faith healing." Mr. Galazan described Travel King's tours and services. During these meetings, Ms. Ford also spoke to those attending and described the tours offered by Travel King to the Philippines (admissions of Travel King and Galazan; Dr. Wallace, Tr. 753).

16. The record contains the film, provided by Mr. Galazan, shown at these public meetings or one similar to it (CX 80; Galazan, Tr. 825-26; see also C. Wright, Tr. 120-130). It depicts "psychic surgery." The film must be seen to comprehend its full impact. It records a series of "operations" on individuals, each of whom is shown lying on a table surrounded by onlookers. The "psychic surgeon" or "faith healer" appears to have his hands, surrounded by blood, in a depression in one part or another of the patient's body, and appears to have opened or to be opening it with his bare hands, without anesthesia or surgical instruments of any sort, and to be removing tissue or other material from inside. During the "operation," the "psychic surgeon" or "faith healer" from time to time holds up to the view of the onlookers what appears to be tissue or material removed from the body. Thereafter, the abdomen, or other part of the anatomy which appears on the film to have been opened, is wiped clean by the "psychic surgeon" or "faith healer," or his attendants. No marks of any incision are seen, and there is no scar. The patient arises and walks away. See CX 80; CX 79 and CX 81 are other reels of film depicting "psychic surgery" which, as described later herein, were shown at meetings connected with or sponsored, directly or indirectly, by respondents Gem and Phil-Am, or those promoting tours with those respondents.

17. Travel King tour brochures (CX 2), "QUESTIONS YOU MAY HAVE" (CX 7A-B), and the photocopied newspaper, newsletter and magazine material (CX 8A-H), were distributed at the Travel King film showings (admissions of Travel King and Galazan; Galazan, Tr. 823-834).

18. During the Sept. 30, 1973, meeting, sponsored by Mr. Galazan and typical of these Travel King film showings (see CX 192 and CX 193; Galazan, Tr. 821-24). Tom Muchlinski, mentioned in finding 15, told the assembled crowd that before he went to the Philippines he had a heart problem which made it difficult for him to walk and which necessitated his taking many nitroglycerin pills. He also told the group he no longer needed to take the pills and showed a film (similar to CX

80) of the kind of "psychic surgery" he experienced. Mr. Muchlinski also showed the group what he claimed was a piece of cholesterol removed from his heart by the psychic surgeons with their bare hands. A woman who claimed to be "legally blind" also spoke at the meeting, telling how she had been operated on in the Philippines by the "psychic surgeons," and that they had improved her vision. Mr. Galazan introduced the various people who spoke about their operations to the audience. The cost of the hotel room in which the meeting was held was shared equally by Travel King, Inc. and Mr. Galazan (Galazan, Tr. 823-833).

19. The film showing held on Oct. 7, 1973 (see CX 10), was similar to the September 30 showing. At this time, Mr. Muchlinski, and other people, again came forward and gave testimonials about the "psychic surgery" they had received in the Philippines. When people asked whether they could be cured of specific diseases, they were told there might be hope for them. Several people signed up at the meeting itself to go on the next Travel King tour. The same literature that was distributed at the Sept. 30, 1973, meeting was also made available at the Oct. 7, 1973, meeting (Galazan, Tr. 858-864). Nyla Ford estimated that about 500 people came to the September meeting and 700 to the October meeting (Ford, Tr. 1824-1832). Additional film showings for audiences also numbering several hundred were held on Nov. 4 and Nov. 17, 1973, at which Mr. Galazan was present (Galazan, Tr. 890A-B; see CX 14, 15 and 16). Mr. Muchlinski's expenses in promoting Travel King's "psychic surgery" tours were paid by Mr. Galazan (Tr. 864-65).

20. Dr. John Wallace is a psychiatrist and teacher of psychiatry at the University of Washington School of Medicine. He is also a consultant to other doctors on the counseling of patients and families of patients who are ill with life-threatening diseases, such as cancer or heart disease. In November 1973, Dr. Wallace saw an ad for a "psychic healing" film showing by Travel King. He subsequently attended the showing at the Olympic Hotel in Seattle (CX 14 and 15 are copies of the advertisements for the showing which appeared in Seattle papers). Dr. Wallace identified Mr. Galazan, Elaine Shin (Shinn), and Mr. Wallinski (Muchlinski) as the principal persons involved in the showing, and identified a Travel King Brochure (CX 2) and promotional document entitled, "QUESTIONS YOU MAY HAVE" (CX 7) as being distributed (Dr. Wallace, Tr. 698-701). Dr. Wallace testified that the films were identified verbally as "showing psychic surgical operations taking place in the Philippines" (Dr. Wallace, Tr. 701). At one point there was a comment by one of the film showings "There it is, the tumor is out" (Dr. Wallace, Tr. 720). Dr. Wallace testified with respect to the audience and the effect of the film at the Olympic Hotel (Tr. 722, 724-25, and 729):

There were 100 to 150 people present in the Spanish Ballroom. Both sexes, all ages

from children to very elderly people. Many of them obviously infirm in one fashion or another, lame, handicapped in a variety of ways. Some individuals obviously were definitely ill at that time as indicated by their powdered complexion and feebleness and so forth. Others had been clearly through some serious illness. They looked pretty pale. Others in the audience were obviously healthy.

* * * * *

Certain individuals in the audience were obviously made very anxious and distressed by the close-ups of human anatomy or alleged human anatomy. Some elderly ladies appeared to be about to faint. There were several comments to the effect, look at that, he is really taking it out, quote, unquote.

In the contents of the film and in the dialogue that went on between the showers of the film and the audience there was a consistent reassurance that cure or some degree of help would be forthcoming. In the context of the film, it would appear that certain dramatic surgical procedures were taking place.

Dr. Wallace testified that questions from the audience in effect asked Travel King representatives whether any condition could be helped by the "psychic surgeons." The answer received was "yes, any condition can be helped by psychic surgery" (Tr. 725).

21. Dr. Wallace evaluated the Travel King brochure (CX 2) and promotional document "QUESTIONS YOU MAY HAVE" (CX 7). In his opinion, statements in CX 7 would contribute to the belief in "psychic surgery" by a seriously ill person. He referred both to claims of cures and a statement suggesting that the existence of films proved that "psychic surgeons" were not hypnotists (Tr. 732). Dr. Wallace testified that CX 7, distributed at the film showings (Tr. 732):

* * * implies that what you see on the camera is all, or on the film, is all there is to be seen, and that the camera or that results of the filming are the complete and whole truth in the context of a variable description of what the audience was told is being done * * *. The audience was consistently told to suspend their faculties.

TV Advertising

22. Respondents Travel King, Yuda Galazan and Ronald Brown disseminated advertising over TV station KTVW, Channel 13, in the Seattle-Tacoma area promoting Travel King's tours to the Philippines to see "psychic healers." The audio portion of the advertisement is in the record (CX 210). The commercial was broadcast twice each day between Sept. 26 and Oct. 16, 1973 (CX 209). The audio portion of the script states (CX 210):

* * * YOU CAN VISIT THE *MIRACULOUS* PHILIPPINE FAITH HEALERS, ALTHOUGH TRAVEL KING TRAVEL AGENCY AND PARTICIPATING SCHEDULED AIRLINES ACCEPT NO RESPONSIBILITY FOR ANY SERVICES, *SURGERY* OR TREATMENT DONE BY THE PSYCHIC HEALERS, IN CONNECTION WITH THIS TOUR OF THE PHILIPPINES. (Emphasis added.)

Representations to the Public by Phil-Am

23. Respondent Phil-Am Travel Agency, Inc., like Travel King, disseminated travel brochures, literature, and other promotional materials, showed, arranged for or was responsible for the showing of

films, and engaged in other activities for the purpose of marketing its tours to the Philippines, representing to members of the public that "faith healers," "psychic healers," "spiritual healers," etc., would open their bodies with their bare hands, remove diseased tissue or disease-causing material, and thereby cure many persons of serious illnesses.

Travel Literature

24. Individual respondents Emile H. Heredia and Adeline C. Heredia, co-owners of corporate respondent Phil-Am, became interested in the business prospects of selling tours to the public to visit Philippine "healers," and authorized Phil-Am's marketing and sales manager, one Victorino P. Mapa, to prepare travel brochures (see Mapa, Tr. 1420-26, 1428-1430, 1432-38; CX 111). The record contains examples of these brochures (CX 26, 27, 39, 106, and 175). One of Phil-Am's brochures "SPIRITUALIST PILGRIMAGE TO THE PHILIPPINES" states (CX 26):

A European authority on parapsychology said that *the phenomenon of psychic surgery is happening in the Philippines* because of the intense religious devotion of its people. Witness and experience this at close range.

See and consult with the world famous spiritual healers of the Philippines * * *. (Emphasis added.)

The Pan-American tour brochure disseminated by Phil-Am listed 14 Philippine "spiritual healers" (CX 27; see also CX 28 and CX 29). A number of these were identified by Ms. Carol Wright, a witness herein, as "psychic surgeons" who purported to "operate" on patients by opening their bodies with their bare hands, and removing diseased tissue or disease-causing material using fakery and deception in the process (C. Wright, Tr. 110, *et seq.*). In addition to travel brochures prepared by Phil-Am and Pan-American, brochures were prepared with Northwest Orient Airlines (CX 26), Philippine Airlines (CX 175), and Japan Airlines (CX 176). In the case of Northwest Orient and Pan-American the airlines paid one-half the cost and Phil-Am the other half. The brochures prepared with Northwest Orient, Pan-American Airways, and Philippine Airlines were disseminated to members of the public by mail and personally to those who visited Phil-Am's offices (admissions of Phil-Am).

25. In addition to brochures, Phil-Am disseminated a booklet entitled "A GUIDE TO SPIRITUAL AND MAGNETIC HEALING AND PSYCHIC SURGERY IN THE PHILIPPINES" (Mapa, Tr. 1485-86), and offered it for sale to prospective tour members (CX 170). Page 2 of the booklet discusses "What is PSYCHIC SURGERY?" and states (CX 41):

By means totally unexplainable in terms of modern science, certain individuals (usually with little or no academic training) possess the ability to "operate" on the human body using only their bare hands, and remove diseased tissue, blood clots, and pus * * *.

On page 13, the booklet states (CX 41):

* * * the healers themselves are concentrating their efforts on patients whose arrangements are handled by Christian and Diplomat.

* * * * *

Diplomat Travel & Tours * * * specializes in handling patients who desire to visit Tony Agpaoa at his clinic * * *.

* * * * *

Christian Travel Center * * * specializes in handling patients who desire to visit one or more of the healers associated with the Union Espiritista Cristiana de Filipinas.

Phil-Am was appointed by the Christian Travel Center, Inc. of the Philippines as their exclusive travel agents in the United States to organize tours to consult "spiritual healers", who in fact purported to open the human body with the bare hands, and the "President General" of the foregoing "Union Espiritista Cristiana de Filipinas, Inc." so informed Phil-Am by letter of July 19, 1973 (CX 111; see also Adeline Heredia, Tr. 1565). Phil-Am worked with Diplomat Tours of the Philippines until April 1973 bringing groups from the United States to see "psychic surgeons" (CX 177).

Tour Promoters

26. A number of individuals with the approval, assistance and financial support of Phil-Am promoted that firm's tours to the Philippines to visit "faith healers" or "psychic healers." These persons had previously acted as tour conductors for Phil-Am's group tours to the Philippines, or had otherwise been to the Philippines, and after returning to the states showed films, slides, and photographs depicting "psychic surgeons," and in some instances placed advertisements in newspapers for Phil-Am "psychic surgery" tours. They engaged in such promotional activities to go again to the Philippines by obtaining free passage as tour conductors on another of Phil-Am's tours (admissions of Phil-Am). In some cases Phil-Am reimbursed promoters for their expenses (Adeline Heredia, Tr. 1545-46; Mapa, Tr. 1476-77, 1481), and substantial numbers of recruits for Phil-Am's tours were obtained by them (Mapa, Tr. 1474-75).

27. One of these promoters, Ms. Blanchard, was reimbursed by Phil-Am for the reprinting of magazine articles, mileage incurred by traveling to various cities for film showings, telephone calls and film (Blanchard, Tr. 1590-92). This reimbursement was part of an \$1,800 payment (Blanchard, Tr. 1599). About \$400 or \$500 in "pocket" money was also paid to Ms. Blanchard by Phil-Am in early 1974 (Tr. 1601-02). In addition to these payments, this promoter was a tour conductor three times for Phil-Am, going free twice and splitting a ticket with another the third time, thus receiving tickets worth approximately

\$2,500 (CX 214; Blanchard, Tr. 1606-07). Total compensation paid by Phil-Am for promotional activities of Ms. Blanchard, including free passage, etc., thus amounted to some thousands of dollars. Emile H. Heredia and Adeline C. Heredia testified that the money paid Ms. Blanchard in reality came from the "Christian Travel Center" in the Philippines (Emile H. Heredia, Tr. 1509-1510; Adeline C. Heredia, Tr. 1545-46; see also Jesus Ma. Jose, Tr. 1706-07). Ms. Blanchard likewise testified that she regarded her payments to have come from "Christian Travel" (Blanchard, Tr. 1590-91). Payments, nevertheless, were made to Ms. Blanchard, and for similar activities to another tour promoter, Ms. Lillian Lux, on Phil-Am checks with no indication that the money came from any source other than Phil-Am (CX 212 and CX 213). The payments were sizeable, the check to Ms. Blanchard being for \$1,800 and the check to Ms. Lux for \$1,500. Adeline C. Heredia knew that both Ms. Blanchard and Ms. Lux were promoting Phil-Am tours to the Philippines (Tr. 1549-1550). The brochure of Phil-Am for the Nov. 3, 1973, tour via Pan-American had Ms. Blanchard's name on its cover, and a similar brochure for the Phil-Am tour via Philippine Airways contained the name of Ms. Lux (CX 106 and CX 107).

In connection with the foregoing claim that "Christian Travel Center" paid Ms. Blanchard and Ms. Lux rather than Phil-Am, it is relevant to note that Phil-Am had an exclusive working arrangement with the Philippine "Christian Travel Center" (CX 106). For a member of the public to be assured of treatment by certain "psychic surgeons" in the "Union Espiritista," arrangements could only be made through Phil-Am (Adeline C. Heredia, Tr. 1565). Christian Travel provided "land" arrangements, including "spiritual healers," in the Philippines, for Phil-Am's tours, and Phil-Am marketed the "package tour" in the United States. In fact, Phil-Am was the "Christian Travel Center's" exclusive United States agent to organize tours to the Philippines to see "spiritual healers" (CX 106). Phil-Am's "Reservation Application" form provided for a release by the tour member of any liability on the part of "Phil-Am Travel Agency, Inc., and Christian Travel Center, Inc.," for treatment by the Philippine "Spiritual Healers" (CX 29). In essence, Phil-Am and "Christian Travel Center" were engaged in a joint venture involving the marketing of tours to the Philippines to visit "psychic surgeons," "spiritual healers," "faith healers," etc. Whether the money paid Ms. Blanchard and Ms. Lux was that of Phil-Am, or whether Phil-Am was reimbursed or transmitted "Christian Travel Center" funds is not significant. Phil-Am knew about, benefited by, and either paid or transmitted funds to Ms. Blanchard and Ms. Lux in payment for or to defray the cost of their promotional activities, and is responsible for representations by them to prospective tour

members that "psychic surgery" was an actual surgical operation, that the body was opened by the "psychic surgeons" and diseased tissue or disease-causing material removed.

28. The films shown to the public by Ms. Blanchard depicted "psychic surgery" operations. Films were shown with considerable frequency, and small advertisements were placed in local papers publicizing them (Blanchard, Tr. 1575-78, 1582). Literature was often distributed at such film showings, such as a reprint of an article entitled "The 'Spiritual Healers' " which appeared in Philippine Panorama on Aug. 26, 1973. (CX 31; Blanchard, Tr. 1584). The article features Alex Orbito, a "psychic surgeon" with whom Phil-Am scheduled appointments for tour members (CX 28, 29, and 107) and describes at length and in great detail the techniques, methodology, and successes of "psychic surgery," with liberal use of medical terms. The flavor of this promotional item is indicated by a picture of a young woman undergoing an "operation" under which the caption states (CX 31B):

OPERATION BY BARE HANDS. Alex Orbito removes the malignant growth from abdomen of Linda Fruechtenicht of Illinois. Center photo shows malignant growth removed from the patient. There is little blood on the skin, but there is not a sign of wound after cleaning with cotton.

AFTER OPERATION. Linda (at right) smiles, obviously feeling very much relieved. She said she felt no pain during the operation.

29. Another article photocopied from Philippine Panorama magazine was distributed at some of Ms. Blanchard's film showings (Blanchard, Tr. 1585). The article is called "The Healers of Pangasinan" and is dated Sept. 30, 1973 (CX 32B and C). Various "psychic surgeons," some of whom are named in Phil-Am travel brochures (see CX 28, 29, 107, and 108), are discussed and pictured. The article includes descriptions of "miracle cures," and descriptions of various procedures in which bodies are entered with bare hands and diseased tissue or disease-causing material removed. Eyeballs are removed from their sockets, repaired and replaced, and the ability of "healers" to cure many diseases including cancer and diabetes are discussed. Other illnesses which are said in the article to be treated successfully by "psychic surgery" include defective kidneys, high blood pressure, heart problems, cataracts, and varicose veins. Ms. Blanchard distributed Phil-Am tour brochures at her film showings (Blanchard, Tr. 1578-79).

30. Another promoter, Mr. Bill Rogers, and his wife were given free passage as tour conductors on one of Phil-Am's tours to the Philippines. Between August 1973 and January 1974 Mr. Rogers was paid several thousand dollars by Phil-Am for expenses incurred in promoting Phil-Am's tours to the Philippines, including the cost of newspaper advertising, stamps and printing (admissions of Phil-Am).

31. Phil-Am authorized Mr. Rogers to use the name "Phil-Am" in

advertisements for Phil-Am's tours to the Philippines, reimbursed him for costs, and CX 37 and 38 are advertisements placed in newspapers by him for meetings held to discuss "psychic surgery" and Phil-Am tours (admissions of Phil-Am, 54, 57, 59 and 60-61). CX 38 is reproduced herein, as follows:

SPIRITUAL PILGRIMAGE
(LEAVES DEC. 6, 1973)
to the Philippines—Visit the Famous
PSYCHIC SURGEONS

15 Day Tour **\$985⁰⁰** Includes Meals, Tours,
Round Trip Hotel & Guide Service

FLY DIRECT—SEATTLE TO MANILA NORTHWEST ORIENT AIRLINES—747.
NO CHANGE OF PLANES.
FOR RESERVATIONS AND FULL INFO. CALL Bill Rogers, 455-0949—or Write.

PHIL AM TRAVEL AGENCY
P.O. BOX 572, BELLEVUE, WASH.

This advertisement appeared in one of the two major Seattle newspapers, the Seattle Times or Post-Intelligencer (Allen, Tr. 675-680). Mr. Rogers also distributed travel brochures of Phil-Am, under Phil-Am's name, which stated to prospects that "psychic surgery is happening" in the Philippines "because of the intense religious devotion of its people" (CX 39D). The brochures distributed by Mr. Rogers advised prospects to mark all letters, applications, etc., "Attention Bill Rogers" (CX 39C). Mr. Rogers traveled free as a tour conductor to the Philippines with Phil-Am tours on three occasions, and his wife accompanied him, also free, on two of these trips, also as a tour conductor (Rogers, Tr. 1653-54, 1681-83). Total ticket value was nearly \$5,000 (CX 214).

32. In connection with the promotion of Phil-Am tours, Mr. Rogers showed films of "psychic surgery" to the public extensively in the Pacific Northwest. The "psychic surgeons" shown included "healers" mentioned in the testimony of witnesses Donald and Carol Wright, discussed later herein, and which are identified, discussed or quoted in many of the magazine articles which Mr. Rogers and others disseminated publicly (CX 31-36). These "psychic surgeons" included Alex and Marcos Orbito, Romeo Bugarin, Marcello, Tony Agpaoa, Jose Mercado, Juan Blance and others (Rogers, Tr. 1659). Most of these names appear on the brochures and reservation applications used by Phil-Am (CX 27-29, 107, 108, 180). The films show operations for varied illnesses, such as eye ailments, abdominal ailments, paralysis, arthritis, in fact, "just about any type of ailment you can name" (Rogers, Tr. 1654-1660; CX 79).

33. As stated, Mr. Rogers showed his film extensively in the Pacific Northwest. He estimated approximately 75 showings, with about 25 to 40 people attending each showing, although some of his showings were attended by over 100 people. He showed his films to high school classes, at colleges and churches, and before business organizations (Rogers, Tr. 1651-54; Tr. 1682). A typical promotion for "psychic surgery" and Phil-Am tours included the showing of a film which Mr. Rogers or his son took. In the narration of the film, Mr. Rogers sometimes identified the people and usually identified the ailment or illness of that person. What the people observed in these films was some area of the body exposed, the opening thereof with the bare hands, a puddle of blood-like fluid appearing, tissue or material of some sort removed, the wiping up of the liquid revealing no wound, and no sign of a scar. Mr. Rogers answered questions and added his own account of his experiences in the Philippines (Rogers, Tr. 1653). Along with personal reports of what he had seen, Mr. Rogers on occasion referred people with specific questions about specific illnesses to others whom he knew had gone to

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the Philippines and had been "cured" of a particular ailment. If he didn't know firsthand whether "psychic surgeons" could cure, for example, arthritis, he might recommend that the caller telephone a person who had visited "psychic surgeons" for that ailment (Rogers, Tr. 1671-72). At these showings CX 30-36 were distributed. CX 31-36 are reprints of articles about the truth and validity of "psychic surgery," and an informational sheet. Mr. Rogers additionally distributed CX 39, identical to CX 175, the original Phil-Am tour brochure, and CX 40, whenever he talked to groups or showed films to groups who were interested in "psychic surgery." CX 30 is an information sheet for prospective tour members explaining the advantages of journeying to the Philippines in a tour group and receiving group rates. Mr. Rogers signed this document as a representative of Phil-Am, as follows:

When sending in reservation applications, either to the Seattle or Bellevue Office, *Please Mark* all mail and applications *ATTENTION* Bill Rogers. This will assure you of prompt service. Make all checks payable to Phil Am Travel Agency, Inc.

Sincerely,

Bill Rogers - Group Coordinator
Representative of Phil Am Travel
Agency, Inc. and Christian Travel
Center, Inc. - Manila, P. I.

Direct Mail Address:

Bill Rogers
P. O. Box 572
Bellevue, WA 98009
Phone: (206) 455-0949
Seattle Office:
Bill Rogers
c/o Phil Am Travel Agency, Inc. 705 - 2nd Ave., Suite 1602
Seattle, WA 98104
Phone: (206) 623-0670

34. At film showings and meetings, Mr. Rogers distributed the travel brochure "PHIL-AM TRAVEL AGENCY'S SPIRITUALIST PILGRIMAGE TO THE PHILIPPINES" (CX 26), reservation applications for Phil-Am (CX 29), the information sheet mentioned in the preceding finding, and reprints of articles describing the opening of bodies by "spiritual healers," "faith healers," etc., in the Philippines, the removal of tissue or disease-causing material, and miraculous cures achieved (CX 31-36).

35. As previously set out, Mr. Rogers was compensated by Phil-Am for his efforts in recruiting members for Phil-Am's tours to the Philippines. Mr. Rogers had a number of discussions concerning reimbursements with Mr. Jose, manager of the Seattle Phil-Am office (Jose, Tr. 1702). Mr. Rogers told him the amount he needed for his

various expenses. His expenses included office incidentals, advertising, telephone calls, and gasoline used in travel to show films. Like Ms. Blanchard and Ms. Lux, Mr. Rogers was reimbursed by a Phil-Am check in the amount of approximately \$2,800 (Rogers, Tr. 1646-49).

36. In sum, Mr. Rogers actively held himself out to be an agent and representative of Phil-Am, distributed Phil-Am literature, was accepted and ratified as such by Phil-Am, and was compensated by Phil-Am for his efforts. Phil-Am used him to promote Phil-Am tours to the Philippines, and in such promotion represented to the public through talks, meetings, film showings and the distribution of literature that "spiritual healers," "faith healers," "psychic surgeons," etc., in the Philippines performed actual surgical operations by opening and entering the body with their bare hands and removing diseased tissue or disease-causing material, and that serious and even terminal illnesses were often cured thereby.

Representations to the Public by Gem Travel Service

37. Respondent Gem Travel first set up its "psychic surgery" tours early in 1972 in response to a request from Diplomat Tours in Manila. The request came from the manager of Diplomat, one Doris Almeda, to Mr. Cortez, a salesman for Gem and the brother-in-law of Ms. Almeda. Ms. Almeda informed Mr. Cortez that people in the United States would be traveling to the Philippines "seeking the help of the healers," and Diplomat requested that Gem "facilitate the handling of these people" (Cortez, Tr. 1019-1028). Ms. Almeda wanted Gem to organize groups for visits to Rev. Agpaoa, as already noted, a well known "psychic surgeon". Mr. Ron Cacas, an officer of Gem, also discussed initial arrangements with Diplomat (Cortez, Tr. 1029; Cacas, Tr. 1164-65). Under the initial agreement between Gem and Diplomat, Diplomat would set up the land arrangements in the Philippines for the tours for which it would charge Gem a fee, while Gem would arrange air transportation (Cortez, Tr. 1030-32; Cacas, Tr. 1169).

38. Diplomat Tours is a Philippine travel agency formerly managed by Ms. Almeda and currently managed by "psychic surgeon" Rev. Agpaoa's wife. Diplomat Tours has an arrangement with Rev. Agpaoa under which appointments with him are handled exclusively by Diplomat, and Diplomat granted an exclusive agency to Gem for Gem tour members to see Rev. Agpaoa. In effect, this meant the only way for a sick person to have an appointment with Rev. Agpaoa was through Gem (Cortez, Tr. 1032; Cacas, Tr. 1169-1170; Mapa, Tr. 1434-35) and Gem promoted this exclusivity (CX 52, 144). CX 52, printed on a Gem letterhead, states:

SPECIAL ANNOUNCEMENT

For those wishing to visit with Rev. Tony Agpaoa in Baguio City.

Appointment and consultation with Rev. Tony can be confirmed by DIPLOMAT TRAVEL & TOURS of Baguio ONLY if travel arrangements are handled through GEM TRAVEL SERVICE of San Francisco, California.

Due to the number of people coming from Europe, Australia and New Zealand, anyone traveling from the United States, Mexico and South America must make advance reservation. For your reservation please fill out and return the form below.

39. On Feb. 22, 1972, Gem ran its first "psychic surgery" tour to the Philippines. The original tour was set up by Ms. Butterfield, Mr. Cortez, and other employees of Gem in conjunction with Diplomat Tours. Ms. Butterfield was the Gem officer with principal responsibility for origination of the tours, although all Gem officers discussed and agreed to setting up those tours (admission of Gem; Marquez, Tr. 1109-1110; Butterfield, Tr. 1180-81). Mr. Cortez was a Gem employee and part-time commission salesman of Gem for more than six years. Mr. Cortez worked in the office of Gem at a desk provided by Gem. He was the principal salesman and tour organizer for the "psychic surgery" tours. Inquiries regarding the tours were generally referred to Mr. Cortez. Gem authorized Mr. Cortez to speak to or correspond with persons inquiring about "psychic surgery" tours. This responsibility was delegated to him by Mr. Marquez (admission of Gem; Marquez, Tr. 1127). Mr. Cortez received half of Gem's commission on each "psychic surgery" tour package sold (Marquez, Tr. 1132-33).

40. Gem prepared and disseminated travel brochures describing its "SPIRITUALIST TOURS to the PHILIPPINES" (CX 50, 51). The brochures included a specific waiver by the tour member of any responsibility of Gem for treatment by Rev. Agpaoa. Mr. Marquez insisted on the inclusion of such a waiver of liability because he was aware of the risk Gem was running in taking customers to Rev. Agpaoa (Marquez, Tr. 1108, 1111-13). Brochures were sent to persons inquiring about Gem "psychic surgery" tours and about cures by Mr. Agpaoa (admission of Gem; Allen, Tr. 574).

41. Gem's "SPIRITUALIST TOURS to the PHILIPPINES" are set up for people who wish to undergo "psychic surgery." Gem arranges and guarantees meetings between its customers and Rev. Agpaoa during those tours, who is known to employees of Gem and members of the public as a "psychic surgeon" (answer of Gem; admission of Gem; see also CX 147(a)). Gem prepared travel literature which was sent or given to persons interested in Gem's "psychic surgery" tours to the Philippines. An example is CX 53 titled "THE PHILIPPINE CHURCH OF SCIENCE REVELATION, INC." "SPIRITUALISM AND PSYCHIC HEALING" which was used to promote a tour from San Francisco to Baguio City, Philippines, in June 1972. This pamphlet,

which was disseminated to the public by Gem, was most explicit in its representations about "psychic surgery" and Rev. Agpaoa, as follows:

Psychic Surgery

"Not with a knife, but with hands" said Maestro Salvatore D'Aura, and this the fabulou[s] Tony Agpaoa, the Philippines' "Miraculous Spiritual Healer," will demonstrate. Witness the amazing, painless, almost bloodless operation which continues to baffle medical science! [CX 53B.]

This document further announced that Rev. Agpaoa would touch on the finer points of "Spiritual Healing" and the nature of "psychic surgery," and was identified with Mr. Cortez's name, Gem's name, and Gem's address. See also Cortez, Tr. 1099-1100.

42. After returning from a trip to the Philippines in June 1972 during which he filmed Rev. Agpaoa performing "operations" with his bare hands, Mr. Cortez prepared a statement to respond to inquiries from the public coming into Gem's San Francisco and other offices (CX 54A, 153A-B; Cortez, Tr. 1042, 1047). It is reproduced herein and describes "painless surgery with the bare hands performed by Rev. Agpaoa and his assistant, Marcelo." This document was signed by Mr. Cortez and was mailed with a Gem price list (CX 54B) attached and often with a Gem brochure enclosed (Cortez, Tr. 1048-1055).

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Cable "GEMTRAVEL"

GEM TRAVEL SERVICE, INC.

Phone: (415) 397-4790

of
SAN FRANCISCO

703 Market Street - Central Tower Building
San Francisco, California 94103


President
LARRY C. MARQUEZ
President/General Manager
RONALD D. CACAS
Secretary/Treasurer
MARIAN BUTTERFIELD

I have just returned from a three-weeks's visit with Rev. Tony in Baguio where I personally witnessed, observed and took pictures and color movies of a series of painless surgery with bare hands performed by Rev. Tony and his assistant, Marcelo.

AIRLINES

The group who traveled with me voiced sincere satisfaction in having made this journey. They all showed courage, faith and belief in Tony's works and expressed their appreciation for the opportunity of having seen Tony and being relieved of their malady and sufferings which have lasted for a number of years, for most of them.

STEAMSHIPS

TOURS

Please be guided by the enclosed information sheet for those wishing to visit with Rev. Tony in Baguio City, Philippines.

CRUISES

HOTELS

Yours very truly,

BAGGAGE

Ernie V. Cortez
Ernie V. Cortez

TRAVEL NOW
PAY LATER


TRAVEL
INSURANCE

43. At the time Mr. Cortez was mailing out CX 54 in response to inquiries about Rev. Agpaoa, he was preparing to show his film of Rev. Agpaoa in operation (CX 81). He announced two showings on Sept. 1, 1973, at the Olympic Hotel in Seattle by postcard sent to people who were inquiring about tours to the Philippines (CX 144A; admission of Gem; Cortez, Tr. 1033-37). The postcard announced an "ACTION MOVIE 'THE WONDER HEALERS OF THE PHILIPPINES' Rev. ANTONIO AGPAOA and his assistant MARCELO," stated that travel information would be given "after each show," and that appointments with Mr. Agpaoa and Marcello would be "arranged exclusively" by Mr. Cortez of "Gem Travel Service, Inc." (CX 144A). Mr. Cortez narrated the film describing both the travel and the tour accommodations. He described one segment of his movie as being a "hemorrhoid operation" performed by Mr. Agpaoa and he described other "operations." Mr. Cortez also told the people, in response to questions as to how people felt after the operations portrayed in the film, "There was no pain * * * all they felt was pressure in their body" (admission of Gem; Cortez, Tr. 1035). Mr. Cortez also gave out Gem brochures at the film showing (Cortez, Tr. 1035).

44. Mr. Marquez and Ms. Butterfield, the owners and officers of Gem, viewed Mr. Cortez's film in mid-1972 and were aware that Mr. Cortez planned to show it to promote Gem's tours to the Philippines (Gem answers to interrogatories; see also Marian Butterfield, Tr. 1181). In fact, Gem had a showing of "psychic surgery" taken in the Philippines in its office (Butterfield, Tr. 1182). Mr. Cortez discussed the Seattle film showing with both Mr. Marquez and Ms. Butterfield and received their approval for showing it (Cortez, Tr. 1043-44; Butterfield, Tr. 1194-95). Ms. Butterfield stated that she thought the showing was a good idea at the time (Butterfield, Tr. 1195). Gem paid for part or all of the hotel expenses for that showing (admission of Gem; Cortez, Tr. 1043). The film is in the record as CX 81 and depicts "psychic surgery" in the Philippines showing the opening of the human body with the bare hands, removal of tissue or other material, and the closing of the incision without a scar.

45. In addition to the film shown by Mr. Cortez to the Seattle audience, another film similarly depicting "psychic surgery" was shown by a person known as Elaine Shinn (Cortez, Tr. 1037). Ms. Shinn narrated her film, and Mr. Cortez referred most questions as to Rev. Agpaoa's "successes" to Ms. Shinn who answered them as well as questions about her film (Cortez, Tr. 1037-39; admission of Gem). Prior to the Seattle film showing, Elaine Shinn had conveyed her desire to Mr. Cortez to become a tour conductor for Gem (admission of Gem), and had told Mr. Cortez that she had her own films of "psychic surgery"

(Cortez, Tr. 1039). Subsequent to the Seattle Olympic Hotel showing, she did receive a free ticket from Gem for a tour to the Philippines two weeks later, Sept. 15, 1973 (admission of Gem; Cortez, Tr. 1040-41).

46. In the San Francisco area Gem arranged for the non-promotional showing of a film depicting "psychic surgery" to a study group in the Berkeley area. This was done by a person known as Sarah Paukert on the request of individual respondent Marian E. Butterfield (Butterfield, Tr. 1181-83). Ms. Paukert's promotional activities on behalf of "psychic surgery" were described in her own testimony in this proceeding. She first took a Gem tour to see Rev. Agpaoo on Feb. 3, 1973. Shortly after returning from this tour, she told Mr. Cortez of her interest in becoming a tour conductor and at approximately the same time started showing her films (Paukert, Tr. 1275-77). Because she was spending as much as an hour discussing travel agency arrangements at the end of her showings, she requested that Mr. Cortez supply her with Gem brochures, which she told him were for distribution at such showings (Paukert, Tr. 1276, 1284). In December and November 1973, Ms. Paukert traveled to the Philippines free as a tour conductor for Gem (Butterfield, Tr. 1184, 1216; CX 143B). The value of the tickets she received from Gem appears to have been about \$3,000 (Paukert, Tr. 1276; see CX 143B, which shows Ms. Sarah Paukert to have been a Gem tour conductor on two occasions and a "Dr. Norman Paukert" to have accompanied her as a tour conductor on one of these). Gem, that is, Ms. Butterfield and Mr. Cortez (Butterfield, Tr. 1184; Cortez, Tr. 1067), knew the nature of the "psychic surgery" films being shown to the public by Ms. Paukert, *i.e.*, that they purported to show "operations" in which human bodies were opened with the bare hands, diseased tissue removed, etc., provided her with Gem travel brochures to pass out at such showings (Paukert, Tr. 1284), had Ms. Paukert's name printed on such brochures (Butterfield, Tr. 1184), and provided her with free trips to the Philippines as a tour conductor (Butterfield, Tr. 1184; CX 143B). Under the circumstances, respondent Gem must accept responsibility for the representations to the public contained in Ms. Paukert's films.

47. Other persons showed films of "psychic surgery" tours, distributed Gem travel brochures, and received free passage as tour conductors for Gem (CX 143A-D; Butterfield, Tr. 1192-98; Cortez, Tr. 1069-1087; CX 115, 127).

Use of Varying Terms for "Psychic Surgery"

48. In promoting their tours to the public for consultation and treatment by Philippine "healers" respondents used varying terms including "psychic surgery" (CX 26, 37-38, 39D, 41, 53A-B, and 175; Galazan, Tr. 811) "faith healing," "spiritual" or "spirit healing" (CX 2, 7A, 17, 27-29, 31-35, 45, 53D, 107-108, 163, 170, 179B, and 210), "psychic

healing" (CX 9, 10, 14, 16, 41, 192, 193, 197, and 210), and "magnetic healing" (CX 41). All these terms were used by respondents in conjunction with the graphic depiction by films of what appeared to be actual "surgical operations" with the bare hands in the Philippines (CX 79, 80 and 81), by verbal statements at film showings, by travel and promotional literature, by distribution of newspaper and magazine articles, and booklets, and through letters and advertisements, to the same effect. In the context used by respondents all the foregoing terms, together with the films, statements, promotional literature and materials disseminated and employed with those terms, meant and conveyed to the public the impression of "psychic surgery" as that term is used in the complaint. All collectively represented to the public that those who purchased tours to the Philippines would be taken to "healers" who would perform actual "surgical operations" with the bare hands, would open the body, remove diseased tissue or disease-causing material, close the body without a scar, that all would be done in a few minutes without anesthesia, pain or suffering, and that many would be cured thereby of serious or even terminal illnesses.

"Psychic Surgery"

49. "Psychic surgery," that is, the opening of the body with the bare hands, removal of diseased tissue or disease-causing material, closing the opening without a scar, etc., is pure and unmitigated fakery. More bluntly, the "surgical operations" of "psychic surgeons," "psychic healers," "faith healers," "spiritual" or "spirit healers," "magnetic healers," etc., with the bare hands are simply phony.

50. The illusion of opening the human body with the bare hands, and the removal of diseased tissue or material therefrom, is created by a variety of crooked devices, mainly clever sleight-of-hand. The "psychic surgeons," "faith healers," "psychic healers," etc., are skilled sleight-of-hand artists, and additionally employ a variety of tricks, devices and methods of deception, including the use of small animal parts, to convey the deceptive impression that a "surgical operation" is taking place and that material is being removed from the body. As the record discloses, thousands of well-meaning people, the sick and infirm have been gulled, exploited and deceived, sometimes with tragic and heart-rending consequences.

51. Two witnesses who testified in this proceeding, Donald F. and Carol Wright, studied "psychic surgery" in the Philippines, actually became "psychic surgeons," and revealed in detail the complete fakery of that phenomenon. The Wrights had studied ESP in the United States, and were extremely interested in what they had heard about the "psychic surgery" phenomenon in the Philippines, tending initially to give it credence. They journeyed to the Philippines in January 1973,

and returned again in July 1973 with a group of ill people who were seeking help (C. Wright, Tr. 113-16). The "healers" contacted on this visit included Virgilio Gutierrez, Romeo Bugarin, Tony Rumbo, Alex Orbita, and Tony Alcantara. The techniques used by these persons were very similar. In most of the operations, cotton was used to wipe off the area to be operated on. A bowl of water was present. In nearly all the operations blood clots or material appearing to be blood clots were removed from the body, and sometimes a piece of tissue which looked like an organ was removed. The area being operated on was wiped clean and there was no scar. The Wrights saw this procedure performed many times on the people they had brought with them. However, no one was visibly improved by these "operations" (C. Wright, Tr. 119).

52. The Wright's party returned to the United States but the Wrights stayed on, moving out of their hotel and renting a house. Their purpose in staying was to work with the "healers" and to learn the phenomenon of "psychic surgery." They were disappointed that there were no miracle cures of the people they had brought with them, but they did not yet suspect that "psychic surgery" was fakery. They met a "healer" who offered to allow the Wrights to work with him. They assisted him as he treated Filipino patients. The Wrights also had the opportunity to work with one Virgilio Gutierrez at his center. The centers were located in the "healers' " homes or in small houses where they worked "treating" the sick.

53. While working as assistants to a number of different "healers," the Wrights discovered "psychic surgery" did not consist of "surgery" at all, but was being performed by sleight-of-hand. Donald Wright noted objects falling from the "healers' " hands onto the bodies of the patients before the "operations" (D. Wright, Tr. 270), and Carol Wright had the opportunity to examine a "tumor" which had been removed from a patient. As an assistant, one of her jobs was to dispose of the "extracted" material at the end of an operation. Before emptying the bowl, she unwrapped what looked like a tumor. She testified (Tr. 134):

* * * so I took the membrane and pulled it back and found that this was a tumor, a membrane that had been stuffed with cotton and blood clots and it appeared very much like a tumor, but it was not, it was just a flat piece of membrane that had been stuffed with cotton and blood clots to look like a round tumor.

The Wrights separately and together had experiences which led them to the conclusion that "psychic surgery" was performed by sleight-of-hand and that the extracted material had not come from within a human's body.

54. After confronting one of their teacher "psychic surgeons" with what they had observed, the "psychic surgeon" admitted that the "operations" were done by sleight-of-hand. The Wrights were eventual-

ly taught the techniques involved. The Wrights were trusted because they had been working with this particular "psychic surgeon" for a number of months. Carol Wright explained (Tr. 215):

I believe that we showed to them our sincerity in that we were come to stay until we did learn and that we did work with them in their centers * * *. We gave this or impressed them that we gave of our time every day in working with their healing centers from morning until night, and over a long period of time they recognized we were serious of being there to learn that.

55. The Wrights were taught how to shop for animal parts used to make up a "bullet." A bullet is actual animal tissue or a clot of animal blood and cotton which is made to appear like tissue coming from inside the body (C. Wright, Tr. 137-141). The Wrights were taught how to make the bullet, how to wrap it, how to prepare the tissue, how to hide the bullet and then how to transfer it onto the patient. They were taken to an open market where they bought animal tissue. The "healer" showed them which animal parts looked most like human parts and then taught them how to prepare the materials. After that, the Wrights were taught where to hide the prepared bullets, for example, on their persons, inside cigarette packs, in their stockings, in their belts, etc. They were taught the techniques of palming so that no one would see the bullet, planting the bullet on the patient's body, moving the bullet if it were necessary, using continuous kneading action in an indentation on the patient's body (which appears to be manipulation but allows the "psychic surgeon" to open his bullets), the importance of such an indentation on the patient's body, the addition of water obtained from saturated cotton balls often passed to the "healer" by attendants, which mixes with a small bullet of animal blood and is used to make the appearance to the uninitiated of human blood issuing from an "opening" in the body, the spreading of an animal membrane in the "blood" in the indentation in the human body to look like an opening therein, and the bringing "out" of the hidden animal membrane so that it seems that material from the body of the person being operated on is being removed. The Wrights were shown how to end an operation, how to clean up the area being "operated on" and to dispose of all the bullets (C. Wright, Tr. 137-154; D. Wright, 269-71). The Wrights, in sum, learned the techniques used for creating the illusion of an actual operation, and they used all these techniques on people who visited some of the centers where they were working. The Wrights continued to work with many other "healers," and they observed the same techniques that they had learned and could perform themselves. They joined the "Union Espiritista Christiana de Filipinas" (C. Wright, Tr. 192-93) which is an organization to which most Philippine "healers" performing "psychic surgery" belong.

56. The nature of Ms. Carol Wright's testimony can be appreciated from the following (Tr. 137-39):

Q. What did you observe as he demonstrated these techniques?

A. He showed me exactly where he had positioned the bullet, as it was known, on himself and then on the body of the patient before he did the operation.

To go back, if I may, he taught me also how to make a bullet, which is the actual tissue, blood clot and cotton that is used in the operation that is made to appear like material coming from inside the body. He took me to—he showed me how to buy the material, what to look for, what to buy, how to make it, how to wrap it, how to prepare the tissue, then on patients, and I worked on a number of patients, not models or not just to practice on, but they were patients who were ill, doing these types of operations.

Q. Where were the materials for these operations obtained?

A. In an open market.

Q. What kind of materials were obtained?

A. Blood clots, blood, from the blood of a cow, which was congealed, and also material from pigs and from cows. Liver was used. We were shown how to look in the intestines to pick out small glands and cysts that could be used, for example, in an adenoid operation or thyroid operation. We were shown what to look for and how to prepare the material so it would very closely resemble the human body as you would bring out a piece of tissue.

Q. And how were these materials then prepared before the operation?

A. Before the operation they would be prepared, for example, taking a small piece of blood clot, perhaps the size of a marble, and placing it into a square of cotton, a small piece of cotton—they always used Red Cross cotton, for some reason—rolling it up very tight and then placing it into a cigarette pack so it would not be noticeable when it was carried.

Q. How were these items carried to the scene of the operation?

A. Inside these cigarette packs, empty cigarette packs. They were also secreted on the person of the healer, the psychic surgeon, perhaps in his socks. We were shown that if you were to wear socks like a man would wear, to put them inside the elastic at the top. They could be put inside the belt, they could be under the collar, they could be—I observed one of the female psychic surgeons take one from her bra—any place on your body which would be or could be a hiding place.

Q. And, in the operation you were shown, how were the materials which were prepared then used to create the appearance of the operation?

A. Taking one of the bullets, which is the blood clot inside the cotton, it would be palmed and held in such a manner that it would not be seen by the patient or by relatives or whoever was around, have it in here like so, and would be planted on the patient's body somewhere and then, after a moment, it would be brought to the area wherever they were going to do the operation and they would begin kneading and they would also make a pressure indentation into the patient's body if it's on the abdomen. If the person was very, very thin, they would often bring the legs up in order to make it softer so that the hands could go down further. And then, through kneading, through pushing, then adding some water, this blood that is in the cotton would begin to mix with the water and appear red and begin to run all over the body and be kind of messy and dramatic and then, if there was also wrapped inside the bullet a piece of tissue, then, while the psychic surgeon's hands are down in, with the hands folded underneath, then it could be—they would break that open and bring these pieces out bit by bit, always keeping one hand in. This was one thing they would say, if they took both hands out, the opening would close, but there was always one hand down and the fingers would be bent under like so, and this is how I was taught to do this.

57. The Wrights testified that the "operations" which they per-

formed and the thousands of "operations" which they witnessed being performed by some of the most well-known "psychic surgeons" in the Philippines were in truth not real operations, the body of the patient was never opened, the flowing blood-like fluid was not that of the patient, the material removed had never been inside the patient, and there was no scar because there had been no "operation." These "operations" were all performed by sleight-of-hand. All the "healers" they witnessed and the "healers" who had taught them used sleight-of-hand techniques commonly employed by magicians (C. Wright, Tr. 145-46; D. Wright, Tr. 267).

58. The Wrights stayed in the Philippines until April 1974. Toward the end of their stay they tried to expose "psychic surgery" for what it was, fakery (C. Wright, Tr. 180). Their original hopes and expectations of learning a miracle healing method from "psychic" or "spiritual" sources by then had been dashed. When they returned to Iowa, they continued to try to expose "psychic surgery" through appearances on local television (D. Wright, Tr. 336-38).

59. Mr. Wright demonstrated in the hearing room the techniques of "psychic surgery" exactly as he and Carol Wright had been taught by Philippine "psychic surgeons" (see transcript beginning at Tr. 296 for demonstration by D. Wright). The techniques used in Mr. Wright's demonstration were similar to those on the films which have been received in evidence (CX 79, 80 and 81). Carol Wright viewed two of respondents' promotional films, CX 80, which was used by respondents Travel King and Mr. Galazan, and CX 81 used by Gem and Mr. Cortez. Based on her experience and training as a "psychic surgeon" Ms. Wright analyzed the events portrayed. The techniques were the same as she learned, and she detected the sleight-of-hand involved, including that used by Rev. Tony Agpaoa (C. Wright, Tr. 124-25, 169-170).

60. The "healers" or "psychic surgeons" who worked with the Wrights, or whom the Wrights testified they observed as performing sleight-of-hand, include the following: Terte, Virgilio Gutierrez, Jr., Tony Rumbo, Tony Alcantara, Romeo Bugarin, Juanito Flores, Alex Orbito, Tony Santiago, Jose Mercado, Felicia Irtal, Rosita Bascos, Marcello, Rudy and Placido Palitayan (C. Wright, Tr. 137, 148-153; D. Wright, Tr. 236-292). Their testimony discusses a number of variations of "psychic surgery" which "psychic surgeons" used to apply to different ailments and on different parts of the body. A number of these names are the same as those on respondents' Phil-Am and Travel King promotional literature (CX 17 and Galazan, Tr. 834-844; CX 27, 107, and 108). Many of these names also occur in articles written in magazines or newspapers which were reprinted or photocopied and distributed at promotional meetings by tour conductors of various

respondents herein. The Wrights considered these healers to be the "major psychic surgeons" in the Philippines. The number of "psychic surgeons" the Wrights observed at work while living in the Philippines was great. They concluded that the techniques used by the "psychic surgeons" were all essentially similar and all were fake. The techniques of "psychic surgery" originated in a particular locality among a core group of practitioners, and spread as the commercial demand developed, with Mr. Terte and Mr. Appaoa teaching recruits (C. Wright, Tr. 233; D. Wright, Tr. 288, 477). Donald Wright testified that once he had learned the techniques used by the psychic surgeons, he could detect the use of sleight-of-hand every time (Tr. 403). An additional technique employed by one particular "psychic surgeon" involved the use of a hidden razor blade to make a minute and shallow cut on a patient's body, enhancing the dramatic effect and heightening the illusion of "surgery" (see Wright, Tr. 146-47; Gurtler, Tr. 351-52; Brown, Tr. 2112-13).

61. Another witness who observed "psychic surgery" at close range in the Philippines and who determined it to be pure fakery accomplished by sleight-of-hand combined with clever use of "props," dramatic effects to exploit the gullibility of onlookers and the desire of many to believe, was a professional magician and sleight-of-hand artist, Robert Gurtler (Andre Kole). Mr. Gurtler is a famous magician who has performed throughout the world on television and in films. He has also viewed and evaluated performances of many other magicians in this country and throughout the world. In September of 1973 while performing on stage and over television in Manila, Mr. Gurtler was contacted by Time magazine and was asked to investigate the phenomenon of "psychic surgery" which was beginning to receive wide publicity at that time (Gurtler, Tr. 350). Mr. Gurtler accepted this assignment and viewed at close range the activities of seven psychic surgeons, five of whom are mentioned in the literature of one or another of respondents.

62. One of the "psychic surgeons" used the technique mentioned earlier of a concealed razor blade employed as part of his "operation" (Gurtler, Tr. 351-52; see list of "psychic surgeons" on Phil-Am's travel brochure, CX 27, No. 2 on list). The technique, which creates the illusion that an incision is made when the "healer" points his or a spectator's finger at the skin of the patient, is in fact created by sleight-of-hand in the preliminarily cutting of the skin with the concealed blade. Mr. Gurtler's testimony describing the sleight-of-hand techniques used in "psychic surgery" corroborates the testimony of the Wrights. The "psychic surgeons" were observed by Mr. Gurtler to use what Mr. Gurtler called "loads" or capsules filled with blood and tissue to

simulate "surgical operations" with the bare hands. Mr. Gurtler's expert eyes detected these secreted by the "psychic surgeon" in a variety of places, on the person, in a cigarette pack or case, around the "operating" table, in the cotton swabs, on the person of an assistant, behind a fan, under the pillow, etc. They were used during the "operation" as convenient or required. The "psychic surgeon" would "make a depression" in the body of the patient, would knead it and during such process by sleight-of-hand would obtain a "load" or "bullet," would burst the "load" or "bullet," mixing the concealed blood and animal tissue with water in a piece of cotton offered by an attendant, producing a red blood-like fluid, and creating the illusion that the body had been penetrated (Gurtler, Tr. 353-366).

63. Mr. Gurtler's expert evaluation of the "psychic surgery" he witnessed make it clear why so many people have been fooled. The sleight-of-hand employed by the "psychic surgeons," in Mr. Gurtler's professional opinion, is better than the vast majority of the magicians he had witnessed throughout the world (Gurtler, Tr. 361). No training in science or medicine would ordinarily help a person initially to detect these sleight-of-hand techniques, although Mr. Gurtler believed that an observer could be taught to detect them. The techniques, however, were not new in the world of magic and could be duplicated by a sleight-of-hand expert or professional magician.

64. Another witness, Mr. Larry Allen, who personally observed and studied "psychic surgery," provided additional compelling evidence of its wholly fraudulent nature. This witness, an electronic technician, gave a detailed and credible account of his experience with Rev. Agpaoa, one of the most well-known of the "psychic surgeons," whom he observed closely and filmed while on a tour promoted by respondent Gem in September 1972. Mr. Allen was able to detect the manner in which Rev. Agpaoa's "loads" or "bullets" were brought into the room. He watched one of Rev. Agpaoa's assistants on several occasions enter the operating room quarters carrying two shopping bags, each of which was filled and covered with a towel. During the excitement surrounding an incident where a patient undergoing an "operation" began to hemorrhage, Mr. Allen looked into the shopping bags which he had seen brought in, and one was filled with the capsules or bullets used in the "operations."

65. Mr. Allen viewed numerous "surgical operations" in the hotel in Manila where the Gem tour group stayed. In one "operation" performed by Rev. Agpaoa on a woman's ear he "heard a pop," a squirt of red liquid shot out of Rev. Agpaoa's hand and almost hit the wall, and then Rev. Agpaoa pulled out what Mr. Allen recognized as "a chicken heart, the heart of a small chicken or bird" (Tr. 591). Rev. Agpaoa held

it up to the people and said, "This is causing her ear problem." Mr. Allen also viewed Marcello, Rev. Agpaoa's assistant, and Juan Blance performing "psychic surgery" (Tr. 682-83). He observed both of them using "loads" or "bullets" to perform their operations and, in addition, he saw Mr. Blance use a hidden razor blade in a performance similar to that described by the magician, Mr. Gurtler.

66. During a tour arranged by respondent Gem to see Rev. Agpaoa, a witness in this proceeding, Erna Hansen, saved garments which were stained with blood during "psychic surgery." She brought them back to the United States where they were examined by a criminologist, who was director of the King County (Seattle) Police Department Crime Laboratory. Analysis showed that (Sweeney, Tr. 2155):

* * * the blood supported by the garments was of swine origin or hog blood.

67. A number of expert medical doctors provided evidence of the fakery involved in "psychic surgery." One of them was Dr. Thomas Gail whose practice as an active hospital staff member regularly includes surgery. While a doctor in the United States Navy assigned to the U.S. Embassy in the Philippines, he had occasion to view Rev. Agpaoa performing "psychic surgery" in Quezon City in 1966. Dr. Gail viewed, among others, abdominal "psychic surgery" and concluded that there had been no opening in the body and no actual surgery. He observed that the "blood," based on its color and its clotted appearance, was not fresh human blood. He also described the parts of the abdominal cavity which would be seen in an actual operation but which were not visible during the "psychic surgery." As to the tissues and membranes which appeared, he testified that "none of these structures even resembled those encountered in a surgical operation" (Tr. 533-38). Dr. Gail described a surgical procedure to correct sterility, one of the "operations" performed by Rev. Agpaoa which he witnessed, and testified that Rev. Agpaoa's procedure did not even simulate that operation with any fidelity (Tr. 538-39). The first "psychic surgery" witnessed by Dr. Gail was a nose "operation." In his opinion, based on viewing the tissues and structures, which were completely dissimilar from normal human tissues and structures, and dissimilar from anything he had "ever seen or encountered in surgery," no actual entry of the body occurred and no "surgery" had taken place (Tr. 547).

68. Dr. Gail viewed individual respondent Galazan's film of "psychic surgery" (CX 80) and gave his expert opinion as a surgeon that no surgery was taking place. This opinion was based on the dissimilarity between actual human blood and body tissue, and that which appeared in the film. Dr. Gail further testified that the events he saw portrayed in the film were generally similar to those he had observed in the Philippines (Tr. 545-47).

69. Dr. Gail believed the illusion of an opening in the body was created as follows (Tr. 557):

* * * by sleight of hand, upon thrusting, after he [psychic surgeon] thrust his hand on the abdomen, he squeezed something in his palm and produced the bloody substance, and the bloody substance does not come from the person, and this illusion of the incision is created this way.

Dr. Gail furthermore believed that, if an operation had taken place during the "psychic surgery" he witnessed, based on the lack of sanitary conditions, there was virtually an absolute certainty that serious infection would have occurred (Tr. 540). In addition, in an abdominal operation the hands of the surgeon would normally go far into the abdomen to reach various organs, whereas Rev. Agpaoa penetrated only one or two inches (Tr. 534, 546). In Dr. Gail's expert opinion as a surgeon, the body cannot be entered without breaking the skin or without surgical instruments, nor can an operation be performed without leaving a scar (Tr. 539-540).

70. A medical doctor, Ronald Chard, Jr., an expert in the field of pediatric oncology (tumors in children) and hematology, who worked both as a practicing physician and assistant clinical professor at the University of Washington School of Medicine, testified in this proceeding. He viewed the Galazan film (CX 80), used to promote Travel King tours, immediately prior to testifying. In his opinion, there was "no evidence of any surgical operation in any of the procedures on the film" (Tr. 757). He testified that in nine of the ten procedures, puckering of the skin, such as would occur simply from pushing on the skin, occurred, unlike actual surgery in which the skin flaps open. Furthermore, the tissue supposedly removed was unlike any with which Dr. Chard was familiar (Tr. 758-59). Dr. Chard examined four patients who had been treated by "psychic surgeons." One boy with leukemia, who was under the regular care of Dr. Chard, was treated and supposedly cured of his disease. According to Dr. Chard (Tr. 767):

Upon my examination about ten days after that there was no evidence in the child's skin or anywhere else that anything had been done at all, and X-ray was done of his pelvic area that included this and there were no abnormalities in this area.

Another patient of Dr. Chard, a teen-age girl with cancer in several areas of her body, had "psychic surgery" on her knees, stomach and lung. On her return, Dr. Chard testified (Tr. 770):

The girl did have an examination, in which there was no evidence that any procedures on her skin had been accomplished. Repeated X-rays showed that all lesions were larger without interruption of any of their borders. There were also new lesions in the chest and the leg had progressed.

It was Dr. Chard's medical opinion that the statements appearing in the first paragraph of Travel King's information sheet (CX 7A) were "fraudulent" because in fact the body is not entered in "psychic surgery" (Dr. Chard, Tr. 780).

71. Another medical doctor, Elray G. Burgwald, is a surgeon in practice in the State of Washington. He testified that from October 1966 until January 1970, and from August of 1973 until the present, a person named Phyllis Douglass was a patient under his care. Ms. Douglass had originally been treated for breast cancer in 1966. In 1973, the disease was present in her shoulder and neck. Dr. Burgwald advised Ms. Douglass as to the worthlessness of "psychic surgery" but, despite his advice, she went to the Philippines that month for that purpose (Dr. Burgwald, Tr. 2052-54). On her return, Ms. Douglass was examined by Dr. Burgwald who testified (Tr. 2054):

* * * if anything the mass in her left superclavicular area was slightly large[r], if anything, but overall there had been little change, if any, with an increase in the size of her mass, rather than any loss of size or removal of any tissue that was evident. There was no evidence of any new scars or other signs of surgery procedure.

Ms. Douglass' husband brought back to Seattle a piece of the tissue the "psychic surgeon," Rev. Agpaoa, "removed" from Ms. Douglass (Richard M. Douglass, Tr. 1352). Dr. Burgwald examined the tissue and, in his opinion, "there was no question from even gross examination that this was a specimen of small intestine or small bowel" (Tr. 2056). Dr. Burgwald turned the tissue over to a pathologist, Dr. Arnold D. Hoekzema, for further examination. Dr. Arnold D. Hoekzema analyzed the tissue "removed" from Ms. Douglass by Rev. Agpaoa, and received from Dr. Burgwald, and determined that it was or came from the bowel of a small animal (Dr. Hoekzema, Tr. 2067). CX 57 is a copy of the pathology report. The report states (CX 57):

The specimen consists of two pieces of tissue, one a 15-cm. in length segment of what appears to be small bowel from a non-human source * * *.

Responsibility of Individual Respondents

72. Yuda Galazan, Nyla Ford and Ronald Brown were individually responsible for the promotion of tours to the Philippines so that tour members could undergo "psychic surgery," and each was individually responsible for false, misleading and deceptive written, oral and visual representations to the public, in connection with the sale of tours to the Philippines for "psychic surgery," that "psychic surgery" was an actual surgical operation, that the body was thereby opened with the bare hands, and diseased tissue or disease-causing material removed therefrom. As previously found, Nyla Ford and Ronald Brown were officers, owners, and managers of Travel King, Inc., Mr. Brown becoming sole owner, however, as of Feb. 1, 1974. They formulated, directed and controlled the policies, acts and practices of Travel King, Inc.

73. Yuda Galazan, as previously found, was president and sole owner of Ramble Travel & Tours, Inc., which continued the downtown Seattle business of Travel King, Inc., subsequent to Dec. 7, 1973, using

the trade names Travel King and Travel King & Ramble Tours. From Oct. 31, 1973, to Dec. 7, 1973, Mr. Galazan managed the downtown Seattle office of Travel King, Inc. Mr. Galazan formulated, directed and controlled the policies, acts and practices of Ramble Travel & Tours, Inc., from the date of its incorporation, and participated in the formulation, direction and control of the policies, acts and practices of the Travel King, Inc., office in downtown Seattle.

74. Mr. Galazan promoted tours to the Philippines for "psychic surgery" by a variety of methods, including newspaper advertising, public meetings with film showings, and tour literature. CX 9, 10, 14-16, 192 and 193 are newspaper advertisements from the major Seattle newspapers, the Seattle Times and Post-Intelligencer, placed by Mr. Galazan between August and December 1973.

CX 192 reads "PHILIPPINE PSYCHIC HEALING, Appointment and Tour Arranged, Films Available for Showing, For More Information Call 622-5424." This ad appeared in the Seattle Post-Intelligencer, Sept. 26, 1973. The telephone number was identified as Mr. Galazan's, and Mr. Galazan placed and paid for that advertisement (Galazan, Tr. 822-23).

CX 193 reads "NOTICE TO THE PUBLIC, Information for PSYCHIC HEALING in the Philippines, Film to be Shown Sunday, Sept. 30, 1 P.M., Holiday Inn—Bellevue," again listing Mr. Galazan's number. This ad appeared in the Seattle Post-Intelligencer on Sept. 29, 1973, and was placed and paid for by Mr. Galazan (Tr. 821-22).

CX 9 is a newspaper advertisement identical to CX 192, except that it shows the telephone number of the Travel King, Inc., downtown Seattle office rather than Mr. Galazan's number. This ad appeared in the Seattle Post-Intelligencer on Oct. 18, 1973 (Galazan, Tr. 854-56).

CX 10 is a newspaper advertisement which reads "NOTICE TO PUBLIC, Due to Overwhelming Requests There will be Another Showing of Astounding Films on PHILIPPINE PSYCHIC HEALING, Sunday, Oct. 7, 1 p.m., Holiday Inn, Bellevue, Wn., Free to Public." This ad appeared on Oct. 6, 1973, in the Seattle Post-Intelligencer. Mr. Galazan acknowledged that he placed this advertisement (Galazan, Tr. 854-57).

CX 15 is an advertisement which appeared in the Seattle Times on Nov. 15, 1973. It is entitled "VISIT PHILIPPINE FAMOUS PSYCHIC HEALERS" and announces a film showing in the Spanish Ballroom of the Olympic Hotel on Saturday, Nov. 17, 1973, at 1:00 P.M., and also announces a tour departure on Nov. 29, 1973. The advertiser is identified as "TRAVEL KING TRAVEL AGENCY—SEATTLE." CX 14 is an advertisement using practically the same language but a different format. Mr. Galazan placed and paid for these two advertise-

ments (Galazan, Tr. 888-890A; Admission of Mr. Galazan; Galazan, Tr. 795).

CX 16 announces another film showing at the Holiday Inn in Bellevue, Wash., Sunday, Nov. 4, at 1:00 P.M. The downtown Seattle phone number of Travel King, Inc., is given in this advertisement. The exhibit is an advertising specimen for the Seattle Times dated Nov. 2, 1973. Mr. Galazan placed this advertisement before Oct. 31, 1973 (Galazan, Tr. 888-890A; downtown office phone number appears in respondent Ronald Brown's supplemental answers to interrogatories, Exhibit B).

75. As the foregoing findings disclose, Travel King and Mr. Galazan sponsored public meetings at which "psychic surgery" was discussed and films of "psychic surgery," like CX 80, were shown. These meetings have already been discussed in some detail. Mr. Galazan was present at all these showings and promoted tours to the Philippines for "psychic surgery" at them. The showings were before audiences of hundreds of people (Galazan, Tr. 890A-B), and "psychic surgery" was represented to the public as an actual surgical operation by which the body was opened with the bare hands, diseased tissue or disease-causing material removed, etc.

76. The TV advertising of Travel King has been the subject of prior findings. CX 210 is the script of this commercial which was prepared on the basis of instructions given to the manager of Channel 13 by Mr. Galazan (Galazan, Tr. 851-52).

77. Mr. Muchlinski and others were paid for their expenses in promoting Travel King "psychic surgery" tours. Mr. Galazan was a moving force in arranging to subsidize the expenses of Mr. Muchlinski in return for the promotion and recommendation by him of "psychic surgery" and Travel King tours (Galazan, Tr. 864-65). Mr. Galazan, in fact, continues to promote "psychic surgery" and tours to the Philippines (Galazan, Tr. 804, 815, 820, 862, 891-94, 925; Ford, Tr. 1821-22). Indeed, in a newspaper advertisement placed several months after a Federal court injunction was entered in this matter, the heading is used "TRAVEL KING AND RAMBLE TOURS AGENCY Continues Their Famous TOURS TO THE PHILIPPINES" (CX 19; Galazan, Tr. 896-97). Mr. Galazan placed this advertisement. Under the circumstances, this advertisement implies that a tour for "psychic surgery" is again being made available to the public, notwithstanding the injunction. This is especially so in view of Travel King's widely publicized film showings in the fall of 1973. Many of the people who went on the tour announced by this advertisement were sick and as a part of their tour, Mr. Galazan arranged visits with the "psychic surgeons" (Galazan, Tr. 895-900). During hearings in this very

proceeding, Mr. Galazan was involved in sending people to Portland, Oreg., for "psychic healing" (Galazan, Tr. 917-920, 958).

78. Ms. Ford, as earlier stated, fully participated in the formulation, direction and control of the policies, acts and practices of both Travel King, Inc., and Ramblé Travel and Tours, Inc. She was instrumental in obtaining and operating the downtown Seattle office of Travel King, Inc., during 1973, and actively promoted tours to the Philippines for "psychic surgery." After Mr. Galazan and later Ramblé Travel & Tours, Inc. took over operation of the downtown Seattle office, Ms. Ford continued working as a travel agent receiving a salary from Mr. Galazan. This employment was terminated in February 1974. One of the terms of the sale of the downtown office to Mr. Galazan was a provision for monthly payments or royalties to Ms. Ford based on the continuation of the "psychic surgery" tours (CX 1C; Ford, Tr. 1786-1790, 1796-97, 1838, 1848; Hasson, Tr. 1898; Galazan affidavit; Brown interrogatories; admissions of Ms. Ford).

79. Ms. Ford observed "psychic surgery" in the Philippines prior to promoting tours in the Seattle area. On her return from the Philippines, she obtained respondent Ronald Brown's concurrence in the promotion of tours for "psychic surgery" by Travel King, Inc., and prepared a tour program. A travel brochure was written and submitted to Northwest Airlines (Ford, Tr. 1814-1823; Hasson, Tr. 1900; Brown, Tr. 1861-63; Galazan, Tr. 807, 817, 960; Brown interrogatories; admissions of Ms. Ford). As noted earlier, CX 7A-B "QUESTIONS YOU MAY HAVE" was prepared by Ms. Ford for use in selling tours to the Philippines for "psychic surgery," and represents to the public that "there are men in the Philippines who have (or claim to have) powers to heal and/or operate on persons without instruments of any kind" (Ford, Tr. 1830-31). Ms. Ford was present with Mr. Galazan at film showings sponsored by Travel King showing "psychic surgery," and spoke at one of these meetings describing Travel King's travel brochure (Ford, Tr. 1824-1832).

80. Individual respondent Ronald Brown, although half-owner and later sole owner of Travel King and vice-president of that corporate respondent, was far less involved in the promotion of tours to the Philippines for "psychic surgery," and the misrepresentations connected therewith, than Mr. Galazan or Ms. Ford. Nevertheless, he did participate. He paid half the cost of television commercials for Travel King broadcast in September 1973 advertising "MIRACULOUS PHILIPPINE FAITH HEALERS," but disclaiming any responsibility for "surgery" by them (CX 210). Mr. Brown was well aware of the promotional activities for "psychic surgery" being conducted by Mr. Galazan and Ms. Ford, as already indicated, and the misrepresentations

being made (Galazan, Tr. 817, 960; Ford, Tr. 1819-1820; Brown, Tr. 1861-63).

81. Adeline C. Heredia and Emile H. Heredia were likewise individually responsible for the promotion of tours to the Philippines so that tour members could undergo "psychic surgery," and each was individually responsible for false, misleading and deceptive written, oral and visual representations to the public that "psychic surgery" was an actual surgical operation, that the body was thereby opened with the bare hands, and diseased tissue or disease-causing material removed therefrom. Mr. Mapa, the sales and marketing manager for Phil-Am, began the development of "psychic surgery" tours to the Philippines on behalf of that travel agency after encountering a tour group arranged by respondent Gem (Mapa, Tr. 1420-22). Thereafter he advised Mr. Heredia, co-owner of Phil-Am, of the potential of such tours and with his consent began planning a tour to visit Rev. Agpaoa, the best known "psychic surgeon" at that time (Mapa, Tr. 1420-26, 1428-29). Mr. Heredia had seen "psychic surgery" operations in the Philippines, was aware that Rev. Agpaoa, one of the most famous of the "psychic surgeons," had been indicted for fraud and had fled the United States, and yet, as owner and manager of Phil-Am, permitted Phil-Am to promote "psychic surgery" tours to the Philippines as described in earlier findings (Emile Heredia, Tr. 1498-99, 1500). Likewise, Adeline C. Heredia exercised the general executive responsibilities of president of Phil-Am. She had a general understanding of "psychic surgery" and approved the brochure publicizing Phil-Am's tour with Philippine Airlines which stated "psychic surgery is happening in the Philippines" (Adeline C. Heredia, Tr. 1534-1542; CX 175). She looked upon "psychic surgery" tours to the Philippines as "another market" for Phil-Am, and approved payments to former Phil-Am tour conductors for the promotion of "psychic surgery" by film showings and other means (Adeline C. Heredia, Tr. 1545-1550).

82. Individual respondents Laurence C. Marquez and Marian E. Butterfield jointly owned and controlled corporate respondent Gem. They knew of, participated in, and were responsible for, the activities of Gem in promoting "psychic surgery" tours to the Philippines so that tour members could undergo "psychic surgery," and each was individually responsible for false, misleading and deceptive, written, oral and visual representations to the public that "psychic surgery" was an actual surgical operation, that the body was thereby opened with the bare hands, and diseased tissue or disease-causing material removed therefrom. Both Mr. Marquez and Ms. Butterfield were fully cognizant of the promotional activities of Gem employees for "psychic surgery." Indeed, both had seen "psychic surgery" films and did not believe that

the body was actually opened with the bare hands, and diseased tissue or disease-causing material removed (Marquez, Tr. 1108-09, 1123; Cortez, Tr. 1148; Butterfield, Tr. 1205).

Respondents Had No Reasonable Basis for Representing "Psychic Surgery" to Be an Actual Surgical Operation, Etc.

83. It has been found that "psychic surgery" is pure fakery. The body is not opened, no "surgery" is performed with the bare hands or with anything else, and nothing is removed from the body. The entire "operation" is an egregious fraud perpetrated by sleight-of-hand and similar tricks and devices. The fact that an individual respondent in this matter may have been taken in by the tricks of the "psychic surgeons," if that is true, does not render the deception perpetrated on the public by the promotion and sale of tours to undergo "psychic surgery" any the less real. Knowledge or intent is not a requisite for finding that respondents engaged in false, misleading, deceptive and unfair acts and practices, and made material misrepresentations to the public in promoting tours to the Philippines for "psychic surgery."

84. In any event, in view of the absolutely incredible nature of "psychic surgery" respondents were under a duty to make a thorough inquiry before making representations to the public in promoting tours to the Philippines that actual surgery would be performed, that the body would be opened with the bare hands, etc. Respondents had no reasonable basis to represent, or to allow representations to be made on their behalf, that "psychic surgeons" opened the body with their bare hands, removed diseased tissue, etc. Indeed, apart from the incredible nature of "psychic surgery," there is evidence in the record of the wide dissemination of information, when respondents were promoting their tours, that fraud was involved in "psychic surgery." One of the more famous "psychic surgeons," Rev. Agpaoa, was indicted in 1968 for fraud in the United States involving "psychic surgery," forfeited bail and fled the country (CX 59A-C, CX 60). This received extensive publicity (see Adeline C. Heredia, Tr. 1500). Leading metropolitan newspapers in both Seattle and San Francisco carried prominent articles questioning "psychic surgery" (see articles in Seattle Times, CX 72 through CX 74, CX 76-78; Tr. 979-980; the Seattle Post-Intelligencer, CX 96, the San Francisco Chronicle, CX 147 and 148). In the Seattle area, one of the witnesses in this proceeding who saw "psychic surgery" in the Philippines and detected it as fakery, appeared on at least three occasions on Channel 7 disclosing the fraud involved (Allen, Tr. 627, 681-82). And in the Port Angeles, Wash., Chronicle as early as Oct. 25,

1972, articles appeared revealing the fakery in "psychic surgery" (CX 154).³

85. The publicity relating to "psychic surgery" described in the foregoing finding was very explicit. The Port Angeles Chronicle, for example, in October 1972 carried an article headed "Films of Phony Operations Will Be Shown." The Port Angeles Chronicle went on to state (CX 154):

* * * The techniques used by Agpaoa can be clearly seen. They include use of animal parts and tissue as well as dehydrated blood capsules. At first the healer and his assistants welcomed the filmmakers, but when they realized how powerful the zoom lens on the camera was they stopped the cameras and wouldn't allow any more filming * * *"

The Seattle Times in December 1973 reported (CX 74):

Agpaoa, a self-styled leader of the healers, jumped bail in Detroit five years ago after a federal grand jury charged he had defrauded ailing Detroit residents of thousands of dollars by enticing them to fly to Manila for "cures."

The "psychic surgeries" he and other healers supposedly perform with their bare hands cause no pain and leave no scar. Skeptics say this is because the healers actually do not open the body.

Several newspapers and persons who have witnessed the "surgeries" have reported the healers conceal animal organs and blood capsules in their hands, then palm the matter atop the body to give the appearance of an opening in the flesh.

The Philippine consulate was reported to have warned ailing persons "not to expect miracles" and that Rev. Agpaoa had been "denounced by the Philippine Medical Association for his questionable activities and faces possible criminal prosecution" (CX 76). Another article appearing in the Seattle Times in November 1973 contained the statement (CX 78):

A nonbeliever is Alejandro Roces, a writer and secretary of education a decade ago in the cabinet of former President Diosdado Macapagal.

On a recent occasion, he seized a pan of water containing flesh which a healer supposedly had just extracted from a patient.

Roces said he took it to a laboratory for analysis. "It was chicken intestine," he said.

The article also contained a large picture of respondent Galazan. An article in the San Francisco Chronicle in June 1973 began with a statement that "Gem Travel Service, Inc." was marketing a "nifty" tour package "complete with two weeks' worth of visits to a psychic healer" (CX 147A; see also Cortez, Tr. 1025-26). The article featured " 'Dr. Tony' Agpaoa" and contained a picture with the caption "Films show 'Dr. Tony' operating with his bare hands." The article also noted that films were circulating in the "Bay Area," and reported that:

Agpaoa made the mistake a month later of visiting this country and was arrested, tried, and fined for fraud and practicing medicine without a license. He's had his problems with the authorities back home, too, but continues in business.

³ These newspaper articles were not admitted for the truth of any factual information contained in them. They were received as relevant and material to the allegation in Paragraph Six of the complaint that respondents lacked a "reasonable basis for representations leading members of the general public to believe that the 'psychic surgery' performed in the Philippines is an actual surgical operation * * *." (Tr. 979-980).

A companion article on June 26, 1973, contained additional descriptive matter on "psychic surgery," endorsements of those who believed in it, and quotations from one "Dr. Francis Rigney, an assistant clinical professor of psychiatry at the University of California Medical Center" (CX 148A):

Any decent magician could do it, and few people could spot the trickery * * *"

The American Cancer Society was quoted as follows (CX 148B):

The cancer society's report also said tests have found the blood isn't always human blood—sometimes it is from animals, and sometimes ont [sic] blood at all—and the removed tissues are usually animal guts.

A witness in this proceeding, Larry Allen, mentioned earlier, after detecting the fraudulent character of "psychic surgery" on a Gem tour, returned to Seattle and in addition to appearing over television to expose the fraud, wrote a letter which the Seattle Post-Intelligencer published on Nov. 17, 1973, which stated (CX 96):

* * * The healing turned out to be a common fraud, performed by sleight-of-hand with animal blood and innards * * *"

86. Publicity calling "psychic surgery" into question on the ground of fraud was proven by complaint counsel to have come to the attention of representatives of all corporate respondents. The article in the San Francisco Chronicle (CX 147A-B) published June 25, 1973, was seen by respondent Adeline C. Heredia (Tr. 1539), and both Ms. Heredia and Emile H. Heredia were long aware that Rev. Agpaoa had been indicted in the United States for fraud in connection with "psychic surgery" (Emile H. Heredia, Tr. 1500; Adeline C. Heredia, Tr. 1537). Laurence C. Marquez and Marian E. Butterfield of Phil-Am were also proven to have seen the San Francisco Chronicle article (CX 147A-B) see Tr. 1123 and Tr. 1205. Mr. Cortez, an employee of Gem, who particularly promoted that travel agency's "psychic surgery" tours, was also familiar with the San Francisco Chronicle articles and the indictment of Rev. Agpaoa (Cortez, Tr. 1024-27). Likewise, respondent Galazan had seen articles in the Seattle Times including the announcement, quoted earlier, from the Philippine consulate (CX 76). Mr. Galazan acknowledged seeing another article published Nov. 20, 1973, which contained his picture as well as the statement, also quoted earlier, of "Alejandro Roces" that he found the material allegedly removed from a patient by a "psychic surgeon" to have been "chicken intestine" (CX 78) see Galazan, Tr. 982-83.

Public Interest

Volume of Business

87. Substantial numbers of people have purchased package tours to the Philippines from and through respondents, paying substantial sums of money therefore. The cost of the tour offered by Travel King, Inc. & Ramble Tours from the West Coast was either \$1,132 per person or

\$1,186 per person, depending on the season (CX 2). Phil-Am's tour cost \$985 under the group plan, and \$1,200 under the independent plan (CX 26). The Gem tour was \$932 under the group plan, \$1,007 under the regular plan, and \$1,116 under the independent plan (CX 50). Travel King, Inc. & Ramble Tours appear to have sold at least 200 tours (see Galazan, Tr. 804, 815, 820, 862, 891-92). Phil-Am has marketed over 814 tours (CX 214; Tr. 1570), and Gem about 1042 (CX 143; Tr. 1014). All in all, about \$2,000,000 has been spent by the public on the "psychic surgery" tours of respondents to the Philippines. Further, insofar as travel to the Philippines to obtain "psychic surgery" is concerned the foregoing seems to be only the "tip of the iceberg." Many thousands of ill persons from all over the world seem to have made the trip, drawn by the desperate but futile hope that by some magic their bodies will be opened by Philippine "healers," and the causes of their diseases removed.

Injury to the Public

88. The representation that "psychic surgeons," "psychic healers," "faith healers," or "spiritual" or "spirit healers" have the ability to open the body with their bare hands, to remove diseased tissue or disease-causing material, to close the body and leave no scar, all without pain or anesthesia, has the capacity to cause the gravest and most serious, indeed, incalculable injury to individuals and to the public generally. Not only do such representations have the tendency and capacity to cause seriously ill persons to travel long distances at great expense, and to waste their time, money, and energy in the false belief that they will undergo an actual surgical operation, but such representations have the tendency and capacity to worsen the condition of the sick, and even to cause death, through interruption of normal medical care.

89. The foregoing are not purely theoretical possibilities. Complaint counsel produced evidence establishing the reality of such effects.

The case of Mr. Hansen

Mr. Hansen, suffering from congestive heart failure and a non-reparable hernia, was taken by his wife, through a Gem tour, to the Philippines to obtain "psychic surgery" from Rev. Agpaoa. Mr. Hansen was desperate to have his hernia repaired. Mr. and Mrs. Hansen had seen "psychic surgery" films, and decided to go to the Philippines to see Rev. Agpaoa (Mrs. Hansen, Tr. 2072-73). Mr. Hansen started the trip comfortably, although in a wheelchair. By the time he had traveled from Seattle to San Francisco, transferred aircraft and flown to Hawaii, he "had a spell." Mrs. Hansen, a registered nurse, had medications with her and there was a doctor on the plane. Mr. Hansen was given oxygen and was eventually able to sleep (Mrs. Hansen, Tr. 2073). After arriving in the Philippines, Rev. Agpaoa "operated" on Mr.

Hansen. According to Mrs. Hansen, Rev. Agpaoa removed "a piece of tissue that was about an inch wide and six inches long" from her husband. This amazed her "because you know when you are being operated on for a rupture, you don't have to pull out anything. You repair" (Mrs. Hansen, Tr. 2077). On the return trip, just as they arrived home, Mr. Hansen came down with pneumonia, and had to be hospitalized. Mr. Hansen spent eight days in the hospital with pneumonia and died at home of congestive heart failure on the day he was released (Mrs. Hansen, Tr. 2084-86). Persons with congestive heart trouble are susceptible to pneumonia, which is hard on their hearts (Mrs. Hansen, Tr. 2087-88).

The case of Mrs. Douglass

Mrs. Douglass suffered from inoperable cancer in her neck and had a short life expectancy. Her husband heard about, and became interested in, "psychic surgery" as offering a possible cure. Mr. Douglass saw an advertisement for a Travel King promotion at the Holiday Inn, Bellevue, Wash., which included a film showing. He and his wife attended. They watched the film and listened to testimonials (Douglass, Tr. 1344). As a result they purchased tickets, although from Gem, and both journeyed to the Philippines for "psychic surgery" from Rev. Agpaoa. Rev. Agpaoa "operated" on Mrs. Douglass, and pulled some tissue from the area of her neck. Mr. Douglass described Agpaoa's hands moving back and forth, moving cotton around on Mrs. Douglass' body, and seeing blood spurt after a few moments. He described blood clots on the skin's surface and the removal of what Rev. Agpaoa announced was "the tumor" (Douglass, Tr. 1351). As described in earlier findings, Mr. Douglass took a piece of the tissue Rev. Agpaoa had stated was the tumor he removed from Mrs. Douglass' neck. When they returned home the tissue was analyzed and was found to be of animal origin (Dr. Hoekzema, Tr. 2067). The report caused Mrs. Douglass to cry (Douglass, Tr. 1367). Mrs. Douglass did not improve. She received no benefit from her visit to the "psychic surgeon." She returned bitterly disappointed and physically weakened. The trip to the Philippines cost the Douglasses over \$2,000 and they also left Tony Agpaoa a \$100 donation (Douglass, Tr. 1367-68). The hot and humid climate and the disappointment of no improvement for his wife made Mr. Douglass describe his trip to the Philippines as "miserable" (Douglass, Tr. 1373).

The case of Mrs. Brown

Wallace Brown testified that his wife suffered a stroke in July 1972 which left her almost totally paralyzed. Over the next year, Mrs. Brown received various types of therapy, including physical, occupational, and speech therapy, but was able to improve her condition only slightly. She

was confined to a wheelchair, had difficulty speaking, and had double vision. Mr. Brown went to an advertised Travel King film showing on Sept. 30, 1973 (see CX 193). At the showing, he saw films of "psychic surgery" operations. He felt that his wife was at a point where no more improvement would occur and that he would have to accept things as they were. The films of "psychic surgery," however, offered him a hope of improvement for her that was not available anywhere else (Brown, Tr. 2093-94). Mr. Brown was very impressed with what the film showed and, coupled with the testimonials offered at the film showing, was very anxious to find out more about "psychic surgery." As a result, Mr. Brown took his wife and a woman to assist her to the Philippines in October 1973. In a two-week stay, Mrs. Brown was "treated" by many "healers," including Alex and Marcos Orbito, Tony Agpaoa, and Juan Blance. Mrs. Brown had many "operations" by these "healers," respondent Yuda Galazan making all the arrangements (Brown, Tr. 2111), but each day Mr. Brown noticed that there was no improvement. He also noticed that there was no improvement in the other members who accompanied him on this Travel King tour. Upon returning to the United States, there was still no improvement in his wife's condition. She had in fact lost ground in her ability to feed herself, which she was able to do before the trip but, because she did not continue her therapy, she did not have the ability upon her return. Mrs. Brown found the loss of hope very hard to take. The trip cost between \$3,000 and \$4,000 (Brown, Tr. 2115-2117).

The case of William Chambers

Mr. William Chambers was afflicted with amyotrophic lateral sclerosis, also known as Lou Gehrig's disease. His physician, Dr. Otto Trott, estimated that he had about three years left to live (Dr. Trott, Tr. 1964). Mr. Chambers, his wife and mother-in-law attended a film showing of psychic surgery conducted by Ms. Blanchard, and later a showing at which Mr. Rogers was present (Mrs. Chambers, Tr. 2157-58; Mrs. Stolz, Tr. 1942). Both Ms. Blanchard and Mr. Rogers, as described in prior findings, received payment for expenses from Phil-Am for their promotional activities for "psychic surgery" tours to the Philippines. After the showing at which Mr. Rogers was present, Mr. Rogers sent Mr. and Mrs. Chambers Phil-Am travel literature, including "PHIL-AM, TRAVEL AGENCY'S SPIRITUALIST PILGRIMAGE TO THE PHILIPPINES" (CX 39). This brochure contained the statement "the phenomenon of psychic surgery is happening in the Philippines," as previously described. Mr. Chambers determined to journey to the Philippines to obtain "psychic surgery." Mrs. Stolz, his mother-in-law, accompanied him. In November 1973 they both traveled to the Philippines on one of Phil-Am's "psychic surgery" tours. Mr.

Chambers had much difficulty walking during the trip, especially on one occasion when he had to carry baggage a long distance over concrete at the airport (Mrs. Stolz, Tr. 1943). Once in the Philippines, Mr. Chambers' treatment consisted of "psychic surgery" with frequent, intensive massage of the legs. Mrs. Stolz testified that after these treatments, Mr. Chambers was in great discomfort with swollen and weakened legs (Mrs. Stolz, Tr. 1944-49). When Mr. Chambers returned, his wife observed that his condition was weaker, and several days later he entered the hospital with blood clots in the lungs for which he was placed on anticoagulant medication (Mrs. Chambers, Tr. 2159-2160). It was the opinion of his physician, Dr. Trott, that these emboli were caused by thrombosis of the legs resulting from the trip to the Philippines. The factors of a long flight, sitting upright in an airplane seat, and the frequent intensive massage connected with the "psychic surgery" combined to form blood clots in his legs which were carried to his lungs. In early April of 1974, Mr. Chambers had a fall at home, striking his head and suffering a subdural hematoma, a bleeding between the skull and the brain. Mr. Chambers recovered from this occurrence, but had to be taken off the anticoagulants upon which he had become dependent. Shortly thereafter, he suffered another pulmonary embolism, which resulted in his sudden death on the day he was scheduled to leave the hospital. Dr. Trott concluded that the Philippine "psychic surgery" tour resulted in Mr. Chambers' death when he was still expected to have approximately two years to live. Dr. Trott testified that pulmonary embolism is not a normal complication of amyotrophic lateral sclerosis and explained that blood clots could easily form in Mr. Chambers' weakened legs under the kind of massage he received in the Philippines. See Dr. Trott, Tr. 1968-2047. Mr. Chambers spent about \$2,000 and Mrs. Stolz about \$1,500 on the trip to the Philippines, including the tour price paid to Phil-Am, about \$400 in donations to "psychic surgeons" and incidental expenses. Dr. Trott estimated that medical expenses incurred by Mr. Chambers as a result of his travel to the Philippines were about \$3,300. In addition, because of his sudden death, Mr. Chambers was unable to obtain his normal pension from which his widow would have received benefits after he died (Mrs. Chambers, Tr. 2160-2186).

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the corporate and individual respondents, and over the acts and practices which are the subject of this proceeding.
2. Corporate and individual respondents promoted and were responsible for the promotion of tours to the Philippines so that tour

members could undergo "psychic surgery," "psychic healing," "faith healing," or "spiritual" or "spirit healing."

3. In the course of promoting tours to the Philippines, corporate and individual respondents made representations to the public which had the tendency and capacity to cause members of the public to believe that the "psychic surgery," "psychic healing," "faith healing," or "spiritual" or "spirit healing," which those who purchased tours from respondents would undergo in the Philippines, consisted of an actual surgical operation, that the body was opened with the bare hands, and that diseased tissue or disease-causing material was thereby removed.

4. Such representations were false and fraudulent, unfair, misleading and deceptive.

5. The "psychic surgery," "psychic healing," "faith healing," or "spiritual" or "spirit healing," performed in the Philippines on persons purchasing tours promoted by respondents did not consist of an actual surgical operation, the body was not opened with the bare hands, or with anything else, and diseased tissue or disease-causing material was not removed.

6. The "psychic surgery," "psychic healing," "faith healing," or "spiritual" or "spirit healing," to undergo which respondents marketed tours to members of the public, is pure fakery and a fraud accomplished by the deception and trickery of the "psychic surgeons," "psychic healers," "faith healers," or "spiritual" or "spirit healers" through the use of sleight-of-hand, tricks and devices, including the employment of animal parts, tissue and blood, all used to defraud and deceive trusting persons into the false and mistaken belief that human bodies have been opened with the bare hands, diseased material or disease-causing material removed, and the incision closed, all without pain or suffering.

7. The representations of corporate and individual respondents herein, and for which they were responsible, in the promotion of tours to the Philippines so that tour members could undergo "psychic surgery," "psychic healing," "faith healing," and "spiritual" or "spirit healing," had the tendency and capacity to inflict great injury and suffering on persons afflicted with serious, incurable or terminal illnesses and diseases, to prey upon and to exploit them, and to cause them, and in some cases their spouses, children or relatives, to undertake long journeys at great cost, hardship and inconvenience, and to forego medical treatment with the potential result of worsening their condition and hastening or causing their death.

8. There is great and abiding public interest in this proceeding.

9. The acts and practices of corporate and individual respondents disclosed by the record are to the prejudice and injury of the public, and constitute unfair methods of competition and unfair and deceptive

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

REMEDY

All corporate respondents disseminated false, misleading and deceptive representations concerning the nature of the "psychic surgery," "psychic healing," "faith healing," or "spiritual" or "spirit healing," which those who purchased tours to the Philippines from them would experience. The individual respondents herein controlled the policies, acts and practices of the closely-held corporate respondents, and are responsible for the activities of the businesses they controlled and the employees thereof. *Standard Educators, Inc.*, 79 F.T.C. 858, 894-99, *aff'd Standard Educators, Inc. v. Federal Trade Commission*, 475 F.2d 401, 402-03 (D.C. Cir. 1973); *Federal Trade Commission v. Standard Education Society*, 302 U.S. 112 (1937); *Pati-Port, Inc. v. Federal Trade Commission*, 313 F.2d 103 (4th Cir. 1963); *Standard Distributors, Inc. v. Federal Trade Commission*, 211 F.2d 7, 15 (2nd Cir. 1954); *Fred Meyer, Inc. v. Federal Trade Commission*, 359 F.2d 351 (9th Cir. 1966). All individual respondents, in fact, knew of, and authorized, directly or by acquiescence, or personally participated in, the dissemination of false, misleading and deceptive representations to the public, through film showings, distribution of literature and printed materials, statements, and otherwise, that the "psychic surgery," "psychic healing," "faith healing," "spiritual" or "spirit healing," which members of the public would experience if they purchased tours to the Philippines from respondents, consisted of an actual operation, that the body was opened, and diseased tissue or disease-causing material removed. Responsibility of respondents for the representations of "tour conductors" or "tour promoters," under the circumstances set out in the findings made earlier in this initial decision, is clear. *Goodman v. Federal Trade Commission*, 244 F.2d 584 (9th Cir. 1957); *Holiday Magic, Inc.*, order of Oct. 15, 1974 [84 F.T.C. 748]. To end the false, misleading and deceptive representations, all corporate and individual respondents must be bound by an order. Such action does not constitute "regulation of religious action" or of travel which is "religious in nature." Respondents may continue to do business as travel agents, but respondents may not promote travel or tours by misrepresenting the nature of the "treatment" available.

The order issued not only prohibits misrepresentation that "psychic surgery," "psychic healing," etc., consists of an actual "surgical operation," but prohibits the continued use of the terms "psychic surgery," "psychic healing," "faith healing," "spiritual" or "spirit healing," and similar terms, employed in the past by respondents in the

promotion of tours to the Philippines. The continued use of those terms would permit continued deception of the public. This would be true notwithstanding cessation of specific misrepresentations through films, dissemination of literature and printed materials, statements, etc., that "psychic surgeons" or "healers" in the Philippines had the miraculous power to open human bodies with their bare hands, and remove diseased tissue or disease-causing material. The legal authority to enter an order which will end all means of continuing past deceptive practices is well established. *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419, 428-430 (1957); *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608 (1946). The sale of "psychic surgery" or the arrangement for treatment by "psychic surgeons," in view of the record herein, is also obviously deceptive and requires prohibition, considering respondents' past conduct.

As an additional provision for ending continuing effects of past false, misleading and deceptive representations in the promotion of tours to the Philippines, respondents must also provide a copy of Attachment A to every member of the public who has taken a "psychic surgery" tour of a respondent or who inquires in the future about "psychic surgery," "psychic healing," etc., or who seeks to purchase travel, tours or accommodations for such purpose in the Philippines, or elsewhere. Past tour members must be notified because they may have discontinued vital medication or otherwise terminated valid medical treatment. As a result of the widespread publicity given to "psychic surgery" films, and other false, misleading and deceptive representations contained in the promotional materials and literature disseminated by, or on behalf of, respondents, it is probable that requests by the public for "psychic surgery" tours, and for travel to visit "psychic surgeons," or Philippine "healers," will be addressed to respondents in the future. Members of the public inquiring about "psychic surgery," "psychic healing," etc., must, for their protection, be given adequate disclosure of the fakery and danger involved. Such provision will also insure compliance with the order by preventing respondents from implicitly endorsing "psychic surgery," "psychic healing," etc., or continuing to sell such tours, by responding to requests for information by sending tour brochures or other literature. Such warning notice is clearly within the Commission's authority to order the relief essential to end unlawful practices and their continuing effects. *Federal Trade Commission v. National Lead, supra*; *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470 (1952); *Jacob Siegel Company v. Federal Trade Commission, supra*; see also, *Arthur Murray Studio of Washington, Inc. v. Federal Trade Commission*, 458 F.2d 622 (5th Cir. 1972), rehearing denied May 11, 1972; *S.S.S. Company, Inc. v. Federal Trade Commission*, 416 F.2d 226 (6th Cir.

1969); *All-State Industries of North Carolina, Inc. v. Federal Trade Commission*, 423 F.2d 423 (4th Cir. 1970).

Certain other provisions have also been included in the order. Respondents had no reasonable basis for believing that "psychic surgery," "psychic healing," etc., involved an actual opening of the human body with the bare hands, and the removal of diseased tissue or disease-causing material. In view of past misrepresentations with respect to treatment of disease by "psychic surgery," respondents must be prohibited from future misrepresentations with respect to any other form of treatment of disease unless there is a reasonable basis therefor. Those caught violating the Act "must expect some fencing in." *Federal Trade Commission v. National Lead, supra*. Similarly, the manner in which respondents approved, authorized, used, and benefited by the promotional activities of "tour promoters" or "tour conductors" for travel and tours to the Philippines for "psychic surgery," "psychic healing," etc., warrants that respondents be prohibited from providing compensation expenses, travel at free or reduced rates, or other benefits, to persons making representations or engaging in acts or practices prohibited by this order.

Complaint counsel originally sought a provision in the order requiring restitution to all persons who purchased "psychic surgery" tours to the Philippines from any corporate respondent in this proceeding. Subsequent to submission of proposed findings, complaint counsel withdrew their advocacy of restitution on the basis of the Commission's ruling of Jan. 21, 1975, striking the restitution provision from its order against *Holiday Magic, et al.*, Docket 8834 [85 F.T.C. 89]. The Commission's action was taken in view of the decision in *Heater v. Federal Trade Commission*, 503 F.2d 321 (9th Cir. 1974), and the decision of the Commission not to seek review of that decision by the Supreme Court. In striking the order of restitution from *Holiday Magic*, the Commission noted that while its determination not to seek review of the *Heater* decision should not be taken to signify a change in its view regarding the correctness of that decision:

* * * it does eliminate any possibility that *Heater* will not continue to be governing law in the Ninth Circuit.

This case, of course, arose in the Ninth Circuit and all respondents are within that circuit. Hence, restitution is not a valid remedy in this matter, even if it were otherwise contemplated, and complaint counsel properly no longer urge a provision in the order to that effect.

Complaint counsel, however, although dropping the restitution provision from their proposed order, seek to amend retroactively the notice order issued herein to provide a basis for the Commission to seek, in its discretion, "consumer redress" in the form of restitution as

authorized by the "Federal Trade Commission Improvement Act" of Jan. 4, 1975. Respondents oppose such action.

Section 206 of that Act creates a new Section 19 of the Federal Trade Commission Act, 15 U.S.C. §59, allowing the Commission, after it has issued a final cease and desist order, to sue a respondent or respondents in Federal district court to obtain "consumer redress" which may consist of "rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification" respecting the unfair or deceptive acts or practices. The statute applies to cases in which a cease and desist order issued after the date of enactment if the respondent (Section 206(b)(2)):

* * * had been notified in the complaint, or in the notice or order attached thereto, that consumer redress may be sought.

Neither the complaint, amended complaint, nor notice order in this proceeding contained any provision for restitution, or notified any corporate or individual respondent that "consumer redress" was or might be sought. Retroactive amendment of the Complaint would constitute a transparent evasion of the plain and unambiguous terms of the statute.

The fact that complaint counsel at the initial pretrial conference announced that they intended to seek restitution, and shortly thereafter filed a written notice to this effect (see notice of intent to seek restitution from corporate and individual respondents, filed Mar. 22, 1974) does not change matters. Such notice did not emanate from the Commission, but from complaint counsel. Respondents were never given notice by the Commission that "consumer redress" was or might be sought. And certainly, as stated, no such notice was in the complaint or notice order. To rule that, in lieu thereof, notice from complaint counsel met the requirements of the statute, would require construction and modification of the plain language thereof. Such action would be wholly unjustified. Where the language of a statute is plain and unambiguous there is no occasion for construction, and the statute must be given effect according to its plain and obvious meaning. *United States v. Public Utilities Commission of California*, 345 U.S. 295, 315 (1953); *Mastro Plastics Corp. v. National Labor Relations Board*, 350 U.S. 270, 287 (1955). Giving effect to the plain language of the statute will not produce anomalous or absurd results, indeed, to the contrary. Cf. *Federal Trade Commission v. Tuttle*, 244 F.2d 605 (2nd Cir. 1957), cert. denied, 354 U.S. 925. The motion of complaint counsel to amend the notice order is denied. It may be noted, in connection with the advocacy of restitution or "consumer redress" by complaint counsel, that respondents did not retain the bulk of the money paid by members of the public for "psychic surgery" tours to the Philippines. Except for a

commission, respondents remitted all such funds to airline companies and to hotels, etc., for "land" accommodations.

The following order is entered.

ORDER

It is ordered, That respondents Travel King, Inc., doing business as Travel King, Inc. & Ramble Tours; Phil-Am Travel Agency, Inc.; Gem Travel Service, Inc.; and Ramble Travel and Tours, Inc., corporations; Yuda Galazan and Nyla Ford, individually and as officers and directors of Ramble Travel and Tours, Inc.; Ronald Brown, individually and as an officer of Travel King, Inc.; Adeline C. Heredia and Emile H. Heredia, individually and as officers of Phil-Am Travel Agency, Inc.; Laurence C. Marquez and Marian E. Butterfield, individually and as officers of Gem Travel Service, Inc.; and their successors and assigns, and their agents, representatives and employees, acting directly or through any corporate or other device, or through any other person or firm, in connection with the advertising, offering for sale, sale, or provision of travel arrangements, or of any form of treatment for disease or disorder, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in the promotion of travel or tours to the Philippines, or elsewhere, that "psychic surgery"⁴ is an actual surgical operation, that the body is opened, and that diseased tissue or disease-causing material is removed from the human body.

2. Representing, directly or by implication, in the promotion of travel or tours to the Philippines, or elsewhere, that "psychic surgeons"⁵ in the Philippines, or elsewhere, have the ability or power to open the body with the bare hands, and to remove diseased tissue or disease-causing material.

3. Advertising or promoting, directly or indirectly, "psychic surgery," or travel or tours to the Philippines, or elsewhere, for "psychic surgery," or for visits to "psychic surgeons," or to any person claiming to be, or known by the respondent involved to be, a "psychic surgeon."

4. Using the terms "psychic surgery" or "psychic surgeon" in the promotion of travel or tours to the Philippines, or elsewhere, or any other term, description or symbol which suggests, directly or by

⁴ Whenever used in this order the term "psychic surgery" includes the terms "psychic healing," "faith healing," and "spiritual" or "spirit healing," and equivalent terms, when those terms refer to or contemplate, a "treatment" or "healing" procedure or technique which purports to involve the opening of the body with the bare hands, and the removal of diseased tissue or disease-causing material.

⁵ Whenever used in this order the term "psychic surgeon" includes the terms "psychic healer," "faith healer," and "spiritual" or "spirit healer," and equivalent terms, when those terms refer to a "healer" or person who purports to open the body with the bare hands, and to remove diseased tissue or disease-causing material.

implication, the opening of the body, the performing of any kind of surgery, or the removing of any tissue or material, with bare hands without instruments.

5. Offering for sale or selling "psychic surgery" or arranging or facilitating treatments by any "psychic surgeon."

6. Representing, directly or by implication, in connection with the promotion, sale, arrangement or scheduling of travel or tours, that during or at the end of such travel or tours, arrangements will be made for visits with any "psychic surgeon," or that any "psychic surgeon" will be available for visits.

7. Making any representation, directly or by implication, as to the validity, efficacy or safety of any form of treatment for disease or disorder without possessing, at the time the representation is made, a reasonable basis therefor.

8. Providing or arranging for the provision of any form of compensation, reimbursement, gratuity, or benefit, including free or reduced rate travel or accommodations to anyone known by the respondents involved, or who should have been known by the respondents involved with reasonable inquiry, to have engaged in the use of any of the representations or promotions prohibited by this order.

It is further ordered, That respondents shall:

(a) Deliver promptly to all persons who request information concerning "psychic surgery" or travel or tour arrangements to visit "psychic surgeons," or who have taken a "psychic surgery" tour of a respondent herein, a copy of the notice contained in Attachment A. [Where such inquiries are by telephone, the notice need only be sent if the inquiring person requests a written response or if a respondent sends written materials to the inquiring person.]

(b) Distribute a copy of this order to each of their employees and to all persons who are or have been tour conductors on respondents' "psychic surgery" tours.

It is further ordered, That each corporate respondent shall notify the Commission at least thirty days prior to any proposed change therein, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondent which may affect compliance obligations arising out of this order.

ATTACHMENT A

The following notice shall be typed on a single page or printed in type at least as large as typewriter pica type on respondents' letterhead:

WARNING

The following factual information is of vital importance to anyone who has undergone or contemplates undergoing "psychic surgery" by any "psychic surgeon" in the Philippines, or elsewhere.

Please read this warning carefully.

"Psychic surgery" has been shown to be fraud and fakery. The "psychic surgeons" in the Philippines use sleight-of-hand and other tricks and deceptions, including the employment of animal parts, tissue and blood to create the appearance of surgery.

"Psychic surgeons" use small capsules filled with the blood and tissue of animals hidden in their hands, cotton, and other places, to simulate human blood and tissue. Chemical analysis of blood appearing during one "operation" showed it to have come from a pig and a tumor supposedly removed during another came from a small animal. Another "psychic surgeon" used a concealed razor blade to make surface incisions. Two former "psychic surgeons" have publicly testified that *all "psychic surgery" is a fake*, using sleight-of-hand techniques and animal parts to create its effects. There is no opening of the body and nothing is removed from inside the body during "psychic surgery," regardless of who claims to be able to perform it.

There are known instances of people who have died or have been seriously injured as a result of the careless manipulations of the "psychic surgeons." These manipulations are particularly dangerous for persons with cancer, tumors, varicose veins, and certain heart conditions.

If you have stopped taking medication or seeing your doctor because you believe you have been "cured" by "psychic surgery," *you may be in serious danger*. There is no way to diagnose many diseases yourself. The feeling of improvement, if any, may only be short-lived and if you wait too long to consult a doctor, it may be too late for him or her to help you.

You should check with a doctor to ensure your own safety.

This travel agency no longer provides any arrangements for visits to "psychic surgeons."

OPINION OF THE COMMISSION

BY HANFORD, *Commissioner*:

The amended complaint in this matter charges the eleven respondents (four West Coast travel agencies and seven of their officers and shareholders) with selling tours to the Philippines by falsely representing that the "psychic surgery" offered there is an actual surgical operation by which diseased tissue or disease-causing material is removed from the human body and with lack of reasonable basis for these same representations.¹

The initial decision of Administrative Law Judge Hanscom, filed Feb. 28, 1975, found all eleven respondents in violation of Section 5 of the Federal Trade Commission Act on both theories. A comprehensive

¹ The following abbreviations are used for citations:

I.D. — Initial decision of administrative law judge;

Tr. — Transcript of testimony;

CX — Commission exhibit;

RB — Brief on appeal of respondent; and

FF — Findings of Fact.

order was entered, prohibiting virtually any activity by respondents in connection with "psychic surgery," and requiring that respondents send warning notices to past purchasers of "psychic surgery" tours and to those who inquire about such tours in the future. One travel agency, Gem Travel Service, Inc., and its two officers and shareholders, Laurence C. Marquez and Marian E. Butterfield, appeal.

We find no merit in any of respondents' contentions, nor do we see any other reason to disturb the initial decision and order; thus, they are both affirmed in full. The findings and conclusions of the law judge are adopted as those of the Commission.

Respondents raise four sets of arguments in challenging the initial decision.

1. Their first contention is that Judge Hanscom's findings of fact are not supported by the record as a whole.² Respondents' primary contention here is that their allegedly deceptive promotional efforts were few and far between and, in essence, *de minimis*. This argument is not supportable as either a legal or a factual matter. The dissemination of only one or a small percentage of deceptive representations has frequently been held to violate Section 5.³ As we have stated previously, "we are not prepared to say that deception is all right if practiced in moderation."⁴ This is particularly true where, as here, the deceptive representations have the capacity to cause extreme medical and financial injury to those members of the public who rely on them.⁵

Moreover, the deception practiced by respondents was by no means *de minimis*, either in time or in scope. In promoting its June 12, 1972 tour to the Phillipines, Gem's brochure featured the psychic surgery of Tony Agpaoa as one of its "highlights."⁶ It was represented in these brochures that Mr. Agpaoa would perform "painless, almost bloodless operation[s]" with his hands, rather than a knife.⁷ Soon thereafter, Mr. Ernie Cortez, a Gem employee, began sending out letters on Gem stationery, informing some of the "dozen a day or so" of potential Gem "psychic surgery" customers about the activities of Mr. Agpaoa.⁸ This

² RB 5-12.

³ *Gimbel Bros., Inc. v. F.T.C.*, 116 F.2d 578 (2d Cir. 1941); *Gimbel Bros.*, 60 F.T.C. 359 (1962), *appeal dismissed*, 7 S & D 549 (3d Cir. 1962); *Baldwin Bracelet Corp.*, 61 F.T.C. 1345 (1962), *aff'd*, 325 F.2d 1012 (D.C. Cir. 1963), *cert. denied*, 377 U.S. 923 (1964); *Fedders Corp.*, D. 8932 (Jan. 14, 1975 [85 F.T.C. 38]), *appeal docketed*, No. 75-4051, 2d Cir., Mar. 19, 1975.

⁴ *Baldwin Bracelet Corp.*, 61 F.T.C. 1345, 1363 (1962), *aff'd*, 325 F.2d 1012 (D.C. Cir. 1963), *cert. denied*, 377 U.S. 923 (1964).

⁵ FF 88-89, Tr. 594-603.

⁶ CX 53B. Mr. Agpaoa, who was indicted for fraud in connection with the practice of psychic surgery in 1967 and forfeited \$25,000 bond, had an "exclusive dealing" arrangement with Gem, by which any American wishing to use his services had to book with Gem. CX 59-60, FF 38, CX 52.

⁷ CX 53B, FF 41.

⁸ Tr. 1041-55.

letter speaks of "painless surgery with bare hands."⁹ Later, in mid-1973, Mr. Cortez, on behalf of Gem, attempted to promote "psychic surgery" tours through public showings of movies depicting actual "psychic surgery operations."¹⁰ This film was shown five times in four cities in two states and was viewed by hundreds of prospective Gem customers.¹¹ It unquestionably has the tendency and capacity to convey the message that "psychic surgery" is an actual surgical operation involving the opening of the human body and the removal of diseased tissue and/or disease causing material.¹²

Moreover, films depicting "psychic surgery" were shown to the public on Gem's behalf by several Gem tour conductors.¹³ The law judge found respondents liable for these films as well,¹⁴ and respondents concede such responsibility.¹⁵ We find no merit in respondents' contention that the representations made by the tour conductors were not deceptive.¹⁶ This defense is bottomed on two propositions: 1) the films accurately portray that which took place and 2) the tour conductors accompanied the films with a "balanced" narrative, setting forth the possibility that "psychic surgery" may be a fake. However, the mere holding out of the possibility that the procedure is genuine when in fact it is not is deceptive. Secondly, the few disclaimers shown to have been made were not sufficient to dissipate the profound emotional message of the films. Third, when a person shows a film which ostensibly depicts a miracle cure involving an apparent opening of the body to seriously ill persons, then invites them to partake of the cure, it is virtually impossible for disclaimers to eliminate the tendency of the film to convey the message to at least some members of the audience that an opening of the body is taking place. We must also reject respondents' defense that the tour conductors did not intend to sell the "psychic surgery" tours.¹⁷ Intent to deceive is simply not an element of a deception under Section 5.¹⁸

Respondents also argue that there has been no showing that sales resulted from any misrepresentations, rather than from word of mouth advertising.¹⁹ This contention must be rejected for two reasons: first,

⁹ CX 54A, CX 153A.

¹⁰ CX 81, FF 43-44. Tr. 1033-44.

¹¹ Tr. 1033-34.

¹² CX 81, FF 43-44, 49-50.

¹³ FF 45-47.

¹⁴ FF 46.

¹⁵ RB 8.

¹⁶ RB 8-12.

¹⁷ RB 9-10.

¹⁸ *Koch v. F.T.C.*, 206 F.2d 311 (6th Cir. 1953); *Ford Motor Co. v. F.T.C.*, 120 F.2d 175 (6th Cir.), cert. denied, 314 U.S. 668 (1941); *Gimbel Bros., Inc. v. F.T.C.*, 116 F.2d 578 (2d Cir. 1941); *F.T.C. v. Sterling Drug, Inc.*, 317 F.2d 669 (2d Cir. 1963); *Montgomery Ward & Co., Inc. v. F.T.C.*, 379 F.2d 666 (7th Cir. 1967).

¹⁹ RB 12.

much of the word of mouth must inevitably have stemmed from earlier misrepresentations;²⁰ second, it need not be shown that even one consumer actually relied on a particular false claim.²¹

2. Contending that the law judge's order is overbroad, respondents ask us to alter Paragraphs 3 and 5 and delete Paragraph 6 and the first "*It is further ordered*" paragraph. The purpose of modifying Paragraphs 3, 5, and 6 is to allow respondents to continue to sell "psychic surgery" tours. We believe, however, that based on respondents' past conduct in promoting these tours and the law judge's conclusion that "psychic surgery" is "pure fakery and a fraud,"²² an outright ban on promotion of "psychic surgery" tours or arrangement for visits to "psychic surgeons" is well within the permissible limits of the Commission's power to "fence in" law violators.²³ Where the very sale of a product or service is offensive to public policy, it is within the authority of the Commission to ban its sale entirely.²⁴

Because we are dealing here with desperate consumers with terminal illnesses who want to believe that "psychic surgery" will cure them, no amount of disclosure will suffice to drive home to all the point that "psychic surgery" is nothing but a total hoax. Respondents' argument that we may not prohibit the arrangement or advertisement of "psychic surgery" has little force in light of their concession that we may prohibit them from selling "psychic surgery."²⁵ Surely the power to prohibit the sale of a service encompasses the power to prohibit its advertisement.

The second aspect of respondents' appeal of the order relates to the sending of the warning notice to past purchasers and those who inquire about "psychic surgery" in the future. As respondents themselves contend, much of their "psychic surgery" business stems from word of mouth of former customers. As respondent Butterfield put it, word of mouth had a "snowballing" effect.²⁶ Even if Gem no longer sells "psychic surgery" tours, some wayfaring souls, hearing the word of mouth, may book passage through Gem to the Philippines to see Mr.

²⁰ As respondent Butterfield put it (Tr. 1186), word-of-mouth from the earlier tours created a "snowballing effect" on Gem's "psychic surgery" business. See also Tr. 747.

²¹ *Bockenstette v. F.T.C.*, 134 F.2d 369 (10th Cir. 1943), modified, 4 S & D 423 (10th Cir. 1945); *Charles of the Ritz Dist. Corp. v. F.T.C.*, 143 F.2d 676 (2d Cir. 1944); *Northern Feather Works, Inc. v. F.T.C.*, 234 F.2d 335 (3d Cir. 1956); *American Life and Accident Insurance Co. v. F.T.C.*, 255 F.2d 289 (8th Cir.), cert. denied, 358 U.S. 875 (1958).

²² I.D. 64[p. 764, herein].

²³ *F.T.C. v. National Lead Co.*, 352 U.S. 419 (1957); *S. Dean Slough v. F.T.C.*, 396 F.2d 870 (5th Cir.), cert. denied, 393 U.S. 980 (1968); cf. *Albert Lane v. F.T.C.*, 130 F.2d 48 (9th Cir. 1942).

²⁴ *Peerless Products, Inc.*, 56 F.T.C. 1070, aff'd, 284 F.2d 825 (7th Cir. 1960), cert. denied, 365 U.S. 844 (1961).

²⁵ In their proposed order, respondents would retain the prohibition against selling "psychic surgery" or offering it for sale. RB 21.

²⁶ Tr. 1186.

Agpaoa. This is a continuing effect of past deception and may properly be remedied via a warning letter.²⁷

Additionally, for their own medical benefit, it is important to warn past "psychic surgery" tour participants that "psychic surgery" was a hoax. As Judge Hanscom said: "Past tour members must be notified because they may have discontinued vital medication or otherwise terminated valid medical treatment."²⁸

As for future inquirers about "psychic surgery," it is obvious that they have at least some interest in partaking of "psychic surgery" services. The fact that they have come to Gem is evidence that the interest was likely engendered by Gem's past acts. To reduce the probability that, as a result of Gem's past deception, these individuals partake of "psychic surgery," it is not unduly burdensome to require respondents to inform them that "psychic surgery" is a hoax.

Respondents also ask us to delete the requirement that they distribute a copy of the order to employees and past or present "psychic surgery" tour conductors. Provisions of this type have frequently been entered by the Commission and upheld by the courts.²⁹ We find this provision entirely appropriate here.

3. Respondents also ask us to delete the reasonable basis provision (Paragraph 7) from the order.³⁰ This request is based on three arguments. First, they contend that the representations for which the reasonable basis was allegedly lacking were *de minimis*. We reject this contention as being unfounded in law or fact for the same reason we reject the *de minimis* argument as to the falsity issue.³¹ Second, respondents argue that the tour conductors did not lack a reasonable basis for their claims, since they were "satisfied users." The experience of a lay tour guide is clearly not an adequate basis for this type of medical claim.³² Respondents' third argument is that the order paragraph relating to reasonable basis is too broad in any case. They contend that it would stop their sale of tours to Lourdes or Fatima. This would be so only if the mere sale of a tour there constitutes a representation as to the efficacy of the "treatment for disease or disorder" which may be obtained there. We do not believe that a mere

²⁷ *Campbell Soup Co.*, 77 F.T.C. 664 (1970); *Firestone Tire & Rubber Co.*, 81 F.T.C. 398 (1972), *aff'd*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973); *I.T.T. Continental Baking Co.*, D. 8860 (Oct. 19, 1973 [83 F.T.C. 865]), *appeal docketed*, No. 75-4141, 2d Cir., July 11, 1975; *Sugar Information, Inc.*, 81 F.T.C. 711 (1972); *I.T.T. Continental Baking Co., Inc.*, 79 F.T.C. 248 (1971); *Ocean Spray Cranberries, Inc.*, 80 F.T.C. 975 (1972); *Pay Less Drug Stores Northwest, Inc.*, 82 F.T.C. 1473 (1973); *Boise Tire Co.*, C-2425 (July 16, 1973 [83 F.T.C. 21]); *Lens Craft Research and Development Co., et al.*, D. 8950 (Sept. 4, 1974 [84 F.T.C. 355]); *Wasem's Inc.*, C-2524 (July 23, 1974 [84 F.T.C. 209]).

²⁸ I.D. 66[P. 766, herein].

²⁹ *E.g., Consumers Products of America, Inc., v. F.T.C.*, 400 F.2d 930 (3d Cir. 1968), *cert. denied*, 393 U.S. 1088 (1969); *National Dynamics v. F.T.C.*, 492 F.2d 1333 (2d Cir.), *cert. denied*, 419 U.S. 993 (1974).

³⁰ RB 15-17.

³¹ Pp. 2-4, *supra*[pp. 772-773 herein].

³² Cf. 21 C.F.R. Sec. 330.10 (a)(4) (ii).

visit to a religious or spiritual shrine constitutes a "treatment." Thus, this provision is not overbroad.

4. Respondents' last major argument is that individual respondents Marquez and Butterfield should not be included in the order because they did not personally represent anything about "psychic surgery" to anyone and did not encourage violations by the tour conductors.³³ Respondents miss the point. Under the law, the presence of knowledge, control, and authorization is more than an ample basis for individual liability.³⁴ All these elements were found by the administrative law judge and respondents do not contest these findings.³⁵ We hold that individual liability is amply justified under the law and is necessary on these facts to prevent circumvention of the order.³⁶

For the reasons set forth herein, the appeal of respondents is denied. The initial decision will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondents Gem Travel Service, Inc., Laurence C. Marquez and Marian E. Butterfield from the administrative law judge's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That respondents, Travel King, Inc., Phil-Am Travel Agency, Inc., Gem Travel Service, Inc., Ramble Travel and Tours, Inc., Yuda Galazan, Nyla Ford, Ronald Brown, Adeline C. Heredia, Emile H. Heredia, Laurence C. Marquez, and Marian E. Butterfield shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

³³ RB 17-19.

³⁴ *Surf Sales Co. v. F.T.C.*, 259 F.2d 744 (7th Cir. 1958); *Steelco Stainless Steel Inc. v. F.T.C.*, 187 F.2d 693 (7th Cir. 1951); *Consumers Home Equipment Co. v. F.T.C.*, 164 F.2d 972 (6th Cir.), *cert. denied*, 331 U.S. 860 (1947); *Walter Dlutz v. F.T.C.*, 406 F.2d 227 (3d Cir.), *cert. denied*, 395 U.S. 936 (1969); *Lloyd A. Fry Roofing Co. v. F.T.C.*, 371 F.2d 277 (7th Cir. 1966); *John A. Guziak v. F.T.C.*, 361 F.2d 700 (8th Cir. 1966), *cert. denied*, 385 U.S. 1007 (1967); *Fred Meyer, Inc. v. F.T.C.*, 359 F.2d 351 (9th Cir. 1966) *rev'd on other grounds*, 390 U.S. 341 (1968); *Standard Educators, Inc. v. F.T.C.*, 475 F.2d 401 (D.C. Cir.), *cert. denied*, 414 U.S. 828 (1973); *contrast Coro, Inc. v. F.T.C.*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965), where individual liability was denied by the Court based on the individual's lack of knowledge of the facts constituting the deceptive practice.

³⁵ FF 82, I.D. 63-66. See also FF 7, 39, 40, 44, 46, 86, Tr. 1106-20, 1195-98.

³⁶ *F.T.C. v. Standard Education Society*, 302 U.S. 112 (1937).

Respondents also contend that the law judge exceeded his authority when he found their conduct to be "a fraud" (I.D. 64). Commission findings of "fraud" have been found supported in the past by the courts on numerous occasions, e.g. *International Art Co. v. F.T.C.*, 109 F.2d 393 (7th Cir.), *cert. denied*, 310 U.S. 632 (1940); *Consumers Home Equipment Co. v. F.T.C.*, 164 F.2d 972 (6th Cir.), *cert. denied*, 331 U.S. 860 (1947); *Dorfman v. F.T.C.*, 144 F.2d 737 (8th Cir. 1944). We find the law judge's characterization of respondents' conduct amply supported by the record and well within his authority.

IN THE MATTER OF
ROSENTHAL CHEVROLET CO., ET AL.

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

Docket 8975. Complaint, July 1, 1974-Decision, Sept. 30, 1975

Consent order requiring an Arlington, Va., new and used car dealership, among other things to cease misrepresenting that any vehicle is new when it has been used in any manner other than the limited use necessary in moving or road testing it prior to delivery to the customer. Further, the complaint is dismissed as to individual respondent Robert M. Rosenthal.

Appearances

For the Commission: *Jerry W. Boykin.*

For the respondents: *Basil J. Mezines, Stein, Mitchell [Mezines,*
Wash., D.C.

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 Rosenthal Chevrolet Co., a corporation, and Robert M. Rosenthal and Harry Rosenthal, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rosenthal Chevrolet Co. 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 3400 Columbia Pike, in the County of Arlington, Commonwealth of Virginia.

Respondents Robert M. Rosenthal and Harry Rosenthal are individuals and officers of the corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including those hereinafter set forth. Their business address is the same as that of the corporate respondent.

The respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, and sale to the public of new and used motor vehicles and in the servicing and repair thereof.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said motor vehicles to be sold to purchasers thereof located in various States of the United States and the District of Columbia, including the Commonwealth of Virginia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said motor vehicles in commerce, as "commerce" is defined in the Federal Trade Commission Act. Also in the course and conduct of their business, respondents have caused, and now cause, customers' notes, contracts, payments, checks, credit reports, title registrations, correspondence and other documents relating to payment of the purchase price for respondents' motor vehicles to be transmitted by various means, including but not limited to, the United States mails, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business, as aforesaid, and for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their motor vehicles and services, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation and by means of radio and television broadcasts transmitted by radio and television stations located in the District of Columbia, having sufficient power to carry such broadcasts across State lines, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical and illustrative of the statements and representations in said advertisements, published in October and November of 1970, disseminated as aforesaid, but not all inclusive thereof, are the following:

* * * * *

THERE ARE STILL 80 - 1970's LEFT!

These are the last of the
5 YR. WARRANTY CARS

SAVE \$500 to \$1200

* * * * *

**Bob Rosenthal largest
Chevrolet dealer in Washington
Maryland and Virginia**

21 HOUR

Complaint

Price-cutting Selling Spree
 All day Friday Oct. 23rd and
 all day Sat. Oct 24th
 CLOSE-OUT 1970's
 Only 165 LEFT

save up to
 \$1000
 and even
 more

8 cars
 per hour
 will be
 our
 goal!

Huge
 Discounts
 on any
 remaining
 1970's

No acceptable
 offer refused

PLEASE NO DEALERS

1970's

*are the last of the
 FIVE YEAR WARRANTY CARS*

* * * * *

PAR. 5. By and through the use of the above-quoted statements, 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:

1. That the motor vehicles described or referred to in respondents' advertisements are new;
2. That the motor vehicles described or referred to in respondents' advertisements carry a full five year warranty.

PAR. 6. In truth and in fact:

1. The motor vehicles described or referred to in said advertisements, in many instances, are not new. To the contrary, they have been

driven substantially in excess of the limited use necessary in moving or road testing a new vehicle prior to its delivery to the ultimate purchaser.

2. Some of the motor vehicles described or referred to in respondents' advertisements do not carry a full five year warranty, but merely the remaining balance of the factory warranty. The warranty starts to run from the date the motor vehicle is sold or from the original date the vehicle is placed in service. Many of the advertised motor vehicles have been driven a number of miles and/or have been placed in service for a number of months.

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

PAR. 7. In the further course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their motor vehicles, respondents, through oral statements by their salesmen, have misrepresented the nature and extent of the prior use of said motor vehicles. Said salesmen have represented motor vehicles as demonstrators when, in truth and in fact, such vehicles were driver education vehicles used in high schools in the Washington, D.C. Metropolitan Area.

Therefore, such representations and statements are unfair, false, misleading and deceptive acts and practices.

PAR. 8. In the further course and conduct of their aforesaid business, respondents have engaged in the following acts and practices in connection with the sale of their said motor vehicles:

1. A \$40 dealer handling and service charge is added to the price of respondents' used motor vehicles, the first indication that such a charge is being made, in many instances, occurs at the time the buyer receives a copy of the sales invoice and the conditional sales contract. The purchaser, in many said instances, believes that the motor vehicle will be delivered in satisfactory condition and appearance without the imposition of additional charges. The dealer handling and service charge becomes an undisclosed cost that should have been made known prior to the consummation of the sale.

2. Respondents have repaired or repainted, or have caused to be repaired or repainted, damaged cars, said repairs or repainting hide damage that may adversely affect a vehicle's performance and life expectancy. Respondents have failed to disclose to prospective purchasers and purchasers of respondents' motor vehicles that said damage has been hidden by repairs or repainting.

Therefore, respondents' failure to disclose such material facts, prior to the time of sale was, and is, unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale, service and repair of new and used motor vehicles of the same general kind and nature as that sold, serviced and repaired by respondents.

PAR. 10. The use by the respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices and the failure to disclose material facts, as aforesaid, 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 complete and into the purchase of substantial quantities of respondents' motor vehicles and services by reason of said erroneous and mistaken belief. Respondents' aforesaid acts and practices unfairly cause the purchasing public to assume debts and obligations and to make payments of money which they might otherwise not have incurred.

PAR. 11. The acts and practices of the respondents, as set forth above, 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 or 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 issued a complaint charging that the respondents named in the caption hereof have violated the provisions of the Federal Trade Commission Act; and

The Commission having duly determined upon motion submitted by complaint counsel and respondents that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order; and

The respondents and counsel for the Commission having executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the 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 the complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of

sixty (60) days, now in further conformity with the procedures described in Section 2.34 of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Rosenthal Chevrolet Co. 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 3400 Columbia Pike, in the County of Arlington, Commonwealth of Virginia.

Respondent Harry Rosenthal 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 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 Rosenthal Chevrolet Co., a corporation, its successors and assigns and its officers, and Harry Rosenthal, individually and as an officer of said corporation, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution, service and repair of new and used motor vehicles, or any other products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, orally or in writing, directly or by implication, that any vehicle is new when it has been used in any manner other than the limited use necessary in moving or road testing a new vehicle prior to delivery of such vehicle to the customer.

2. Offering for sale or selling any vehicle of the current or previous model year, which has been used in any manner, other than the limited use referred to in paragraph 1. above, without orally disclosing, prior to any sales presentation the nature and extent of such previous use of said vehicle.

3. Advertising any vehicle of the current or the previous model year which has been used in any manner, other than the limited use referred to in paragraph 1. above, without clearly and conspicuously disclosing in any and all advertising thereof the nature of such previous use of said vehicle.

4. Displaying, offering for sale or selling any vehicle of the current or the previous model year which has been used in any manner, other than the limited use referred to in paragraph 1. above, without clearly and conspicuously disclosing by decal or sticker affixed to the inside of

the side window containing the manufacturer's suggested retail price or "Monroney sticker," or if space is not available thereon, in close proximity thereto, so as to be clearly visible, the nature of such previous use of said vehicle. Said decal or sticker shall also contain the following statement: "FOR EXACT mileage, see odometer."

5. Misrepresenting, orally or in writing, directly or by implication, the nature or extent of previous use or condition of any vehicle displayed, offered for sale or sold.

6. Representing, orally or in writing, directly or by implication, that any of their motor vehicles are warranted, unless the nature and extent of the warranty, the identity of the warrantor and the manner in which the warrantor will perform are clearly and conspicuously disclosed; misrepresenting, in any manner, the terms, conditions and extent of any warranty.

7. Failing to disclose both orally and in writing, prior to the signing of the completed retail order for a used motor vehicle, and in any and all advertising of such vehicles, the precise amount of handling and service charges which will be added to the cost of respondents' used motor vehicles.

It is further ordered, That respondent Robert M. Rosenthal be dismissed from the complaint as an individual and named officer of the corporate respondent.

It is further ordered:

(a) That respondents shall forthwith distribute a copy of this order to each of their operating divisions;

(b) That respondents deliver a copy of this order to cease and desist to all present and future personnel engaged in the offering for sale, or sale, of any motor vehicle, and in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person;

(c) That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order;

(d) That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

(e) 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
HOLLYWOOD CARPETS, INC., ET AL.

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

Docket 8983. Complaint, July 8, 1974—Decision, Sept. 30, 1975

Order requiring a Beltsville, Md., seller and distributor of carpeting and floor coverings, among other things to cease misrepresenting the word "sale," and the savings afforded purchasers of respondent's products; failing to maintain adequate records; and misusing the term "warehouse." Further, the order proscribes respondent's from violating the Textile Fiber Products Identification Act by misbranding and falsely advertising its textile fiber products.

Appearances

For the Commission: *Everette E. Thomas, Richard C. Donohue and Thomas J. Keary.*

For the respondents: *Ben Paul Noble, Noble & Lorsen, Wash., D.C.*

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 Hollywood Carpets, Inc., a corporation, and Charles Snyder, Florence H. Snyder and Dale E. Snyder, individually and as officers of said corporation, hereinafter sometimes 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 Hollywood Carpets, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 10212 Southard Dr., Beltsville, Md.

Respondents Charles Snyder, Florence H. Snyder and Dale E. Snyder are individuals and are the principal 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 business address is the same as that of the corporate respondent. All of the aforementioned respondents cooperate and act together in the carrying out of the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of carpeting and floor coverings to the public.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused, and now cause, the dissemination of certain advertisements concerning the aforesaid carpeting and floor coverings, by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of respondents' said merchandise.

In the further course and conduct of their business, as aforesaid, respondents have caused, and now cause, their said merchandise, when sold, to be shipped from their places of business located in the State of Maryland, to purchasers thereof located in the Commonwealth of Virginia and the District of Columbia. Thus, respondents maintain, and at all times mentioned herein 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 aforesaid business, and for the purpose of inducing the purchase of their carpeting and floor coverings, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation, and by oral statements and representations of their salesmen to prospective purchasers with respect to their products and services.

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

WAREHOUSE SALE

at

Complaint

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HOLLYWOOD CARPETS, INC.**SATURDAY, Dec. 13****8 a.m. to 6 p.m.****Free Coffee and Donuts for the Early Birds!****WAREHOUSE ONLY****SAVE 50 to 75%**

* * * * *

**WAREHOUSE SALE 1st Quality BROADLOOM REMNANTS and RUGS
From PHILADELPHIA CARPETS, INC.**

Yes, we bought more than 15 Tons of beautiful carpeting way, way under book prices, from this great mill. All large sizes — it took two large trailers to deliver them. Choose from Wools, Acrylics, Polyesters, Nylon Deep Plush Piles, Hi-ho's, Twists. Quality you dream about and now at these lower than ever prices everyone can afford the best.

* * * * *

**HOTTEST
CARPET
WAREHOUSE
SALE
IN TOWN**

NOBODY BEATS OUR LOW PRICES

* * * * *

15x15' SALE \$98

Compare \$238 to \$264 Value

12x18' SALE \$96

Compare \$184 to \$235 Value

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

1. By and through the use of the word "SALE," and other words of similar import and meaning not set out specifically herein, that said carpeting and floor coverings may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices.

2. Purchasers of respondents' carpet remnants are afforded savings of 50 to 75 percent off the prices at which such carpet remnants are usually and customarily sold at retail.

3. By and through the use of the words "Compare \$238 to \$264 Value" and other words of similar import and meaning not set out

specifically herein, that said comparative value is the price at which the same carpet remnants are being offered for sale by a substantial number of the principal outlets in respondents' trade area.

4. By and through the use of the words "WAREHOUSE SALE," separately or in conjunction with the words "LOW PRICES," and other words of similar import or meaning, not set out specifically herein, that the facility at which respondents' merchandise is being offered for sale or sold is used primarily for the storage of merchandise used by respondents' retail business, and that respondents' merchandise is being offered for sale or sold out of such facility at prices substantially below those charged for the same or similar merchandise by a substantial number of the principal outlets in respondents' trade area.

PAR. 6. In truth and in fact:

1. Respondents' merchandise is not being offered for sale at special or reduced prices. To the contrary, the price respondents regularly advertise and their so-called advertised "sale" price are identical and are used to mislead prospective customers into believing there is a saving from a bona fide regular selling price.

2. Purchasers of respondents' carpet remnants are not afforded savings of 50 to 75 percent off the prices at which such carpet remnants are usually and customarily sold at retail. To the contrary, the percentage price comparison is based on prices for quantities of carpeting required for wall-to-wall installation rather than the advertised carpet remnants or rugs which are usually sold for less than wall-to-wall prices.

3. The same carpet remnants are not offered for sale at the comparative price by a principal number of the principal outlets in respondents' trade area.

4. The facility at which said merchandise is being offered for sale or sold is not used primarily for the storage of merchandise used by respondents' retail business. Instead, such facility is regularly used for the display and retail sales of merchandise at prices not substantially below those charged for the same or similar merchandise by a substantial number of the principal outlets in respondents' trade area.

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 and distribution of rugs, carpeting, floor coverings services of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts 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 complete, and into the purchase of substantial quantities of respondents' products and services 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.

COUNT II

Alleging violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. 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, of textile fiber products including carpeting and floor covering and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, 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. 11. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

PAR. 12. 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 promulgated under said Act.

PAR. 13. Among such textile fiber products, but not limited thereto, was carpeting which was falsely and deceptively advertised in the Washington Post newspaper published in the District of Columbia, and having a wide circulation in the District of Columbia and various States of the United States, in that said carpeting was described by such fiber connoting terms among which, but not limited thereto, was "Acrilan," and the true generic name of the fiber contained in such carpeting was not set forth.

PAR. 14. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents have 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 promulgated thereunder in the following respects:

1. In disclosing the 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 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 said Act, and the regulations promulgated thereunder, in at least one instance in 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. 15. 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 and deceptive acts and practices, in commerce, and unfair methods of competition, in commerce, under the Federal Trade Commission Act.

Initial Decision

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INITIAL DECISION BY MILES J. BROWN, ADMINISTRATIVE LAW
JUDGE

MARCH 18, 1975

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this matter on July 8, 1974 (mailed July 17, 1974), charging respondents with 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 (15 U.S.C. §45), as well as with violation of the Textile Fiber Products Identification Act (15 U.S.C. §70) and the rules and regulations promulgated thereunder. By answer duly filed respondents denied summarily many of the substantive allegations of the complaint, although they did admit making certain representations alleged in the complaint. Respondents also denied that their practices were "in commerce," and denied that they had violated the Federal Trade Commission Act or the Textile Fiber Products Identification Act. Respondents also asserted numerous defenses including the Commission's lack of jurisdiction, "laches," no showing of public interest, and "de minimis."

Adjudicative hearings were held in Wash., D.C. on Nov. 6, 7, 11, 12 and 26, 1974. The record in this proceeding was closed on Dec. 19, 1974, although the record was thereafter reopened by order of Jan. 3, 1975, for the sole purpose of receiving CX 62 into evidence (see Tr. 416-417, 522). In addition certain corrections in the official transcript were ordered on Jan. 3, 1975.

In support of the allegations of the complaint, Commission counsel adduced the testimony of respondents Charles Snyder, Florence Snyder and Dale Snyder; two consumer witnesses Verna Dickerson and Howard Beard; Harold Reznick, executive vice-president and general manager of Diener's, Inc., a carpet retailer; Lindsay Stott, Jr., an ex-employee of Hollywood; and Martin Adem, owner of Marty's Floor Covering, Alexandria, Va. Counsel's exhibits included copies of respondents' newspaper advertising (CXs 1-48), several so-called installment sales agreements (CXs 61, 123) and numerous invoices covering Hollywood's purchases of carpeting from certain suppliers (CXs 154-772).

In support of the defense, respondents adduced the testimony of Charles and Dale Snyder; John Bowen, assistant classified advertising manager, Washington Post; Mark Teaney, Wash., D.C. area sales representative of Philadelphia Carpet Co., a carpet manufacturer; Curt Brandland, representative of Barwick Mills, a carpet manufacturer; and

Steven Wexler, salesman for Coronet Carpets, a carpet manufacturer. Respondents' exhibits include pictures of its facility in Beltsville, Md. (RX 1-17); pricelists of various carpet manufacturers (RX 18, 20, 27); an advertisement respondents placed in the Washington Post on Dec. 15, 1973 (RX 41); documents relating to respondents' complaint to the Washington Post about the use of the word "Acrilan" in RX 41 (RX 42, 43, 45; CX 62); copies of advertising of other retailers (RX 44, 51); pictures of other retail establishments (RX 46-50); numerous sales invoices (RX 36, 39, 40, 52-72); and an analysis of respondents' retail sales by type of carpeting in each of its store locations (RX 73b, d).

On Feb. 5, 1975, counsel supporting the complaint filed their proposed findings of fact, conclusions of law, and proposed order. On Feb. 14, 1975, respondents filed their counter-proposed findings of fact, conclusions of law, and proposed order along with their memorandum brief in support thereof. Respondents' counsel advised the administrative law judge that failure to file proposed findings on the scheduled day of Feb. 5, 1975, was due to certain internal office problems. Complaint counsel have not objected to this late filing and have advised the administrative law judge that they did not intend to file a reply.

Any motions appearing on the record not heretofore or herein specifically ruled upon either directly or by the necessary effect of the conclusions in this initial decision are hereby denied.

The proposed findings and conclusions submitted by counsel have been given careful consideration and to the extent not adopted by this decision in the form proposed or in substance are rejected as not supported by the evidence or as immaterial.

Some of the abbreviations used in this decision are as follows: CX - Commission's exhibits; RX - respondents' exhibits; Tr. - transcript of testimony; CPF - Commission counsel's proposed findings; RPF - respondents' proposed findings; Comp. - complaint; Ans. - respondents' answer to the complaint.

At this posture of the case there appears to be little dispute over the evidentiary facts. Respondents' main contentions appear to be that the allegations of the complaint and complaint counsel's proposed findings relating to the meaning of the terms "SALE" and "WAREHOUSE," either considered separately or in conjunction with each other, do not constitute a violation of the Federal Trade Commission Act. In addition, respondents assert that their representations as to certain savings relating to remnants are in fact true. It is significant to point out that the evidence concerning respondents' alleged unfair trade practices presented by counsel supporting the complaint relate mainly to a period of time from Nov. 15, 1970, through June 1972, at which time

respondents operated certain retail stores in addition to their so-called "warehouse."

Having reviewed the record in this proceeding, and having considered the demeanor of the witnesses as they testified, together with the proposed findings, counter-proposed findings, conclusions and arguments submitted by the parties, I make the following findings of fact based on the record considered as a whole:

FINDINGS OF FACT

1. Respondent Hollywood Carpets, Inc. ("Hollywood"),¹ is a District of Columbia corporation with its principal office and place of business located at 10212 Southard Dr., Beltsville, Md. (Comp.; Ans. Par. One). Incorporated in 1962, Hollywood has operated retail stores at Prince Georges Plaza, Md., Bladensburg, Md., and Bailey's Crossroads, Va. (Tr. 7, 16, 217, 419; see CX 39). In addition, since 1969 Hollywood has had a retail store and storage and cutting facility at its Beltsville location (Tr. 17, 420). The Virginia store was closed in late 1969 (Tr. 24) and the Prince Georges Plaza and Bladensburg stores were closed by the end of 1972 (Tr. 16, 218; see CX 45). Since 1972 Hollywood has done business only from its Beltsville facility (Tr. 17). In the period from November 1970 through November 1971 Hollywood's dollar volume of sales was approximately \$610,000 (Tr. 519). In 1974 Hollywood's annual retail sales were approximately \$400,000 (Tr. 23).

2. Respondent Charles Snyder was president and the chief executive officer of Hollywood from 1962 until 1971 (Tr. 7-8). Since 1971, he has served the corporation in the capacity of a director and consultant. His main duties have been "advising for advertising and purchases and different duties because of his past experience" (Tr. 13, 15). Mr. Snyder owns 51 percent of the outstanding shares of stock in Hollywood (Tr. 14). He has been connected with the carpet business in some capacity since 1949 (Tr. 92).

3. Respondent Florence H. Snyder, wife of Charles Snyder, has been a director and officer of Hollywood throughout its corporate existence (Tr. 8, 109). In 1972 she assumed the office of president and is also treasurer (Tr. 12-13, 109). She is an owner of shares of stock in Hollywood (Tr. 14-15).

4. Respondent Dale E. Snyder, son of Charles and Florence Snyder, has been actively employed by Hollywood since 1962 (Tr. 119, 120, 452). Before Nov. 15, 1971, he cooperated and acted with Charles Snyder in carrying out the acts and practices of the corporate respondent, and since that time has been instrumental in carrying out the acts and

¹ Most of the time hereinafter "Hollywood" refers to all of the respondents.

practices of the corporation (Tr. 114, 120). He is presently vice-president and secretary of Hollywood and is an owner of shares of stock in that corporation (Tr. 15, 109).

5. The individual respondents Charles, Florence and Dale Snyder, formulate, direct and control the acts and practices of the corporation, and all of these respondents cooperate and act together in carrying out the acts and practices of the corporation as such acts and practices are pertinent and relevant to this proceeding (findings 2, 3, 4, *supra*; see Ans. Par. One; see also Tr. 15, 111-112, 113, 115).

6. At all times relevant herein, respondents have been engaged in the advertising, offering for sale and distribution and installation of carpeting and floor covering to the public at retail (see Ans. Par. Two).² During the period from Nov. 15, 1970, through Nov. 15, 1971, and subsequently, respondents advertised regularly in the classified section of the Washington Post Newspaper, a few times in the Evening Star, and occasionally on a radio station, all of which have circulation or transmission across State boundaries (Tr. 22, 28-31; see CXs 1-48). In the course and conduct of their business respondents have caused their said carpet merchandise, much of which had been purchased from suppliers located outside the State of Maryland (CXs 275-772) to be shipped from their place of business located in Maryland to purchasers located in the Commonwealth of Virginia and the District of Columbia (Tr. 24, 25). Hollywood is in competition with other retail carpet stores in the metropolitan Wash., D. C. area (Tr. 25). The acts and practices and the methods of competition challenged in this proceeding are acts and practices "in commerce" and methods of competition "in commerce" as "commerce" is defined in the Federal Trade Commission Act (15 U.S.C. §41).

7. Certain of respondents' newspaper advertisements contained the following statements and representations:

WAREHOUSE SALE
at
HOLLYWOOD CARPETS, INC.
SATURDAY, DEC 13
8 a.m. to 6 p.m.
Free Coffee and Do-nuts for the Early Birds!
WAREHOUSE ONLY
Save 50 to 75%
3000 sq. Yds. Cabin Craft — Thick Plush Nylon Pile
Broadloom — Full Rolls 9 Colors
Will Cut to Any Size \$3.33 sq. yd.

² During the period November 1970 to November 1971, Hollywood also sold drapery and dinette sets (Tr. 17).

Initial Decision

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1000 Broadloom Remnants \$9.99 to 99.99 each
Room Sizes Included

100 sq. yds. Jute Padding Remnants
Short Ends-of-Rolls 25 sq. yd.

Thousands of Square Yards of Shags — Plush — HiLo Loops
at Low, Low Prices Full Rolls

ALL PRICES F.O.B. WAREHOUSE
ALL 1ST QUALITY - WE NEVER SELL 2NDS

HOLLYWOOD CARPETS, INC.
10212 Southard Drive
Beltsville, Maryland
Rear of New Hess Gas Station
1 mile north of Beltway on Rte. 1

(CX 34; Exhibit received by Commission, Nov. 15, 1971)

* * * * *

HOTTEST
CARPET
WAREHOUSE
SALE
IN TOWN

Nobody Beats Our Low Prices
Sale Days
Friday - Saturday - Monday
Daily 9 to 9; Saturday 9 to 6.

Always First Quality. We never sell seconds.
We boast the cleanest warehouse anywhere

Alexander Smith Shag Scatter Rugs
\$1 each
9x12 Rug Cushions
\$9.99 each
Wall to wall Bath Sets
\$11.99 set
8'6" x 11'6" Room Size Shag Rugs
\$22.99 each
Indoor/Outdoor Carpeting
\$1.55 sq. yd.
Cabin Craft Shag, Plush, or Hilo Pile Broadloom
\$2.99 sq. yd.

Initial Decision

More than 800 Nylon, Wool, Acrilan, all brand name beautiful quality remnants. From hall sizes to big room wall to wall sizes. And if we don't have your size, we'll cut it.

You Save 50 to 70%
3-Day Special Drapery Sale
Any Pair in Stock
1/3 OFF from our reg. Stock
Call 345-5595 for directions
on sale at all 3 locations

HOLLYWOOD
Carpets, Inc.
Warehouse Locations
10212 Southard Dr. Beltsville, Md.
1 Mi. N. off Beltway on RT. 1
Rear of Hess Gas Station
Call for directions, 345-5595

* * * * *

PRINCE GEORGES PLAZA
Opposite Big Boy Restaurant
779-5151
West Hyattsville, Md.

5426 ANNAPOLIS ROAD
Opposite Cheverly Theater
864-5945
Bladensburg, Md.

All prices F.O.B. Store or Warehouse
Credit Terms Available

(CX 6 Apr. 23, 1971).

* * * * *

HOLLYWOOD
Carpets, Inc.
BELTSVILLE WAREHOUSE
SALE
TODAY, FRIDAY-SATURDAY-MONDAY
Daily 9 to 9; Saturday 9 to 6

BROADLOOM REMNANTS SALE

More than 1000 in stock to choose from. All first quality, never sell seconds. From America's finest mills.
MOHAWK - LEES - CABIN CRAFT - BARWICK - CORONET-
PHILADELPHIA CARPET

More Mills Means Better Selection
Choose from 501 Nylon, Acrylic, Wools
Shags, Plushes and Hilo Designs

Initial Decision

15x15', SALE \$98
 Compare \$238 to \$264 Value
 12x18', SALE \$96
 Compare \$184 to \$235 Value

12x15', SALE \$78
 Compare \$138 to \$192 Value
 12x12' SALE \$68
 Compare \$104 to \$156 Value
 9x15', SALE \$58
 Compare \$97 to \$138 Value
 9x12', SALE \$48
 Compare \$69 to \$124 Value

ALSO 20,000 SQ. YDS. OF BROADLOOM
 FROM \$3.99 to \$6.88 sq. yd.
 Call 345-5595 For Directions

HOLLYWOOD

Carpets, Inc.

10212 Southard Dr., Beltsville, Md.
 1 MI. N. OFF Beltway on RTE 1, Rear of Hess
 Gas Station Right Side Heading North
 All Sales F.O.B. Warehouse; All items subject to
 prior sales Credit Terms Available
 345-5595

(CX 15 (July 9, 1971; July 16, 1971; July 23, 1971)).

* * * * *

HOLLYWOOD CARPETS
 WAREHOUSE SALE

1ST QUALITY BROADLOOM REMNANTS AND RUGS FROM
 PHILADELPHIA CARPETS, INC.

Yes, we bought more than 15 TONS of beautiful carpeting, way, way under book prices, from this great mill. All large sizes - it took two large trailers to deliver them. Choose from Wools, Acrylics, Polyesters, Nylon Deep Plush Piles, Shags, Hi-Lo's, Twists. Quality you dream about and now at these lower than ever prices everyone can afford the best.

STARTS TODAY SAT. 9 to 6

All prices FOB Warehouse. Check the listed Qualities and sizes and hurry to our beautiful warehouse and see hundreds more not listed.

100% Wool Pile

12x13'	RESPLENDANT	FROSTED GOLD	SHAG	\$139
100% Acrylic Pile				
Size	Quality Name	Color	Style	Price
10x15	Jarman	Royal Blue	Plush	\$118
*	*	*	*	*
100% Nylon Pile				
12x16'11"	LaPrado	Gold	Shag	\$119
*	*	*	*	*
100% Polyester Pile				
12x14'9"	Happy Talk	White Wine	Shag	\$149
*	*	*	*	*

HOLLYWOOD CARPETS

On SALE ONLY AT OUR BELTSVILLE WAREHOUSE

CALL 937-5595 for DIRECTIONS

1 mile North of

Beltway Exit 27 on RT. 1

Rear Gas Station,

Next to Furniture City"

(CX 43, Saturday, Apr. 15, 1972)

8. In addition to the four advertisements detailed in finding 7, *supra*, (the advertisements apparently relied on by counsel supporting the complaint in drafting the specifications of the complaint), the record contains 45 other advertisements. Commission Exhibit 1 through CX 40 were published in the Washington Post during the period Nov. 15, 1970, through Nov. 15, 1971, the latter date being the day on which respondent Charles Snyder made return on a subpoena at the investigational hearing in this matter. Dates of publication are noted on CX 1 through CX 28. CX 29 through 40 appear to be substantially similar in content, but because the date of publication is not known, these advertisements are of little relative additional value.³ CX 41 through 48 are Hollywood advertisements published from Feb. 2, 1972, through Dec. 2, 1972, and RX 41 was disseminated on Dec. 15, 1973 (Tr. 369). A review of CXs 1-28 and CXs 41-48 demonstrates that from about May 1971 until March 1972, respondents have often represented that they are conducting a "WAREHOUSE SALE," and that in many instances the sale is being conducted at their stores as well as at the

³ It appears that some of the undated advertisements are duplications of other exhibits.

warehouse (see CXs 1-6, 10-12, 24, 27, 42). Indeed until August 1971, respondents listed their stores as well as the Beltsville facility under the general heading "WAREHOUSE LOCATIONS" (see CXs 1-8, 12-14). Also respondents used such other sale descriptions as "LABOR DAY WAREHOUSE SALE" (CX 21), "ANNIVERSARY SPECIALS" (CX 22), and "WAREHOUSE AND STORE-WIDE END-OF-THE-MONTH SALE" (CX 27).

Most of Hollywood's advertising was placed in the classified section of the Washington Post. Several display advertisements that would appear in other sections of the paper, are CXs 28 and 43. (see Tr. 28-31)

In a few instances respondents used comparative pricing representations relating to remnants (see CXs 15, 16, 18, 19), and on at least two occasions used comparative pricing for carpet products other than remnants (see CXs 18, 19).

On several occasions respondents represented savings as percentages (50 to 70 percent - CX 34; 40 percent to 70 percent - CX 35; 20 percent - CXs 41, 48). However, usually respondents merely stated a price for a particular rug or groups of rugs, remnant or group of remnants (*e.g.* from \$11 each up - see CXs 5, 9, 11) or for carpeting, quoted per square yard.

Also a review of the dated exhibits demonstrates that in 14 instances the term "acrylic" was used (CXs 7, 12, 15, 17, 18, 19, 20, 27, 28, 42, 43, 44, 46, 47) whereas in only 5 instances was the term "acrilan" used (CXs 1, 6, 21, 23, 24). In some instances respondents noted that certain carpeting had "foam backing" (CX 29) or "double jute back" (see CX 25).

9. There are three general price levels at which respondents (and for that matter any retailer) purchase carpeting from a manufacturer: the price for a full roll of carpeting, the price for a particular size of carpeting, and the price for remnants (Tr. 112). The principal price is called the "roll price," that is the base price at which carpeting may be bought in a complete roll (Tr. 294). This price is quoted in terms of yards, meaning square yards. A roll usually consists of carpeting in a standard width of 12 or 15 feet (4 or 5 yards) and in lengths varying from 50 feet to 400 feet (Tr. 59). The differences in length are controlled by the variances in the manufacturing process usually relating to the amount of material available from the same dye lot or lots (Tr. 42, 61, 88). Manufacturers afforded quantity discounts on large purchases of rolls (Tr. 96, 280, 293-294).

When respondents purchased a roll of carpeting they either sold to the customer from a display sample located in the retail stores or from

the customer's observation of the roll itself which was stored at the Beltsville facility (Tr. 104-105).⁴ The retail price for such carpeting is usually based on a 40 to 42 percent markup above respondents' cost for said carpeting (Tr. 53, 55, 118; but see Tr. 313-316).

10. In those circumstances where respondents do not have a roll of the particular color or style of carpeting desired by the consumer they may, selling from samples, order a designated quantity (less than a roll) from the manufacturer (Tr. 41-42). This order is called a "cut order" (Tr. 42, 294). Usually the manufacturer's "cut order" price to respondent (or any other retailer) is 18 to 20 percent higher than the roll price for the same carpeting (Tr. 57, 91A, 256, 305). Manufacturers generally state their "cut order" and roll price in their published price lists (see RXs 18-22; Tr. 95). Respondents' retail price for carpeting ordered on a cut order basis is usually based on the 40 to 42 percent markup above its cost ("cut order" price) for said carpeting (Tr. 21, 53, 55, 118; but see Tr. 313).

11. When a manufacturer uses a roll for "cut orders" or when a retailer uses a roll to fill customers' orders, the end of the roll which is too small for general use in filling wall-to-wall carpet orders becomes a "remnant" (Tr. 41-42, 56, 294). This so-called remnant, which is unbound, and which may vary in length from a few feet to 30 feet (usually under 20 feet)⁵ is sold at a substantially lower price than the same carpeting sold at a roll price or the higher cut order price (see Tr. 483). The manufacturer usually sells remnants at from 40 to 50 percent lower than the roll price (Tr. 42, 254-255, 295, 306). Retailers usually purchase remnants in groups or packages consisting of a large number of assorted styles, patterns and colors (Tr. 118-119, 294). When respondents purchase remnants from manufacturers they add the usual 40 to 42 percent markup to their cost to arrive at their retail price (see Tr. 18, 53, 55, 118; but see Tr. 313-316). When respondents create a remnant in the course of their business they reduce the price from their usual roll price (Tr. 57-61).

12. Remnants are usually purchased for use as area rugs (Tr. 117). To create an area rug in the size desired by the customer the carpeting (whether a remnant or a cut from a roll) is cut to size and bound, the binding being done at respondents' Beltsville facility for a charge (Tr. 56). In addition, area rugs of certain standard sizes may be created by the manufacturer or by respondents before being ordered by a particular customer and are offered for sale as "rugs" (Tr. 18, 19-20).

⁴ When the prospective purchaser went to the Beltsville facility she would buy looking at the roll itself not a sample (see Tr. 88).

⁵ Remnants are light enough to be moved without the aid of machinery and are usually displayed by standing the roll along a wall (Tr. 483, 502-503).

Moreover, remnants may also be created by cutting rolls into sizes of 20 feet or under (Tr. 514).

13. Remnants are of the same quality as carpeting of the same style and patterns that are obtainable in rolls or by cut order. Hollywood purchases carpeting as remnants in many cases substantially similar or identical in quality and pattern to carpeting it already carried in inventory as rolls (Tr. 58, 454). If the style, patterns and grade of carpeting desired by a customer are not available in a remnant, that customer would have to pay a roll price (if a retailer carried a roll of that carpeting) or the "cut order" price if no roll was stocked. Respondents do not handle "seconds" (Tr. 62, 295, 325, 356, 506).

14. During the period from November 1970 through November 1971 and at other times when respondents operated more than one retail location, their regular "roll price" at the stores were higher than the "roll price" for the same product at the Beltsville location, the difference being reflected in the cost to them of "free" delivery from the Beltsville location, *i.e.*, 11 cents per square yard. No deliveries were made at that time on products purchased at the Beltsville location (Tr. 105, 212, 219, 226, 233, 242, 448-449).

15. Generally, when respondents advertised a "SALE" the items specifically referred to therein were priced lower than the prices at which those items had been offered for sale by respondents in the past or the "cut order" list price therefor (Tr. 106, 122). With respect to remnants, respondents' lower price was usually compared to the price at which the same or substantially comparable carpeting could be purchased from respondents or a competing retailer at a "cut order" price (Tr. 72, 107, 123, 304). When remnants were purchased from a manufacturer they were added to the remnant lines of respondents and included in the remnant sale (Tr. 50, 118, 122). If a special purchase is made from the manufacturer "* * * you go in and buy it naturally you are going to have a sale * * * based on [those] reduced prices * * * and you can reduce some of your own inventory and put it all together and have a sale and profitably do so" (Tr. 52). Hollywood had sales "Whenever it seemed necessary." "There are certain times bills must be paid and we have to reduce items, or when we buy something that is not moving we have to sell it out. Or if we buy special purchase of remnants on things like we used to stock. These sort of things" (Tr. 131-132).

16. When respondents specifically advertised remnants at "50 - 70 percent off" the higher price reference is to the regular cut order list price for the same carpeting (Tr. 56, 63, 122). The higher discount was for smaller pieces that sell for halls or runners (Tr. 63-64). "This is the value of the remnant. This is the end of the roll. This is the end of the

roll that we sold for \$10 a yard and there are four yards left on the end of it. We sell it for 50 percent of our prices which is \$5 a yard. That is a 50 percent sale. That is how we determine that comparison, the percentage" (Tr. 57).

17. Respondents admitted in their answer that by and through the use of the word "SALE" and through other words of similar import and meaning, they have represented that the carpeting and floor covering which they offer for sale may be purchased at special or reduced prices, and purchasers are thereby afforded savings from respondents' regular selling prices (see CXs 1-48; Ans. Par. Five (1)).

18. Respondents' representation is true (see findings 14, 15, *supra*).

19. Respondents admitted in their answer that they have represented in their advertising that purchasers of respondents' carpet remnants are afforded savings of 50 to 75 percent off the prices at which such carpet remnants are usually and customarily sold at retail (see CXs 1-48; Ans. Par. Five (2)).

20. In truth and fact the higher price on which respondents base their comparisons is the price at which the same grade and quality of carpeting as the advertised remnant usually and customarily sold at retail (see findings 13, 15, 16, *supra*).

21. Respondents also admitted in their answer that by and through the use of the words "Compare \$238 to \$264 Value" they have represented that said comparative value is the price at which the said carpet remnants are being offered for sale by a substantial number of the principal outlets in respondents' trade area (Ans. Par. Five (3)).

22. In fact, respondents represented by use of the words "Compare \$238 to \$264 Value" that said comparative value is the price at which carpeting of the same grade and quality as the advertised remnant is being offered for sale by a substantial number of the principal outlets in respondents' trade area (see findings 9, 10, 11, 12, *supra*; see CXs 15, 16, 18, 19).

23. Respondents' representation as to the comparative value of advertised remnants (see finding 22, *supra*) was in fact true (see findings 9, 10, 11, 12; see also conclusion, *infra* pp. 23-25) [pp. 808-810 herein].

24. Respondents' Beltsville facility which was opened in late 1969 (Tr. 17), is "located in a district that is adjacent to commercial warehouses" (Tr. 406). It is a portion of a larger building with three roll-type-overhead-door entrances at the front, which could be described generally as a loading bay (see Tr. 90, 178; RX 1 - frames 34A-36). A walk-in door entrance is located to the left of the overhead door entrances (see RX 1-frames 34A-36, RX 5).

This walk-in door leads into a small enclosed area described as "a

sample show room perhaps 12 by 36 feet" (Tr. 75, 420; see RXs 2, 4, 5). In this area respondents display samples used in its "cut order" business, *i.e.*, the ordering directly from the manufacturer of specific quantities of carpeting (Tr. 88). The remaining portion of this facility, consisting of a floor area of approximately 11,000 square feet, contains the rolls of carpeting and remnants and other merchandise which Hollywood maintains as stock (see RXs 2, 3, 6, 7, 8, 9). The remnants (rolled up) are usually stacked standing up along the right and left walls of this large room (Tr. 84), whereas the rolls of carpeting are placed horizontally in pyramid fashion on the floor in piles with walk space between the remnant display and roll display (Tr. 84; RXs 2, 3, 6, 7, 8, 9, 10, 11, 12, 13). The middle of the floor area in the large room is used as a cutting area (Tr. 86; see RX 6). A three ton fork-lift truck ("hyster" Tr. 84-85) is used to move the rolls from the various piles to the cutting area (see RX 1, frame 33A-34). Certain office space is located over the sample room with access by stairs from the large storage-work area (see RXs 2, 8; Tr. 82).

Until late in 1972, Hollywood stored most of its rolls of carpeting in this facility, customers being able to either order this merchandise from its other store locations from samples taken from the rolls on stock at Beltsville or by ordering directly by observation of the actual roll at Beltsville (Tr. 75-76). The facility at Beltsville is open to the public (except the office area) and Hollywood has a "retail license and occupancy permit for retail sales" at this location (Tr. 77). Before opening its Beltsville facility Hollywood stored its on-hand merchandise (rolls and remnants) in the back room of its Bailey Crossroads store or the basement of its Bladensburg store (Tr. 217-218, 223).

25. During the times relevant to this proceeding Hollywood referred to its Beltsville facility as its "WAREHOUSE" or "WAREHOUSE LOCATION" (Tr. 111-116; see CXs 1-48). "We don't call it a store, we call it a warehouse. That is what it is" (Tr. 111).

26. By and through the use of the words "WAREHOUSE SALE" separately and in conjunction with the word "LOW PRICES" and other words of similar import or meaning, the respondents have represented that said facility was used primarily for the storage of merchandise sold by respondents at retail and that the merchandise offered for sale or sold was available for sale or sold out of such facility at substantial savings to consumers from the prices charged for the same or similar merchandise by a substantial number of the principal outlets in respondents' trade area (Tr. 44-70, 301-302, 306, 340, 350; see CX 1-40; RPF 13).

27. The Beltsville facility is in fact a WAREHOUSE and respondents' representation that said facility was used primarily for the

storage of merchandise used by respondents' retail business was true (see findings 14, 25, *supra*). The additional fact that this facility was also a retail store or a "showroom and warehouse combined" and that the public had everyday access thereto does not, on this record, alter the fact that the facility was a "WAREHOUSE" (*ibid.*).

28. A "WAREHOUSE SALE" implies that a retailer, who has a warehouse used primarily for storage, is having a rare sale, one usually held to move merchandise quickly and in a short period of time said merchandise being that which it was not able to sell at retail during the regular course of its business. Such a sale implies substantial savings because it has been priced for quick sale and/or the goods have been stored at the facility without incurring the overhead costs of the traditional retail store (see Tr. 140, 163, 178, 182, 195-196).

Mrs. Verna Dickerson, a consumer witness and customer of Hollywood, testified that when she saw the term "WAREHOUSE SALE" she thought she would be getting a "saving at a warehouse price" (Tr. 140, see also Tr. 153). Mr. Howard Beard, also a consumer witness and customer of Hollywood, testified that when he saw a Hollywood "WAREHOUSE SALE" advertisement, he thought the sale would be "out of the ordinary" (Tr. 178). Significantly, neither Mrs. Dickerson nor Mr. Beard purchased carpeting at any particular price stated in the advertisements (see Tr. 153, 188-189). These witnesses were attracted to respondents' premises by the representation of the "WAREHOUSE SALE" (Tr. 161-162, 177, 193).

29. Actually, respondents conducted their retail business at the Beltsville warehouse and the "sales" they advertised as "Warehouse Sales" were not out of the ordinary, but were conducted almost on a weekly basis during the period November 1970 through December 1972. In addition, respondents' products were not priced to afford substantial savings over and above usual price reductions for its retail "sales." Respondents' use of the term "WAREHOUSE SALE" had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief all to the prejudice and injury of the purchasing public and respondents' competitors.

30. The information to be contained in advertisements appearing in the classified section is usually supplied by telephone (Tr. 372, 373-375, 390). No practical opportunity exists for the advertiser (*e.g.* respondents) to actually proofread the copy before it is published and disseminated (see Tr. 396-398). The importance of the distinction

between the words "acrilan" and "acrylic" is generally misunderstood (Tr. 370, 375, 385, 387, 397-398). It is possible that the receiver of the information at the Washington Post mistakenly wrote the word "Acrilan" whereas respondents had specified "Acrylic" (see Tr. 371-375, 384-385, 389; see RX 43).

31. 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 and distribution of rugs, carpeting, floor coverings, and services of the same general kind and nature as those sold by respondents.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Hollywood, Charles Snyder, Florence Snyder and Dale Snyder.

Said respondents have at all times relevant hereto engaged in interstate commerce within the intent and meaning of Section 4 and 5 of the Federal Trade Commission Act. The Washington Post newspaper, in which most of their advertisements were placed, has interstate circulation. In addition, Hollywood has purchased carpeting from suppliers located outside the State of Maryland and has delivered carpeting to customers located in Virginia and/or the District of Columbia. The acts and practices which are challenged in this proceeding relate to respondents' interstate advertising and are "in commerce" within the coverage of the Federal Trade Commission Act. See *Guziak v. Federal Trade Commission*, 361 F.2d 700 (8th Cir. 1966); *Ford Motor Co. v. Federal Trade Commission*, 120 F.2d 175 (6th Cir. 1941); *United States v. South-Eastern Underwriters Ass'n.*, 322 U.S. 533 (1944); *Standard Oil Co. v. Federal Trade Commission*, 340 U.S. 231 (1951).

Respondents contend that the activities complained about were so small compared to its overall business and, at the time of the complaint and adjudicative hearing the investigation was so old, that the public interest would hardly be served by sustaining the complaint. I do not agree.

In its complaint the Commission made the determination that this proceeding is in the public interest. There is nothing in this record which demonstrates that that determination was in error. This proceeding is in the public interest insofar as that determination is essential to the Commission's assertion of jurisdiction. See *Koch v. Federal Trade Commission*, 206 F.2d 311, 319 (6th Cir. 1953);

American Airlines, Inc. v. North American Airlines, Inc. 351 U.S. 79, 83 (1956).

So-called "laches," viz., the failure to act expeditiously to enforce a claim or right, does not apply to proceedings brought in the public interest pursuant to Section 5 of the Federal Trade Commission Act, where deception of public is asserted. *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67, 80 (1934). Moreover, the record shows that respondents' advertising contained the type of representations which were the subject of this proceeding at least until late in 1973 (see RX 41). This is not a situation for application of the *de minimis* rule.

2. Respondent Charles Snyder was president of Hollywood until 1971 and since then has been engaged as an advisor and consultant of Hollywood. He is the majority stockholder in the corporation. Florence Snyder has been president of Hollywood since 1971, and at all times during the corporation's existence has been actively engaged in its affairs. Dale Snyder is presently an officer and the operating manager of Hollywood. All of these individual respondents have cooperated and acted together in formulating, directing and controlling the acts and practices of the corporation, including the placing of the challenged advertising, and they are individually responsible for the content of said advertisement and the acts and practices of Hollywood. See *Federal Trade Commission v. Standard Education Society*, 302 U.S. 112, 120 (1937); *Sunshine Art Studios, Inc. v. Federal Trade Commission*, 481 F.2d 1171 (1st Cir. 1973).

3A. It was alleged in the complaint and respondents admitted in their answer that they represented in their advertisements by and through the use of the word "SALE" that carpeting and floor coverings may be purchased at special or reduced prices, and that purchasers are thereby afforded savings from respondents' regular prices.

It is the contention of complaint counsel that such a representation is not true, and accordingly false and misleading, because the advertised prices were not special or reduced prices from respondents' regular prices or, if certain items were reduced in price, such reductions were not significant reductions from respondents' regular prices. In support of their contention that respondents' use of the word "SALE" constitutes an unfair trade practice violative of Section 5 of the Federal Trade Commission Act, complaint counsel cite only the Commission's "Guides Against Deceptive Pricing," quoting a portion of Guide I(e) thereof. That section reads as follows:

If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as "Regularly," "Usually," "Formerly," etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, "SALE," the advertiser must take care that the amount of reduction is not

so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been "Reduced to \$9.99," when the former price was \$10, is misleading the consumer, who will understand the claim to mean that a much greater, and not merely nominal, reduction was being offered. [16 C.F.R. §233.1(e) (1974).]

Almost all of respondents' advertisements of record in this proceeding use the word "SALE" and contain price quotations without reference to a former price or the amount or percentage of reduction involved (see CXs 1-15, 17, 19, 21-28, 42-44, 46, 47).⁶

The record shows that although respondents did reduce certain items for its various "SALES", in most instances they were relying generally on the fact that carpeting that was sold off rolls that they had in stock were offered at a significantly lower price than the same grade and quality carpeting that they offered for sale in the regular course of business at the "cut order" price, *i.e.*, the price at which a purchaser would pay if said carpeting was purchased directly from the manufacturer.

For example, respondents' regular price in its retail stores (other than the Warehouse location) for Philadelphia Carpets' Casa Real was \$4.99 per square yard (Tr. 429-430; RXs 53-55). It was usually sold at the warehouse location for \$4.88 per square yard (this 11% reduction reflecting a saving to respondents in delivery charges). The same carpeting if ordered on a "cut order" basis would retail at \$5.99 per square yard (Tr. 429-442). This carpeting was advertised as a "SALE" item at \$4.88 a square yard in CXs 1, 5, 7, 9, 13, 15, 21, 25, 27, 28 and 35, and probably was the carpeting referred to in CXs 10, 11, 12 and 14 (Tr. 212-214). During the relevant period Casa Real was advertised at prices other than \$4.88 in only four advertisements: CX 14 and CX 23 - \$4.99; CX 22 and CX 32 - \$4.44.

The question presented is whether the \$4.99 or \$4.88 price is in fact a "SALE" price, *i.e.*, does it represent a significant reduction from respondents' regular price. The only authoritative help that I can find appears also in the Commission's "Guides Against Deceptive Pricing" where at Guide I(b), it states:

A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, *that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith — and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.* * * * [16 C.F.R. 233.1(b)(1974); Emphasis added.]

Although this section is speaking to the situation where the higher price is stated in the advertisements, but no sales were actually made

⁶ See also undated advertisements: CXs 29, 31-36, 39, 40.

at the higher price, it would appear only reasonable that the same principles would apply in establishing the regular price where it is not set forth in the advertisement of the "SALE" but where actual sales are made at the higher price, *i.e.*, the higher price "is one at which the product was openly and actively offered for sale." Because of the methods in which carpeting is retailed (purchases on "cut order," rolls and remnants), it is my opinion that the \$5.99 "cut order" price is a legitimate regular price and that offering it for "SALE" at \$4.99, \$4.88 or \$4.44 accords with the permissible guidelines promulgated by the Commission.

The same rationale that was applied to the "SALE" of Casa Real applies to all other advertised prices relating to carpeting sold per square yard. Although the specific details as to the particular regular prices have not been developed on this record as to other carpeting the general approach taken by respondents appears to have been applied to all such representations.

The present guides, promulgated in 1964, superseded the 1958 guides which had clearly and specifically spelled out conduct which was deemed to be violative of the Federal Trade Commission Act. In comparison the 1964 guides appear to be general statements of policy and a foundation for developing on a case-by-case basis the do's and don't's of pricing (see Kintner: A Primer on the Law of Deceptive Practices, pp. 155-57 (Macmillan 1971)): Accordingly, the result reached here is based on the record in this case (1970-1972 advertising), and might not necessarily control a similar issue directed to the advertising by any other retailer or even to Hollywood today. Significantly during the 1970-1972 period Hollywood had retail stores as well as the warehouse location and had not an insubstantial amount of "cut order" business. There was testimony to the effect that the carpet retailing business was fast changing over to the "warehouse" type of operation with retailers concentrating on sales of carpeting cut from "rolls" in stock and in remnants. Dale Snyder testified that Hollywood's records showed the following change in its "cut order" business from 1968 to 1974 (RX 73(b)).

1968	553	
1969	444	
1970	237	
1971	134	
1972	128	
1973	63	
1974	78	(through Nov. 22, 1974)

The ultimate question, however, is whether the consumer would in fact realize a saving as represented in the advertisement as to the products mentioned in the "SALE." I find that the purchaser would in

fact realize a saving by purchasing the "SALE" items and that the representation attributed to respondents' use of the word "SALE" as set forth in the complaint was not false or misleading.

B. It was alleged in the complaint and respondents admitted in their answer that they represented in their advertisements that purchasers of their carpet remnants are afforded savings of 50 to 75 percent off the prices at which such carpet remnants are usually and customarily sold at retail.

This meaning is found in several of respondents' advertisements as contained in the record. CX 6 states in part: "More than 800 Nylon, Wool, Acrilan, all brand name beautiful quality remnants. From hall sizes to big room wall-to-wall sizes. And if we don't have your size, we'll cut it. YOU SAVE 50 to 70%."

CX 34 states in pertinent part: "Save 50 to 75% * * * 1000 Broadloom Remnants \$9.99 to 99.99, each Room Sizes Included."

CX 33 states in pertinent part: "Greatest name brand carpeting. First Quality Remnants * * * Save 40 to 70% * * *."

The record shows that respondents' basis for their representations on "percent-off" relating to remnants was the price at which that particular carpeting would retail for at the "roll" or "cut order" price. It is not disputed that remnants purchased as such from manufacturers cost respondents 50 to 70 percent less than the same carpeting would cost on a "cut order." Respondents, operating on a constant markup, would pass the same difference on to the purchaser at retail. The record is clear that respondents did not actually reduce their retail price of any particular remnant by 50 to 70 percent, although the retail price of remnants created by their own sales from "rolls" would generally be 50 percent less than the so-called roll price.

There is no doubt on this record that if a purchaser can find a remnant that suits her carpet needs including adequate size, color and quality that she would probably save 50 percent or more off the retail price for the same grade and quality of carpeting that she would pay if she had to order from a "roll" in stock or on a "cut order" basis.

However, it appears that the unsophisticated prospective purchasers of carpet do not know the manner in which carpeting is retailed and that the bare "50-70% off" representation might have the tendency and capacity to mislead the consuming public as to the nature of the savings represented. Accordingly, respondents should have specified exactly what higher price base they are using, *e.g.* 50-70 percent off "roll" or "cut order" price.

It is concluded that failure to state the higher price base, was a failure to state a material fact constituting a violation of the Federal Trade Commission Act. See *J.B. Williams Co. v. Federal Trade*

Commission, 381 F.2d 884 (6th Cir. 1967); *Haskelite Mfg. Corp. v. Federal Trade Commission*, 127 F.2d 765 (7th Cir. 1942).

C. It was also alleged in the complaint and respondents admitted that by and through the use of such words as "Compare \$238 to \$264 Value" they represented that said comparative value was the price at which the same carpet remnants are being offered for sale by a substantial number of the principal outlets in respondents' trade area.

As with respect to the "percentage off" representations, respondents' basis for the higher price on the advertised remnants, and accordingly the savings to be afforded the purchaser thereof, was the "cut order" price for the identical carpeting. Such comparison representations relating to remnants were contained in only a few of the respondents' advertisements contained in the record of this proceeding (CXs 15, 16, 18, 19, 20).

The only evidence concerning the actual prices relating to these comparison representations were for the six items listed on CX 15. Charles Snyder testified and it was stipulated that the carpeting referred to in the last five items was Westernaire by Mohawk or Barwick Mills and that he had derived the higher price from Diener's price for the same carpeting (Tr. 68-74). Harold Resnick, executive vice president and general manager of Diener's testified that Diener's "regular price" for carpeting in the Westernaire line was \$5.95 per square yard (Tr. 164-165). Respondents' point out, and correctly so, that Mr. Resnick did not specify whether the \$5.95 price was Diener's roll price or the "cut order" price, and that Mr. Snyder used the "cut order" price for his comparison. Using the sizes and prices given and considering that the "cut order" price would be 20 percent higher than the \$5.95 price the following mathematical comparisons are possible:

<i>Item</i> ¹	<i>Size</i>	<i>Sq. Yards</i>	<i>Diener's Reg. Price</i>	<i>Plus 20 %</i>	<i>Hollywood's Compare. Value</i>
2.	12X18'	24	\$142.80	\$171.36	\$184 to \$235
3.	12X15'	20	119.00	142.80	138 to 192
4.	12X12'	16	95.20	114.24	104 to 156
5.	9X15'	15	89.25	107.10	97 to 138
6.	9X12'	12	71.40	71.40	69 to 124

On the basis of the record and the resulting computations it appears that respondents' comparisons are in the ball park, and that respondents' advertised higher prices were not fictitious or misleading.

It is not disputed however, that the same grade and quality of carpeting if sold by Diener's as remnants would be 40 to 50 percent lower than their regular price for the same carpeting. Respondents

¹ Charles Snyder testified that the first item on CX 15 was a Philadelphia Carpet wool carpet that retailed for \$10.95 per square yard on a "cut order" (Tr. 72). The computed price for 15 square yards would be \$273.75. Hollywood's representation was "Compare \$238 to \$264." (CX 15)

have admitted that their remnant advertising represented a comparison with their competitor's remnant price. In view of the testimony, respondents' admission as to the meaning attributable to their advertising must be disregarded, in that such meaning is too limiting and it would be a gross miscarriage of justice to lock respondents to this admission. It is concluded that respondents' representation as to the comparative values related to the "cut order" price and that such representations were not false or misleading.

D. It was alleged in the complaint that by and through the use of the words "WAREHOUSE SALE" as set forth in their advertisements, respondents represented (1) that the facility at which their merchandise is being offered for sale is used primarily for the storage of merchandise used by their retail business, and (2) that respondents' merchandise is being offered for sale or sold out of such facility at prices substantially below those charged for the same or similar merchandise by a substantial number of the principal outlets in respondents' trade area. Although respondents denied in their answer that they have "advertised WAREHOUSE SALE in the manner complained of at any time material here," or that the meaning of said advertisements was as alleged (see Ans. Par. 4, 5(4)), they made the following counter-proposed finding of fact:

13. By and through the use of the words "WAREHOUSE SALE" separately and in conjunction with the words "Low Prices" and other words of similar import or meaning, the respondents did in fact convey that the merchandise offered for sale or sold was available for sale or sold out of such facility at a substantial savings to consumers from the prices charged for the same or similar merchandise by a substantial number of the principal outlets in respondents' trade area. (Tr. 44-70, 301-302, 306, 340, 350) [RPF #13.]

It is concluded that respondents did make the representations charged in the complaint. Although respondents' Beltsville facility has been found to be a "WAREHOUSE" in the general meaning of that term, and that respondents did in fact afford certain savings from the "cut order" price or "roll" price generally prevailing in the trade area to justify its using the term "SALE," it is the further conclusion of the administrative law judge that on the basis of the testimony and the exhibits of record that in most instances respondents did not afford substantial savings to consumers from the prices charged for the same or similar merchandise by its competitors.

The term "WAREHOUSE SALE" has a distinct meaning. It relates to a special or unusual event at which time the advertiser has generally reduced all or most of its merchandise in its storage facility for fast sale. In fact most of the time pertinent to these proceedings

respondents were not conducting such a "warehouse sale" and the representations that they were had the tendency and capacity to mislead members of the purchasing public.

It is well established that it is an unfair trade practice to make statements in advertising which have the tendency and capacity to deceive the prospective customer. *Carter Products, Inc. v. Federal Trade Commission*, 323 F.2d 523 (5th Cir. 1963). Where the advertisements themselves sufficiently demonstrate their capacity to deceive, the Commission can find the requisite deception or capacity to deceive on a visual examination of the exhibits without evidence the public was actually deceived. *Double Eagle Lubricants, Inc. v. Federal Trade Commission*, 360 F.2d 268, 270 (10th Cir. 1965). Moreover, the initial contact, if deceptive, may be prohibited under the Federal Trade Commission Act. *Exposition Press, Inc. v. Federal Trade Commission*, 295 F.2d 869, 873 (2d Cir. 1961) *cert. denied*, 370 U.S. 917 (1962); *Carter Products, Inc. v. Federal Trade Commission*, 186 F.2d 821, 824 (7th Cir. 1951).

In determining the impression created by an advertisement, the Commission need not look to the technical interpretation of each phrase but must look to the overall impression likely to be made on the consuming public. *Murray Space Shoe Corp. v. Federal Trade Commission*, 304 F.2d 270 (2d Cir. 1962); *National Bakers Services, Inc. v. Federal Trade Commission*, 329 F.2d 365 (7th Cir. 1964).

4. The Commission's charge that respondents have violated the Textile Fiber Product Identification Act is based in part on the fact that the trade name "Acrilan" appeared in certain of respondents' advertisements. The proper generic name for this man made fiber is "Acrylic" and it is required that this name be used in such advertising.

Respondents contend that the use of the term "Acrilan" was due to a misunderstanding or miscommunication in setting up the advertisements with the classified advertising section of the Washington Post. The record shows that this type of classified advertising is usually telephoned to the newspaper early in the week and that no opportunity exists for a review of the advertisement before publication. Respondents testified that they have complained from time to time about such errors and the record shows that in 1973 the Washington Post admitted that the use of the term "Acrilan" was probably the paper's mistake.

It is significant that in a large number of respondents' advertisements spanning the time period relevant here the proper term "Acrylic" was used. It appears that the use of "Acrilan" was completely inadvertent and not intentional. Under the circumstances responsibility for the violations of the requirements of the Act may not have been respondents.

Finally, the Commission has also alleged that respondents have not made proper disclosures relating to the exempted backings, filling or paddings as required by rule 11 of the rules and regulations (16 C.F.R. §303.11). Commission counsel have merely referred to certain exhibits of record as supporting their claim without further discussion or explanation. No further evidence or testimony of record relates to this alleged violation. Upon reading rule 11 and the cited advertisements I can not determine what information required by rule 11 was not included. In this respect I can discern no difference between the advertisements cited and those which were not cited. Compare CX 7 with CX 8.

Accordingly, not being able to describe the violation alleged I can make no finding that it in fact occurred (see Tr. 272).

THE REMEDY

The two violations of the Federal Trade Commission Act found in this proceeding were respondents' use in their advertising of the term "WAREHOUSE SALE"⁸ and their failure to state the nature of the higher price on which their "percentage-off" claims were based. Significantly, the initial contact a prospective purchaser might have with respondents is at the point of reading such advertising. Although the true nature of respondents' promotion, including the fact that respondents might offer the best bargains in town, would appear obvious to any customer upon inspection of respondents' retail premises, the initial contact, if possessing the requisite tendency and capacity to deceive, may be prohibited outright.

Accordingly, in my opinion, requiring respondents to cease and desist from using the words "Warehouse Sale" or any combination of those words or other words that state or imply that respondents are conducting business anywhere else than at their retail establishment is appropriate under the circumstances and is reasonably related to the violation of law found.

Such a prohibition is clearly within the Commission's power, for it is vested with broad discretion in determining the type of order necessary to ensure discontinuance of the unlawful practices found. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965). The Commission's discretion is limited only by the requirement that the remedy be reasonably related to the unlawful practices found. *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 613

⁸ It should be noted that the record shows that respondents did use a large sign mounted on top of a station wagon or truck that read "WAREHOUSE SALE TODAY." This sign was displayed at the side of the road in front of respondents' Beltsville facility. Although this would constitute an unfair trade practice, that act and practice is not "in commerce" and is not within the coverage of the Federal Trade Commission Act (see RX 1, frames 34A-36; Tr. 140).

(1946); *Niresk Industries, Inc. v. Federal Trade Commission*, 278 F.2d 337, 343 (7th Cir. 1960), *cert. denied*, 364 U.S. 883. The Commission is not limited to prohibiting the illegal practices in the exact form in which they were found to have been employed in the past. *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

Respondents should be required, when they use "percentage off" claims, to state the nature of the higher price upon which the claim is based. The Commission's power to require affirmative disclosure is well established. See *Federal Trade Commission v. Colgate-Palmolive Co.*, *supra*.

ORDER

It is ordered, That respondents Hollywood Carpets, Inc., a corporation, its successors and assigns, and its officers, and Charles Snyder, Florence H. Snyder and Dale E. Snyder, individually, and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "WAREHOUSE SALE" or any combination of those words or other words of similar import and meaning that represent that respondents are conducting any business other than their regular retail business.

2. Representing that a sale price is a "percentage off" without disclosing in a clear and conspicuous manner the nature of the higher price upon which the claim is made.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor coverings and other merchandise.

It is further ordered, That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

It is further ordered, That respondents deliver a copy of this order to all present and future personnel of respondents engaged in the sale, or the offering for sale, of any product, or in any aspect of preparation, creation, or placing of advertising, and secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That each of the individual respondents named herein promptly notify the Commission of the discontinuance of his or her present business or employment and of his or her affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which he or she is engaged as well as a description of his or her duties and responsibilities.

OPINION OF THE COMMISSION

BY DIXON, *Commissioner*:

The complaint in this matter was issued on July 8, 1974, charging respondents with a variety of unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) as well as with violation of the Textile Fiber Products Identification Act (15 U.S.C. 70) and rules and regulations thereof, all in connection with the retail sale of carpeting. Hearings were held before Administrative Law Judge Miles J. Brown, who rendered his initial decision on Mar. 18, 1975. The administrative law judge found that respondents, a carpet retailer and its controlling officers, had made misleading use of the term "Warehouse Sale," and had falsely advertised large percentage reductions on their merchandise (I.D. pp. 23, 26 [pp. 808, 810-811 herein]).¹ In all other respects the judge rejected the allegations of the complaint, and provisions of the notice order. Complaint counsel have appealed from the initial decision, urging that the provisions of the notice order be adopted in their entirety.

¹ The following abbreviations are used herein:

I.D. p. - Initial Decision (Page No.)
I.D. - Initial Decision (Finding No.)
Tr. - Transcript of testimony (Page No.)
CX - Complaint Counsel's Exhibit
RX - Respondents' Exhibit

In reviewing the record of this case, the administrative law judge was no doubt impressed, as are we, that the named parties here are not among the more heinous male-factors to be haled before this tribunal. In a Rogues' Gallery of Commission Respondents they would find their place beneath the cobwebs of a back room. Nonetheless, proof of evil intent is not necessary in a Section 5 case, and good character does not excuse false advertising, nor lessen its capacity to harm consumers. For whatever reason, we believe that the administrative law judge dealt too gently with the practices set before him, finding truth where deception lay. Our job being not to punish, but only to prevent the recurrence of past violations, we believe that modification of the law judge's conclusions, and expansion of his order is necessary in several respects, all as set forth below:

I. FICTITIOUS "SALE" ADVERTISEMENTS

The initial controversy involves respondents' use of the word "sale" to characterize their offering of the same carpeting over a one-year period, November 1970 to November 1971. The administrative law judge found that there are three basic prices at which carpets and floor coverings are sold: (1) The retailer may purchase a full roll of carpeting from the manufacturer and sell various lengths from the roll. The price charged under this method is the "full roll" price (I.D. 9). (2) If the retailer cannot satisfy demand from stock he or she may place a special order with the manufacturer, which cuts off the required amount from its roll and ships it. As might be expected, a higher price is charged in such circumstances, referred to as the "cut order" price (I.D. 10). (3) A "remnant" is the portion at the end of a roll which is too small for general use in filling wall-to-wall orders. Remnants are sold by the manufacturer at 40-50 percent or more below roll price to the retailer and generally resold by retailers at similarly hefty discounts from full roll and cut order prices (I.D. 11).

The record indicates that during a year-long period under investigation respondents advertised as being on "sale" a brand of carpeting called "Casa Real" by Philadelphia Carpets at a price of \$4.99 (or \$4.88)² per square yard. Under questioning, respondent Dale Snyder conceded that \$4.99 (or \$4.88) was the "regular store price" established for Casa Real (Tr. 429-30). The administrative law judge concluded that respondents had not misused the term "sale" because during the period in question respondents did make some sales of Casa Real at \$5.99, the cut order price. These, however, were instances in which respondents did not have in stock the particular color or pattern of Casa Real

² The lower price was apparently charged at respondents' large Beltsville facility, the higher price at its smaller retail showrooms, the difference in price reflecting the cost of shipping from Beltsville.

desired by the consumer (Tr. 430). The record indicates, moreover, that cut order sales of Casa Real at a price higher than \$4.99 constituted only a tiny and declining fraction of all sales of the product (RX 73b; Tr. 496).

Under these circumstances we believe that the continuous representation by respondents that \$4.99 (or \$4.88) was a "sale price" for Casa Real was deceptive. Conceivably respondents intended by their advertising to reflect the fact that at the time the "sale" began they had begun to stock Casa Real in large quantities, thereby enabling them to provide roll prices for most colors and patterns, as opposed to the higher cut prices previously in force. If so, it was incumbent upon them to make this clear, as, for example, by announcing that they had changed their regular method of operation and could now offer lower prices on a wider range of merchandise. Unqualified, the term "sale," combined with citation of particular prices, clearly implies that a merchant has departed in significant measure from pricing patterns previously observed (and likely to be observed in the future) in the regular course of the merchant's business. It suggests to the consumer the advisability of taking *immediate* advantage of the unusual prices being offered, and, to the extent that the claim is believed, it may significantly influence buying behavior.³ It is clearly an abuse of "sale" to apply it over a prolonged period of time to characterize what have become the everyday prices at which a merchant sells.

We will enter order language prohibiting deceptive use of the term "sale" (order Par. I(1)), and prohibiting representations of savings based on use of a fictitious regular price (Par. I(2)).

II. MISLEADING COMPARISON PRICES

The second assignment of error relates to the law judge's finding that respondents had not advertised falsely by using the cut order price of carpeting as a comparison price in the advertising of remnants, to wit:

15x15', SALE \$98
Compare \$238 to \$264 Value
12x18', SALE \$96
Compare \$184 to \$235 Value (CX 15)

The carpets described were remnants, and the prices at which they

³ If consumers possessed perfect knowledge of all competitive alternatives no harm might flow from misrepresentations of the sort involved here. A consumer could readily determine how the advertised price compared to market alternatives (taking into account quality and service as well) and would simply ignore the merchant's own characterization of his price. Lacking such perfect knowledge, however, a consumer is likely to infer that if a merchant has succeeded in selling a substantial quantity of product at some "regular" price, that price must be a competitively viable charge. When the vendor offers a "sale," therefore, the consumer will infer that the new price is, in fact, cheap relative to competitive alternatives, which will, of course, be false if the "sale" includes only regular-priced items.

were offered were respondents' regular per-unit prices for *remnants*. The comparison prices were those at which the same size carpeting might be sold had it been cut ordered from the manufacturer. Respondents themselves conceded in their answer that advertising such as the above would be construed as a comparison of their remnant prices with their competitors' *remnant* prices.⁴ Despite respondents' admission, the administrative law judge concluded that it would be "a gross miscarriage of justice to lock respondents to this admission." (I.D., p. 25 [p. 809, herein]). To the contrary, we believe the admission mirrored the truth. A consumer not familiar with the carpeting industry might well assume that the comparison prices did indeed represent those at which others would sell identical merchandise, *i.e.*, *remnants*. In fact, it appears that the prices respondents advertised were not only those at which they regularly sold remnants, but in the same general range as prices at which competitors sold remnants. The use of comparison prices 100-150 percent higher with no indication that such comparison prices were based on the prices of cut order merchandise could only deceive and mislead.

The administrative law judge himself recognized that respondents were remiss in failing to qualify representations that remnants were being sold at savings of "50-70%." He concluded that absent qualification consumers would be likely to assume that they would realize savings of 50-70 percent from what they would pay for comparable *remnants* elsewhere (I.D. p. 23 [p. 808, herein]). The same reasoning is equally applicable to respondents' use of unqualified comparison prices. The potential injury resulting from such misrepresentations is obvious. Respondents' unqualified comparison clearly suggests that the advertiser is providing a product at only a fraction of what the same product would cost elsewhere. The consumer who relies on the representation may, therefore, be induced to purchase the advertised product, assuming the quoted per-unit price cannot be matched, when in fact a more desirable remnant might be obtainable from a competitor at a comparable per-unit price.

There is, of course, nothing wrong (and much right) in pointing out to consumers that by purchasing remnants they can realize huge savings over costs incurred by buying the identical product cut from a roll. The additional order provision we shall enter respecting this violation will require simply that the nature of comparison prices be made clear in respondents' advertising (Par. I(3)).

⁴ Use of the word "Sale" might also tend to suggest that the advertised prices were below per-unit remnant prices charged by respondents themselves, and, therefore, that the "compare" prices were respondents' own former prices.

III. BAN ON UNQUALIFIED REPRESENTATION OF DOLLAR AMOUNT SAVINGS

Complaint counsel contend thirdly that the administrative law judge erred in modifying section I, paragraph 4 of the notice order to forbid only unqualified representations of percentage savings and not unqualified representations of dollar amount savings. While the complaint alleged, and the administrative law judge found that respondents had made only deceptively unqualified representations of percentage savings, we believe that the order in this matter should forbid unqualified representations of dollar amount savings in order to prevent respondents from repeating in a different guise the same violations which gave rise to the order. It would be absurd, if, being estopped from claiming without qualification "Save 50-75%," respondents were able to say, no less deceptively, "Save \$70-\$100." It is well established that the Commission in fashioning an order need not limit it to the most narrow formulation of the violation found. *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952). The prohibition on unqualified dollar savings claims is clearly related reasonably to the unlawful practices found, which were in essence misrepresentations of available *savings*.

IV. USE OF "WAREHOUSE"

Complaint counsel further contest the administrative law judge's limitation of the language of Section I, paragraph 6 of the Notice Order to forbid only use of the words "Warehouse Sale" or any combination of other words of similar meaning. Complaint counsel urge a prohibition on any use of the word "warehouse."

The administrative law judge found that respondents' Beltsville facility could indeed be termed a "warehouse." As he concluded (citations omitted):

It is a portion of a larger building with three roll-type-overhead-door entrances at the front, which could be described generally as a loading bay * * *. A walk-in door entrance is located to the left of the overhead door entrances * * *.

This walk-in door leads into a small enclosed area described as a "sample show room perhaps 12 by 36 feet" * * *. In this area respondents display samples used in its "cut order" business * * *. The remaining portion of this facility, consisting of a floor area of approximately 11,000 square feet, contains the rolls of carpeting and remnants and other merchandise which Hollywood maintains as stock * * *. The remnants (rolled up) are usually stacked standing up along the right and left walls of this large room * * *, whereas the rolls of carpeting are placed horizontally in pyramid fashion on the floor in piles with walk space between the remnant display and roll display * * *. The middle of the floor area in the large room is used as a cutting area * * *. A three ton fork-lift truck * * * is used to move the rolls from the various piles to the cutting area * * *. Certain office space is located over the sample room with access by stairs from the large storage-work area * * *. (I.D. 24.)

The administrative law judge, finding that a warehouse sale "relates to a special or unusual event at which time the advertiser has generally reduced all or most of its merchandise in its storage facility for fast sale" concluded that respondents had used the term deceptively (I.D. p. 26 [p. 810, herein].) We have no quarrel with this finding (nor do respondents, who did not appeal) since it appears that respondents employed the term on a regular basis to characterize their normal course of business. Indeed, given that respondents now operate from only one location, it is doubtful that they could under any circumstances conduct what consumers would generally construe to be a "warehouse sale." Therefore, a prohibition on any use of that term (and functional equivalents) seems clearly warranted.

Complaint counsel raise the further question of whether the order should forbid any use of the term "warehouse," as for example, "visit our warehouse location," another common advertising theme of respondents. The underlying question we believe is whether use of the term "warehouse" in an advertisement is likely to convey a misleading impression to consumers regarding the available range of products and prices they will encounter if they patronize the facility. While the physical attributes of a building might satisfy Noah Webster that it is a warehouse, the issue for Section 5 purposes is whether the building functions in the commercial setting in the way consumers will be led to expect by virtue of reference to it in an advertisement designed to sell carpeting. This is no more than a restatement of the well established proposition that the literal truth employed in a particular context may be used to deceive *Bockenstette v. F.T.C.*, 134 F. 2d 369 (10th Cir. 1943). On that point the evidence in the record is inconclusive. While it does not appear that respondents ever provided the significant savings generally associated with a legitimate warehouse sale, it does appear that by virtue of doing business from a large storage facility they were able to stock a wide range of carpeting at prices that at least sometimes compared favorably with those of competitors. Thus we conclude that complaint counsel have not sustained the burden of proof necessary to warrant an absolute prohibition on respondents' use of the term "warehouse" to characterize a part of their sales facility.

By the same token, respondents must not be allowed to misrepresent the situation. A statement such as "Visit our Warehouse Location" is likely to convey a misleading impression when in fact respondents have only one location consisting of a warehouse attached to a showroom. We think that on balance respondents should be permitted to employ the term "warehouse" provided that they make clear that it refers to a location at which they conduct their retail business in its regular course. We have fashioned an appropriate order. Paragraph I(6) is the

administrative law judge's prohibition on use of "Warehouse Sale." Paragraph I(7) forbids the use of warehouse unless it is disclosed that the term refers to a facility at which retail selling is regularly conducted, *e.g.*, "Visit our warehouse-showroom." Paragraph I(8) prohibits other misrepresentations of the nature of respondents' physical facilities, a provision contained in Paragraph I(6) of the notice order and warranted as a reasonably related generic description of the violation occurring here.

V. TEXTILE FIBER PRODUCTS IDENTIFICATION ACT VIOLATIONS

Exhibits introduced by complaint counsel indicated that advertisements for respondents' products run in the Washington Post employed the term "Acrilan" when in fact the proper generic term for the fiber in question is "acrylic" and use of that term is required by the Textile Fiber Products Identification Act, 15 U.S.C. §§70, 70b. The exhibits upon which complaint counsel rely consist of advertising from 1971 (CX 1, 6, 21, 23, 33). Respondents introduced evidence to suggest that a single false advertisement which occurred in 1973, after the Commission's investigation, may have been the fault of an employee of the Washington Post who accepted instructions for the advertisement over the telephone (RX 41, 42, 45). No similar testimony was adduced for the 1971 advertisements, but the administrative law judge apparently reasoned, though he did not explicitly so find, that inasmuch as some advertisements during the 1971 period did employ the term "acrylic," the uses of "acrilan" may similarly have been due to repeated errors in transcription by Post employees. The administrative law judge thus omitted an order, finding that responsibility for the improper advertisements "may not have been respondents." (I.D. p. 27 [p. 811 herein].)

We would certainly agree that where, through no fault of an advertiser, a newspaper makes an error which results in deception, the advertiser is not liable, provided he or she takes prompt action to rectify the mistake which has occurred, and does not acquiesce in it or permit it to continue. In the instant case it appears that during the initial 1971 period respondents took no action to remedy repeated misuses of the term "acrilan." Thus, assuming, *arguendo*, that the improper advertisements were in fact due to errors in transcription by the Washington Post⁵, it was nevertheless incumbent upon respondents, after the initial mistake had occurred, to take action to prevent its recurrence, which they did not do. The Commission is obliged to prevent negligent violations of the law as well as those that flow from

⁵ The presumption, of course, should be to the contrary. Whether it was adequately rebutted here is a matter we need not consider.

more blameworthy motives, for in either case the result is the same. We, therefore, conclude that the administrative law judge erred in omitting an order provision with respect to the Textile Fiber Products Identification Act.⁶

Similarly, we believe complaint counsel are correct in pointing out that respondents ran afoul of the Act by characterizing carpets for sale as being composed of various fibers (wool, nylon, polyester) without disclosing that the fiber descriptions referred only to the face or pile of the carpet and not to other portions, as required by rule 11, 16 C.F.R. §303.11, promulgated by the Commission pursuant to the Textile Fiber Products Identification Act. (CX 1, 6, 7, 24, 30, 42, 46, 47) For the foregoing reasons we shall enter the notice order language requiring compliance with the provisions violated.

An appropriate order is appended.

FINAL ORDER

This matter having been considered by the Commission upon the appeal of complaint counsel from the initial decision, and the Commission for the reasons stated in the accompanying opinion, having granted the appeal in part:

It is ordered, That the following portions of the initial decision of the administrative law judge be, and they hereby are, adopted as the findings of fact and conclusions of law of the Commission: Pages 1-13 [pp. 790-800, herein] (except for finding 15, sentence 1, page 13 [p. 800, herein]); page 14 [p. 800-801 herein] (except for findings 18 and 20); page 15 [p. 801-802, herein] (except for findings 22-23); pages 16-18 [p. 802-804, herein] (except for finding 27, page 16 [p. 802, herein]); pages 19-20 [p. 805-806, herein]; page 21 [p. 806, herein], first sentence; [beginning with "The question presented * * *"]; page 22 [p. 807, herein], Sec. "B"; pages 23-24 (except for last textual sentence, p. 24) [pp. 808-809 herein, and textual sentence beginning "On the basis of the record * * *"]; page 25, first two sentences, [p. 809 herein, beginning with "It is not disputed however, * * *], and Sec. "D" [p. 810, herein]; page 26 (except for last two sentences) [pp. 810-811 herein, sentences beginning with "4". The Commission's charge that respondents have violated * * *]; page 28, second full paragraph [p. 812 herein, beginning with "Such a prohibition is clearly within * * *].

Other findings of fact and conclusions of law of the Commission are contained in the accompanying opinion.

It is further ordered, That the following order to cease and desist be, and it hereby is, entered:

⁶ Use of the fiber trademark "acrilan" without use of the generic term acrylic is also contrary to the requirements of rules 41(a) and 41(c) [16 C.F.R. §303.41(a), (c)] of the TFPPIA.

ORDER

I

It is ordered, That respondents Hollywood Carpets, Inc., a corporation, its successors and assigns, and its officers and Charles Snyder, Florence H. Snyder and Dale E. Snyder, individually, and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other article of merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Sale," or any other word or words of similar import or meaning not set forth specifically herein unless the price of such merchandise, being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise or services have been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

3. Advertising or otherwise representing a compared value price for carpet remnants or rugs (a) unless the carpet remnants or rugs being advertised are of the same grade and quality as the carpets with which such advertised prices are compared; and (b) without disclosing in immediate conjunction therewith that the carpet remnants or rugs are usually sold for less than wall-to-wall prices, and that the compared value is based on the wall-to-wall price of carpeting of the same grade and quality (unless the compared value is in fact based on the price of remnants of the same grade and quality).

4. Representing, directly or by implication, orally or in writing, that purchasers of respondents' merchandise will save any stated dollar or percentage amount without fully and conspicuously disclosing, in immediate conjunction therewith, the basis for such savings representations.

5. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar represen-

tations as set forth in Paragraphs One, Two, and Four of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

6. Using the words "Warehouse Sale" or any combination of those words or other words of similar import and meaning that represent that respondents are conducting any business other than their regular retail business.

7. Using the word "warehouse" or any other word or words of similar import to describe respondents' physical facilities, without also disclosing clearly and conspicuously that the word "warehouse" or other word or words of similar import describe a facility at which respondents regularly engage in the retail sale of carpeting, *e.g.*, "Visit our warehouse-showroom facility."

8. Misrepresenting in any manner the size, description or classification of any of respondents' physical facilities.

II

It is further ordered, That respondents Hollywood Carpets, Inc., a corporation, its successors and assigns, and its officers, and Charles Snyder, Florence H. Snyder and Dale E. Snyder, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by 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. Falsely and deceptively advertising textile fiber products by:

(a) 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 Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

(b) Failing to set forth in advertising the fiber content of floor covering 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.

(c) 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.

(d) 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 respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor coverings and other merchandise.

It is further ordered, That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall forthwith distribute a copy of this Order to each of their operating divisions.

It is further ordered, That respondents deliver a copy of this order to all present and future personnel of respondents engaged in the sale, or the offering for sale, of any product, in the consummation of any extension of consumer credit or in any aspect of preparation, creation,

or placing of advertising, and secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That each of the individual respondents named herein promptly notify the Commission of the discontinuance of his or her present business or employment and of his or her affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he or she is engaged as well as a description of his or her duties and responsibilities.

It is further ordered, That respondents shall, within sixty (60) days after the effective date of the order served upon it, file with the Commission a report, in writing, signed by respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

BRIDGESTONE TIRE COMPANY OF AMERICA, INC.

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

Docket C-2734. Complaint, Sept. 30, 1975—Decision, Sept. 30, 1975

Consent order requiring a Torrance, Calif., distributor and seller of tires, among other things to cease misrepresenting the safety or performance characteristics of any automobile tires, and misrepresenting any generalized safety claims. Further, the respondent is required to have a "reasonable basis" in substantiation of claims regarding the safety performance characteristics of "any product."

Appearances

For the Commission: *Bruce J. Parker.*

For the respondents: *Anthony Liebig, Lillick, McHose & Charles,*
Los Angeles, Calif.

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 Bridgestone Tire Company of America, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in