IN THE MATTER OF

JUICE MASTER MANUFACTURING CO., INC., ET AL.

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

Docket C-1572. Complaint, Aug. 6, 1969—Decision, Aug. 6, 1969

Consent order requiring an East Peoria, Ill., distributor of fruit and vegetable juice extractors to cease using deceptive guarantees in the sale of its products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Juice Master Manufacturing Co., Inc., a corporation, and Lola Slagell, individually and as an officer of said corporation, and Lloyd D. Slagell, individually, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Juice Master Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 604 West Muller Road in the city of East Peoria, State of Illinois.

Respondent Lola Slagell is an individual and an officer of the corporate respondent. She formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Her address is the same as that of the corporate respondent.

Respondent Lloyd D. Slagell is an individual and an officer of a corporation that owns or controls the assets of the said corporate respondent. He participates with the said corporate officer in formulating, directing and controlling the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

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

bution of fruit and vegetable juice extractors directly to the public and to distributors and retailers for resale to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, the respondents have made, and are now making, numerous statements in advertisements inserted in magazines and in promotional material with respect to their product guarantees or warranties.

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

ATLAS JUICE MASTER

* * *

fully guaranteed * * *

* * * * * * *

Unconditional lifetime guarantee against failure resulting from defective parts or workmanship (excepting the cutting blade which has a one year warranty). This guarantee applies to the original purchaser only.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that their products are guaranteed or warranted without condition or limitation.

PAR. 6. In truth and in fact, respondents' guarantees or warranties of their products are subject to conditions and limitations which are not revealed in their advertised guarantees or warranties.

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 corpora-

tions, firms and individuals in the sale of fruit and vegetable juice extractors of the same general kind and nature as those sold by respondents.

PAR. 8. By and through the use of the aforesaid acts and practices, respondents place in the hands of distributors, retailers and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure

prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Juice Master Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 604 West Muller Road, in the city of East Peoria, State of Illinois.

Respondent Lola Slagell is an individual and officer of said corporation and her address is the same as that of said corporation.

Respondent Lloyd D. Slagell is an individual and an officer of a corporation that owns or controls the assets of the corporate respondent 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, Juice Master Manufacturing Co., Inc., a corporation, and its officers, and Lola Slagell, individually and as an officer of said corporation, and Lloyd D. Slagell, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of fruit and vegetable juice extractors or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that their products are guaranteed unless all of the essential terms and conditions of the guarantee, including its nature and extent, the name and address of the guarantor, and the manner in which the guarantor will perform thereunder, are clearly and conspicuously disclosed in immediate conjunction therewith.

2. Furnishing or otherwise placing in the hands of others any means or instrumentality by or through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

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

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

IN THE MATTER OF

AARON'S, INC., ET AL.

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

Docket C-1573. Complaint, Aug. 6, 1969—Decision, Aug. 6, 1969

Consent order requiring a Falls Church, Va., retailer of television and radio sets to cease using bait advertising, making deceptive offers of free merchandise, inducing purchasers to sign partially completed contracts, and failing to disclose that sales contracts may be negotiated to third parties.

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 Aaron's, Inc., a corporation and Harry Baron and Irene Baron, 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. Aaron's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 440 South Washington Street in the city of Falls Church, Commonwealth of Virginia.

Respondents Harry Baron and Irene Baron are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, in-

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

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

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

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

FREE HOME DEMONSTRATION
CALL 538-2920 Now
Home Demo. Hours: Daily and Sunday 9 a.m. to 10:00 p.m.
Store Hours: Daily 9:30-6:00—Fri. 9:30-9:00

282 sq. in. T.V. RADIO PHONO COMB.
Complete With VHF-UHF Famous Brand

[Picture of television set]

$159 with old set

FREE WITH YOUR
PURCHASE $50 WORTH
LP STEREO RECORDS

NO MONEY DOWN
with Old Set in Trade
NO PAYMENTS FOR 46 DAYS
QUALIFIED PURCHASERS

FANTASTIC VALUE

267 SQ. IN. ADMIRAL COLOR

[Picture of television set]

Consolette Base Optional
Admiral presents brilliant color highlights
with sharper, crisply defined images, in
vivid COLOR as well as in Black and
White TV. You see the full picture—
Exactly what the TV camera sees.

$259
With Trade
NO MONEY DOWN With Old Set in Trade. No Payment for 46 Days.

CALL NOW
533-2920

AARON'S

440 WASHINGTON ST.

14 years serving Washington area—

FREE
set walkie-talkies or
16-transistor radio
with purchase of any
console TV

FREE
Your Choice
electric percolator or
electric portable mixer
with purchase of any
console TV.

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

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

2. The respondents have sufficient quantities of the advertised products available for purchase.

3. Purchasers of the advertised television, radio, phonograph combination will receive free with their purchase, $50 worth of LP stereo records.

4. Purchasers of the advertised console television sets will receive with their purchase, a free set of walkie-talkies, a free 16-transistor radio, or their choice of a free electric percolator or portable mixer.

PAR. 6. In truth and in fact:

1. The offers set forth in said advertisements were not bona fide offers to sell the advertised products at the prices and on the terms and conditions stated. Respondents' salesmen, who called at home upon persons responding to said advertisements, did not display the advertised products. Instead, respondents' salesmen disparaged the advertised products and attempted to sell a higher

priced product. By these and other tactics, purchase of an advertised product was discouraged and respondents frequently sold a higher priced product.

2. In a number of instances, the respondents did not have sufficient quantities of the advertised products available for purchase.

3. Purchasers of the advertised television, radio, phonograph combination did not receive $50 worth of the stereo records free.

4. Purchasers of the advertised console television sets did not receive with their purchase a free set of walkie-talkies, a free 16-transistor radio, or their choice of a free electric percolator or portable mixer.

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, respondents have engaged in the following unfair and deceptive acts and practices:

1. In a number of instances, respondents have induced purchasers of their merchandise to sign blank conditional sales contracts and other instruments which respondents later complete as to prices, terms and product information.

2. In a number of instances, respondents have failed to disclose to the purchaser the material fact that the conditional sale contract and promissory note executed by such purchasers may, at the option of respondents, be negotiated or assigned to a finance company to which the purchaser will be indebted.

3. In a number of instances, respondents have failed to supply purchasers with a copy of the executed conditional sales contract and promissory note at the time of the consummation of the sale.

4. In a number of instances, respondents have failed to disclose all applicable interest, finance, credit, service, or carrying charges to the purchaser.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of television sets, stereos, and radio, television, phonograph combinations and other articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations and practices has

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

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

DECISION AND ORDER

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

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

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

1. Respondent Aaron's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business

located at 440 South Washington Street, in the city of Falls Church, Commonwealth of Virginia.

Respondents Harry Baron and Irene Baron are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Aaron's, Inc., a corporation, and its officers, and Harry Baron and Irene Baron, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of television sets, television, radio and phonograph combinations, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Discouraging the purchase of, or disparaging, any of the respondents' merchandise which is advertised or offered for sale.

3. Representing, directly or by implication, that specified products are offered for sale, unless such offer is bona fide and unless sufficient quantities are available in stock to satisfy reasonably anticipated demand: *Provided, however,* That items available only in limited supply may be advertised if such advertising clearly and conspicuously discloses the number of units in stock and the duration of the offer.

4. Representing, directly or by implication, that free merchandise will be given to purchasers of products, unless such free merchandise is tendered or delivered to the purchasers in every instance.

5. Inducing or causing purchasers or prospective purchasers of respondents' merchandise to sign blank or partially completed conditional sale contracts, or any other contractual instruments not fully filled out and completed.

6. Failing to disclose in writing, prior to the execution of any evidence of indebtedness by the purchaser, and with such conspicuousness and clarity as is likely to be observed and read by the purchaser, that such evidence of indebtedness may be, at respondents' option and without notice to the purchaser discounted, negotiated or assigned to a third party to whom the purchaser will be thereafter indebted and against whom the purchaser's claims or defenses may or may not be available.

7. Failing or refusing to supply purchasers of respondents' merchandise with a copy of the executed conditional sales contract, promissory note or other agreement at the time of execution by the purchaser.

8. Failing or refusing to disclose the exact amount of the total purchase price of merchandise including all interest, taxes, finance, credit, service or carrying charges, at the time the contract is executed by the purchasers.

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

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

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

IN THE MATTER OF

MATTRESSES, INC., ET AL.

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

Docket C-1574. Complaint, Aug. 6, 1969—Decision, Aug. 6, 1969

Consent order requiring a Baltimore, Md., retailer of mattresses and box springs to cease using fictitious pricing, bait offers, and false health claims, misrepresenting that its products are patented, and failing to disclose all financial details of its sales contracts.

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

PARAGRAPH 1. Respondent Mattresses, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business formerly located at 4030 W. Garrison Avenue in the city of Baltimore, Maryland, and with present address of 6813 Huntington Drive, Baltimore, Maryland.

Respondent Paul Feldman is an individual and an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent. His residence address is 8606 Bramble Lane in Randallstown, Maryland.

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

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

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of said mattresses and box springs, respondents have represented, directly or by implication, the following:

1. That they are working in conjunction with a Physical Fitness and Health Program.

2. That their "health representatives" will call on prospective customers and demonstrate respondents' "new health mattress."

3. That they are making a bona fide offer to sell mattresses at a reduced or special sale price of $22.50 for a limited time only and that purchasers of such mattresses realize a savings from respondents' regular selling price.

4. Through the use of the words or terms "orthopedic," "health," "orthopedic type," "health mattress," and other words or terms of similar import not set forth herein, that certain of respondents' mattresses and box springs have been specially designed and constructed so as to prevent, correct or afford substantial relief to a body deformity or deformities, and accord with recommendations of orthopedic authorities respecting design and construction of such products for the prevention, correction or relief of such deformity or deformities.

5. Through the use of the words or terms "custom," "custom made," "custom built," and other words or terms of similar import that respondents' mattresses and box springs have been specially designed and constructed in accordance with specifications furnished by individual purchasers or users prior to manufacture of said mattresses and box springs.

6. That with respect to the prices of the "Golden Lyne" mattresses and box springs, these products are being offered for sale or sold at a special, reduced, or discount price and that savings are thereby afforded purchasers from respondents' regular selling prices.

7. Through the use of an advertisement appearing in the Maryland State Medical Journal, the official publication of the Medical and Chirurgical Faculty of the State of Maryland, that the design and construction of respondents' "Golden Lyne" bedding have been approved by said Faculty and by reason thereof have preventive or therapeutic properties.

8. By and through the use of the words "Protected By United States Patent No. 2,227,685," that their bedding products are protected by a patent issued to them by the United States Patent Office, or the respondents are authorized to use such patent number which was issued to another party.

PAR. 5. In truth and in fact:

1. Respondents are not working in conjunction with any phsyical fitness and health programs and are only in the business of advertising, selling, and distributing bedding products.

2. Respondents do not employ any "health representatives" but employ salesmen, who are not qualified to be referred to as

"health representatives," who call on customers and demonstrate a mattress which has no therapeutic or preventive properties and should not be referred to as a "health mattress."

3. Respondents' offers are not bona fide offers to sell the said "health mattress" at the aforesaid price, but are made for the purpose of obtaining leads to persons interested in the purchase of mattresses and box springs. After obtaining such leads, respondents' salesmen or representatives call upon such persons at their homes and disparage the aforementioned mattress and otherwise discourage the purchase thereof and attempt to sell, and frequently do sell, different and more expensive mattresses and box springs. The offer set forth above, is not for a limited time only, and said mattresses are offered regularly at the represented price.

4. Respondents' mattresses and box springs have not been specially designed and constructed so as to prevent, correct or afford substantial relief to body deformity or deformities nor do said mattresses accord with recommendations or orthopedic authorities respecting design and construction for prevention, correction or relief of such deformities.

5. Certain of the mattresses represented by respondents as being custom made are not specially designed in accordance with specifications furnished prior to manufacture by individual purchasers or users of their mattresses or box springs.

6. Respondents' "Golden Lyne" bedding products are not being offered for sale at special or reduced prices and no savings are realized by respondents' customers.

7. No Medical and Chirurgical Faculty or any chiropractic association or society has approved the design or construction of any of respondents' bedding products, nor has such design or construction been approved by any practitioner of medicine, orthopedics or chiropractic.

8. None of the respondents' bedding products, nor any material part thereof, are protected by a United States patent issued to the respondents, nor are the respondents authorized or licensed by the owners of United States Patent No. 2,227,685 to use such patent number, which has since expired.

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

PAR. 6. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of said mattresses and box springs, respondents (A) have had customers execute

conditional sales contracts and other negotiable instruments in blank and (B) have failed to disclose orally and in writing at the time of sale, all of the terms and conditions of the negotiable instrument to be signed, including but not limited to, the finance charge, rate of interest, and insurance charge.

PAR. 7. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of mattresses, box springs and other bedding products of the same general kind and nature as those sold by the respondents.

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

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

DECISION AND ORDER

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

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

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

1. Respondent Mattresses, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business formerly located at 4030 West Garrison Avenue, in the city of Baltimore, Maryland, and with present address of 6813 Huntington Drive, Baltimore, Maryland.

Respondent Paul Feldman is an officer of said corporation and his business address is the same as that of said corporation. His residence address is 8606 Bramble Lane in Randallstown, Maryland.

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 Mattresses, Inc., a corporation, and its officers, and Paul Feldman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of mattresses, box springs, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the respondents or their representatives are affiliated with or are working in conjunction with a physical fitness or health program, or that the respondents or their representatives are "health representatives," or representing in any manner that respondents or their representatives, agents, or employees are contacting members of the public for any purpose other than the sale of merchandise.

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

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

4. Discouraging the purchase of, or disparaging, any merchandise which is advertised or offered for sale.

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

6. Representing, directly or by implication, that any article of merchandise is offered for sale or sold at a special price, reduced price, or a discount price unless such price constitutes a significant reduction from the respondents' established selling price at which such merchandise has been sold in substantial quantities by respondents in the recent regular course of their business.

7. Representing, directly or by implication, that any article of merchandise offered for sale is limited in time or in any other manner unless any represented limitation or restriction is actually imposed and in good faith adhered to.

8. Misrepresenting, directly or indirectly, in any manner the savings realized by purchasers of respondents' merchandise.

9. Using the words or terms "orthopedic," "health," or any other words or terms of similar import or meaning as descriptive of mattresses or any other bedding product not specially designed and constructed so as to prevent, correct, or afford substantial relief to a body deformity or deformities, and not in accord with recommendations of an orthopedic authority or authorities respecting the design or construction of such product for the prevention, correction, or relief of a body deformity or deformities.

10. Representing, directly or by implication, that the design or construction of their products has been approved by a practitioner or practitioners of medicine, orthopedics or chiropractic.

11. Using the word "custom" or the phrases "custom made," "cusom built," or any other words or phrases of simi-

lar import or meaning as descriptive of stock merchandise; or misrepresenting, directly or by implication, that their bedding products have been specially designed and constructed in accordance with specifications furnished by the purchasers or users prior to manufacture.

12. Representing, directly or by implication, that bedding products, or any material part thereof, are protected by United States Patent Number 2,227,685, or falsely representing, in any manner, that bedding products, or any material part thereof, are protected by a United States patent or that the respondents are authorized to use a patent issued to another party.

13. Failing to disclose orally at the time of sale and in writing to each customer who executes a conditional sales contract, promissory note, or other negotiable instrument, with such conspicuousness and clarity as is likely to be read and observed by the customer all of the following items:

(a) The cash price of the merchandise purchased.

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

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

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

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

(f) The amount of the finance charge.

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

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

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

(j) A description of any security interest held or to be retained or acquired by respondent in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

For the purpose of this paragraph, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under Sections 106 and 107 of Public Law 90–321, the "Truth in Lending Act," and the regulations promulgated thereunder.

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

It is further ordered, That the 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

LEBANON KNITTING MILL, INC., ET AL.

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

Docket C–1575. Complaint, Aug. 6, 1969—Decision, Aug. 6, 1969

Consent order requiring a Pawtucket, R.I., knitting mill to cease misbranding the fiber content of its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Lebanon Knitting Mill, Inc., a corporation, and Clinton Grossman and Stanley Grossman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commis-

sion 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 Lebanon Knitting Mill, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island. Its office and principal place of business is located at 721 School Street, Pawtucket, Rhode Island.

Respondents Clinton Grossman and Stanley Grossman are officers of said corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation. Their address is the same as that of said corporation.

Respondents are manufacturers of wool products.

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

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

Among such misbranded wool products, but not limited thereto, were certain wool products which were stamped, tagged, labeled, or otherwise identified as containing "Wool and Rabbit Hair," whereas in truth and in fact, said wool products contained other fiber than represented.

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

Among such misbranded wool products, but not limited thereto, were certain wool products which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber

weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

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

DECISION AND ORDER

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

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

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

1. Respondent Lebanon Knitting Mill, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Rhode Island, with its office and principal place of business located at 721 School Street, Pawtucket, Rhode Island.

Respondents Clinton Grossman and Stanley Grossman are officers of corporate respondent and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Lebanon Knitting Mill, Inc., a corporation, and its officers, and Clinton Grossman, and Stanley Grossman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment, in commerce, as wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

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

IN THE MATTER OF

CARPETVILLE, INC., ET AL.

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

Docket 8764. Complaint, July 3, 1968—Decision, August 7, 1969

Consent order requiring a Penndel, Pa., former retailer of carpeting to cease misbranding, falsely advertising, and deceptively guaranteeing its textile fiber products.

COMPLAINT

Pursuant to 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 Carpetville, Inc., a corporation, and Broadloom Distributors, Inc., a corporation, and Sidney Soifer and Philip Bohm, individually and as officers of Carpetville, Inc., and Broadloom Distributors, Inc., and Allan Portnoy and Burton Snyder, individually and as officers of Broadloom Distributors, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Carpetville, Inc., is a corporation which was organized, existed and did business under and by virtue of the laws of the Commonwealth of Pennsylvania and was engaged in the retail sale of carpeting with its office and principal place of business located at 2026 Hunting Park Avenue, Philadelphia, Pennsylvania.

Respondent Broadloom Distributors, Inc., is a corporation which was organized, existed and did business under and by virtue of the laws of the Commonwealth of Pennsylvania, and was engaged in the retail sale of carpeting, with its office and principal place of business located at 397 West Lincoln Highway, Penndel, Pennsylvania.

Respondents Sidney Soifer and Philip Bohm are officers of Carpetville, Inc., a corporation, and of Broadloom Distributors, Inc.,

a corporation. They were primarily responsible for formulating, directing and controlling the policies, acts and practices of said corporations. The address of respondent Sidney Soifer is 3462 Bristol Pike, Cornwall Heights, Pennsylvania. The address of respondent Philip Bohm is 1319 Cardeza Street, Philadelphia, Pennsylvania.

Respondents Allan Portnoy and Burton Snyder, are officers of Broadloom Distributors, Inc., a corporation. They cooperated and were equally responsible with Sidney Soifer and Philip Bohm for formulating, directing and controlling the policies, acts and practices of said corporation. Their address is 3462 Bristol Pike, Cornwall Heights, Pennsylvania.

The aforesaid corporations appear to be inactive although according to the records of the Commonwealth of Pennsylvania, no proceedings in merger, sale or dissolution have been filed with respect to either of the aforementioned corporations.

PAR. 2. Respondents were, and for some time last past have been, engaged in the introduction, delivery for introduction, sale, advertising and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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

Among such misbranded textile fiber products but not limited thereto, were floor coverings which were falsely and deceptively advertised in newspapers published in various cities of the United States and having a wide circulation in various other States of the United States. Among such newspapers, but not limited thereto, was The Philadelphia Sunday Inquirer, a newspaper published in the city of Philadelphia, Commonwealth of Pennsylvania, in that the respondents in disclosing the fiber content in-

formation as to floor coverings, containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile or outer surface of any such floor covering and not to be exempted backings, fillings or paddings.

PAR. 4. Certain of said textile fiber products sold by means of samples, swatches or specimens, and unaccompanied by an invoice or other paper showing the information required to appear on the label, were further misbranded by the respondents, in that there was not on or affixed to said textile fiber products any stamp, tag, label, or other means of identification showing the required information in violation of Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under such Act.

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised in that respondents, in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and 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.

Among such textile fiber products but not limited thereto were textile fiber products which were falsely and deceptively advertised in the following respect by means of advertisements placed by respondents in newspapers published in various cities of the United States and having a wide circulation in various other States of the United States. Among such newspapers, but not limited thereto, was The Philadelphia Sunday Inquirer, in that respondents in disclosing the required fiber content information as to floor coverings, containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile or outer surface of any such floor covering and not to exempted backings, fillings or paddings.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised in violation of the Textile Fiber Products Identification Act, in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively adver-

tised in the following respects by means of advertisements placed by respondents in newspapers published in various cities of the United States having a wide circulation in various other States of the United States. Among such newspapers but not limited thereto, was The Philadelphia Sunday Inquirer, published in the city of Philadelphia, Commonwealth of Pennsylvania, in that:

(a) In disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such required fiber content information related only to the face, pile, or outer surface of the floor coverings and not to the backings, fillings, or paddings, in violation of Rule 11 of the aforesaid Rules and Regulations.

(b) All parts of the required information were not set forth in immediate conjunction with each other in legible and conspicuous type of lettering of equal size and prominence, in violation of Rule 42(a) of the aforesaid Rules and Regulations.

PAR. 7. The acts and practices of the respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business respondents now cause and for some time last past have caused, their said products, when sold, to be shipped from the respondents' suppliers to purchasers thereof located in various states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. In the course and conduct of their business the respondents have caused their said textile fiber products to be offered for sale in newspapers published in various cities of the United States. Among such newspapers, but not limited thereto, were various editions of The Philadelphia Sunday Inquirer, a newspaper published in the city of Philadelphia, Commonwealth of Pennsylvania.

PAR. 10. Respondents, in the course and conduct of their business, as aforesaid, have made the following guarantee statements

in newspaper advertising of their textile products, namely, floor coverings:

* * * * * * *

10 Years For Wear

* * * * * * *

Guaranteed 10 Years For Wear

* * * * * * *

Guaranteed 10 Years For Wear
At Tremendous Savings

PAR. 11. Through the use of said statements and representations, as set forth above, and others similar thereto but not specifically set out herein, the respondents have represented, directly or indirectly, to the purchasing public that said floor coverings are unconditionally guaranteed for ten years.

PAR. 12. In truth and in fact, said floor coverings are not unconditionally guaranteed for ten years and the nature and extent of the guarantee and the manner in which the guarantor will perform was not set forth in connection therewith. Moreover, the name and address of the guarantor were not set forth as required. Therefore, the statements and representations made by the respondents, as hereinbefore stated, were and are false, misleading and deceptive.

PAR. 13. In the course and conduct of their business and for the purpose of inducing the purchase of their products, the respondents, their salesmen and representatives have made certain statements and representations with respect thereto in advertisements inserted in the aforementioned newspapers published in various cities of the United States and having a wide circulation in various States of the United States, of which the following are typical and illustrative, but not all inclusive:

1. The Philadelphia Inquirer, Sunday Morning, June 9, 1963:

* * * * * * *

* * * Buys Out Bankrupt
Famous Mill * * *

* * * 3 Rooms
100% Nylon Carpet
Completely Installed * * *

2. The Philadelphia Inquirer, Sunday Morning, August 18, 1963:

* * * * * * *

* * * Buys Direct From
Famous Mill * * *

* * * We Have On Sale
"100%"
Nylon
Carpet * * *

* * * Only $139 * * *

PAR. 14. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set out herein, and through oral statements made by their salesmen and representatives, the respondents have represented, directly or by implication, that they were making a bona fide offer to sell carpeting or floor coverings at the prices specified in the advertising.

PAR. 15. In truth and in fact, the respondents' offers were not bona fide offers to sell the said carpeting or floor coverings, including installation, at the advertised prices, but were made for the purpose of obtaining leads and information as to persons interested in the purchase of carpeting or floor coverings. After obtaining leads through response to such advertisements and calling upon such persons, the respondents, their salesmen and their representatives made no effort to sell the advertised carpeting or floor coverings at the advertised price, but instead, exhibited and disparaged such merchandise in such a manner as to discourage its purchase and attempted to, and frequently did, sell much higher priced carpets or floor coverings.

PAR. 16. In the course and conduct of their business and for the purpose of inducing the purchase of their products, the respondents, their salesmen and representatives have made certain statements and representations offering free merchandise with the purchase of carpeting in advertisements inserted in the following newspapers distributed in interstate commerce, of which the following are typical and illustrative, but not all inclusive.

Evening Journal, Wilmington, Delaware, July 18, 1966:

Take your choice
Fedders Air Conditioner
New 1966 Portable TV

Grand Opening
Free
Gift
Offer

* * * * * * *

The Times Herald, Morristown, Pennsylvania, Thursday May 31, 1966:

Free
With your purchase—A swinger
Polaroid Camera

PAR. 17. Through the use of said statements and representations, and others of similar import and meaning, but not specifically set out herein, the respondents have represented, directly or indirectly, to the purchasing public that said offers were bona fide offers of gift merchandise to purchasers of respondents carpeting.

PAR. 18. In truth and in fact, respondents' offers were not bona fide offers of gift merchandise to be given to purchasers of respondents' carpeting but were made for purpose of obtaining leads and information as to persons interested in the purchase of carpeting or floor coverings. After obtaining such leads through response to such advertisements and effecting sales of advertised merchandise, respondents, their salesmen and their representatives, in many instances did not fulfill the offer of free gifts made in said advertisements or would only fulfill the offer upon payment of undisclosed charges.

PAR. 19. In the course and conduct of their business, in soliciting the sale of and in selling the aforementioned products, individual respondents Sidney Soifer, Philip Bohm, Allan Portnoy and Burton Snyder and corporate respondent, Broadloom Distributors, Inc., did business under the name Broadloom Distributors, Inc. and used such name on purchase orders and in advertisements of their products.

PAR. 20. By means of the aforesaid advertisements and purchase orders, and through the use of the word "Distributors" as part of respondents' corporate name, individual respondents Sidney Soifer, Philip Bohm, Allan Portnoy and Burton Snyder and corporate respondent, Broadloom Distributors, Inc., represented themselves to be engaged in the wholesale distribution of carpeting.

PAR. 21. In truth and in fact, individual respondents Sidney Soifer, Philip Bohm, Allan Portnoy and Burton Snyder and corporate respondent, Broadloom Distributors, Inc., were not engaged in the wholesale distribution of carpeting but were engaged in the retail sale of carpeting, maintaining a small inventory and often placing orders for carpeting only as orders were received from purchasers.

PAR. 22. There is a preference on the part of many consumers and the purchasing public to buy products including floor coverings, from distributors believing that by so doing lower prices and other advantages thereby accrue to them.

Therefore, the statements, representations and practices set forth in Paragraphs Thirteen, Fourteen, Fifteen, Sixteen, Seven-

teen, Eighteen, Nineteen, Twenty and Twenty-one thereof were false, misleading and deceptive.

PAR. 23. In the conduct of their business at all times mentioned herein, the respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of carpeting or floor coverings of the same general kind and nature as those sold by the respondents.

PAR. 24. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 25. The aforesaid acts and practices of the respondents, as herein alleged, were all to the prejudice and injury of the public and of the respondents' competitors, and constituted, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER IN DISPOSITION OF THIS PROCEEDING AS TO ALL RESPONDENTS EXCEPT RESPONDENT CARPETVILLE, INC.

The Commission having issued its complaint in this proceeding on July 3, 1968, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

Upon motion and for good cause shown, the Commission having, on January 29, 1969, pursuant to § 2.34(d) of its Rules, withdrawn the matter from adjudication for purposes of granting respondents opportunity to negotiate, under Subpart C of Part 2 of its Rules, a settlement by the entry of a consent order; and

Respondents (except respondent Carpetville, Inc.) and counsel supporting complaint having thereafter signed an agreement containing a consent order, an admission by the signatory respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the signatory respondents that the law has been violated as alleged in such

complant, and waivers and other provisions as required by the Commission's Rules; and which agreement also recites that respondent Carpetville, Inc., is an inactive corporation upon which valid service was not obtainable; and

The Commission, having considered the agreement and having accepted same, and the agreement having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order in disposition of the proceeding as to all respondents except respondent Carpetville, Inc.:

1. Respondent Broadloom Distributors, Inc., is a corporation which was organized, existed and did business under and by virtue of the laws of the Commonwealth of Pennsylvania, and was engaged in the retail sale of carpeting, with its office and principal place of business located at 397 West Lincoln Highway, Penndel, Pennsylvania.

Respondent Philip Bohm was an officer of Carpetville, Inc., an inactive corporation, and is at present an officer of Broadloom Distributors, Inc., a corporation. The former address of respondent Philip Bohm was 1319 Cardeza Street, Philadelphia, Pennsylvania. The present address of respondent Philip Bohm is 791 Furrow Lane, Huntingdon Valley, Pennsylvania.

Respondents Alan R. Portnoy * and Burton Snyder are presently officers of Broadloom Distributors, Inc. The former address of respondents Alan R. Portnoy and Burton Snyder was 3462 Bristol Pike, Cornwall Heights, Pennsylvania. The present address of respondent Alan R. Portnoy is 589 Remson Road, Philadelphia, Pennsylvania. The present address of respondent Burton Snyder is 805 Foster Street, Philadelphia, Pennsylvania.

Respondent Sidney Soifer was an officer of both Carpetville, Inc., an inactive corporation, and Broadloom Distributors, Inc., a corporation. The former address of respondent Sidney Soifer was 3462 Bristol Pike, Cornwall Heights, Pennsylvania. The present address of respondent Sidney Soifer is 611 B Summerset House, Cherry Hill, New Jersey.

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

* Erroneously designated in the complaint as Allan Portnoy.

ORDER

It is ordered, That respondents Broadloom Distributors, Inc., a corporation, and its officers, and Philip Bohm, individually and as a former officer of Carpetville, Inc., and as a present officer of Broadloom Distributors, Inc., and Alan R. Portnoy and Burton Snyder, individually and as officers of Broadloom Distributors, Inc., and Sidney Soifer, individually and as a former officer of Carpetville, Inc., and Broadloom Distributors, Inc., and respondents' representatives, agents and employees' directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce, or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. 1. Failing to set forth that the required disclosure as to the fiber content of floor coverings relates only to the face, pile or outer surface of such products and not to exempted backings, fillings or paddings, when such is the case.

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

B. Advertising textile fiber products by:

1. Making any representations by disclosure or by implication as to the 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, without disclosing in the said advertisement 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, except that the percentages of the fibers present in the textile fiber product need not be stated.

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

3. Failing to set forth all parts of the required information in advertisements of textile fiber products in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence.

It is further ordered, That respondents Broadloom Distributors, Inc., a corporation, and its officers, and Philip Bohm, individually and as a former officer of Carpetville, Inc., and as a present officer of Broadloom Distributors, Inc., and Alan R. Portnoy and Burton Snyder, individually and as officers of Broadloom Distributors, Inc., and Sidney Soifer, individually and as a former officer of Carpetville, Inc., and Broadloom Distributors, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of floor coverings or other related textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or offering said products for sale for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the functions for which they are offered and respondents have readily available an adequate stock of the products advertised and offered for sale.

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

3. Disparaging in any manner or refusing to sell any products advertised.

4. Representing, directly or indirectly, that any products or services are offered for sale when such offer is not a bona fide offer to sell said products or services.

5. Representing that any of respondents' products are guaranteed, unless the nature and extent of the guarantee, the name of the guarantor, the address of the guarantor, and the manner in which the guarantor will perform thereunder, are clearly and conspicuously disclosed.

It is further ordered, That respondents Broadloom Distributors, Inc., a corporation, and its officers, and Philip Bohm, Alan R. Portnoy and Burton Snyder, individually and as officers of Broadloom Distributors, Inc., and Sidney Soifer, individually and as a former officer of Broadloom Distributors, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of floor coverings or other related textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly using the word "Distributors" or any other term of similar import or meaning in or as a part of respondents' corporate or trade name, or representing in any other manner that respondents are engaged in wholesale distribution of floor coverings or other related textile products unless and until respondents do in fact become wholesale distributors.

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

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

ORDER WITHDRAWING COMPLAINT AS TO RESPONDENT CARPETVILLE, INC.

It appearing to the Commission that it would not be in the public interest to adjudicate the issues raised as to this corporate respondent for the reason that such respondent is out of business and an inactive corporation at this time:

It is ordered, That the complaint be, and it hereby is, withdrawn

as to the respondent Carpetville, Inc., without prejudice to the right of the Commission to bring a new proceeding if the facts should so justify.

IN THE MATTER OF

PARAMOUNT QUILTING CORP., ET AL.

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

Docket C-1576. Complaint, Aug. 7, 1969—Decision, Aug. 7, 1969

Consent order requiring a Bronx, N.Y., quilting manufacturer to cease misbranding its wool and textile fiber products, falsely invoicing its textile fiber products, furnishing false guarantees and failing to maintain required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Paramount Quilting Corp., a corporation, and Erwin Blum and Hyman D. Parker, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Paramount Quilting Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 4246 Park Avenue, Bronx, New York.

Respondents Erwin Blum and Hyman D. Parker are officers of said corporate respondent. They formulate, direct and control the

acts, practices and policies of said corporation. Their address is the same as that of said corporation.

Respondents are manufacturers of textile fiber products and wool products.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

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

Among such misbranded textile fiber products, but not limited thereto, were quilted materials with labels which failed:

(1) To disclose the true percentage of the fibers present by weight; and

(2) To disclose the true generic names of the fibers present.

PAR. 4. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 5. Respondents have furnished false guaranties that their textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

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

of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 7. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 8. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

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

PAR. 9. The acts and practices of the respondents as set forth in Paragraph Eight were, and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 10. Respondents, now and for some time last past, have been engaged in the offering for sale, sale and distribution of products, namely quilted interlining materials, to garment manufacturers. In the course and conduct of their business, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States and maintain, and at all times mentioned herein, have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 11. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices and shipping

memoranda to their customers misrepresenting the fiber content of their said products.

Among such misrepresentations, but not limited thereto, were statements representing the fiber content thereof as "50/50 wool" whereas, in truth and in fact, the products contained different amounts of woolen fibers and also contained different fibers and amounts of fibers than represented.

PAR. 12. The acts and practices set out in Paragraph Eleven have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Paramount Quilting Corp. is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 4246 Park Avenue, Bronx, New York.

Respondents Erwin Blum and Hyman D. Parker are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Paramount Quilting Corp. a corporation, and its officers, and Erwin Blum and Hyman D. Parker, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by failing to affix labels to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain records of fiber content of textile fiber products manufactured by them, as required by Section

6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

It is further ordered, That respondents Paramount Quilting Corp., a corporation, and its officers, and Erwin Blum and Hyman D. Parker, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced.

It is further ordered, That respondents Paramount Quilting Corp., a corporation, and its officers, and Erwin Blum and Hyman D. Parker, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by failing to securely affix to or place on, each such product a stamp, tag, label or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Paramount Quilting Corp., a corporation, and its officers, and Erwin Blum and Hyman D. Parker, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of quilted materials or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in quilted products or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

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

It is further ordered, That the respondents herein shall, within

sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

SELVY FUR CO., INC., ET AL.

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

Docket C-1577. Complaint, Aug. 7, 1969—Decision, Aug. 7, 1969

Consent order requiring a New York City manufacturing furrier to cease misbranding, falsely invoicing and deceptively guaranteeing its fur products.

COMPLAINT

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

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

Respondents Benjamin Weinstein and Peter Weinstein are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 155 West 29th Street, New York, New York.

PAR. 2. Respondents are now, and for some time last past have

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

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

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

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

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

2. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

Among such falsely and deceptively invoiced fur products, but

not limited thereto, was a fur product covered by an invoice which failed:

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

2. The term "Dyed Broadtail-processed Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

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

4. Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on invoices with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which were described as "Broadtail" thereby implying that the fur contained therein was entitled to the designation "Broadtail Lamb" when in truth and in fact it was not entitled to such designation.

PAR. 8. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal

Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said Rules and Regulations under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Selvy Fur Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of

the State of New York, with its office and principal place of business located at 155 West 29th Street, city of New York, State of New York.

Respondents Benjamin Weinstein and Peter Weinstein are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

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

A. Misbranding fur products by:

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

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

3. Failing to set forth information required under Section 4 of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to each section of fur products composed of two or more sections containing different animal furs.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is

defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

3. Failing to set forth the term "Dyed Broadtail-processed Lamb" on invoices in the manner required where an election is made to use that term instead of the words "Dyed Lamb."

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

5. Failing to set forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, separately on invoices with respect to each section of fur products composed of two or more sections containing different animal furs.

6. Setting forth on an invoice pertaining thereto, any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur products.

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

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

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

IN THE MATTER OF

NORM THOMPSON OUTFITTERS, INC., ET AL.

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

Docket C-1578. Complaint, Aug. 7, 1969—Decision, Aug. 7, 1969

Consent order requiring a Portland, Oregon, importer and mail-order seller of wearing apparel to cease misbranding its wool and textile fiber products and falsely advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Norm Thompson Outfitters, Inc., a corporation, and Bernard A. Alport, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Norm Thompson Outfitters, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 1805 NW. Thurman Street, Portland, Oregon.

Individual respondent, Bernard A. Alport is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter referred to. His address is the same as that of the corporate respondent.

Respondents are importers of woolen and textile fiber outerwear and are also engaged in the mail order sale of such products.

PAR. 2. Respondents now and for some time last past have introduced into commerce, sold, transported, distributed, delivered

for shipment, shipped and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool product" is defined therein.

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

Among such misbranded wool products, but not limited thereto, were certain wool products, namely coats with linings which linings were labeled "100% wool" whereas in truth and in fact said wool products contained substantially different fibers and amounts of fibers than as represented.

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

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

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

PAR. 6. Respondents are now, and for some time last past have been engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and

have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 7. Certain of said textile fiber products were 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 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.

Among such textile fiber products, but not limited thereto, were articles of wearing apparel which were falsely and deceptively advertised by means of a "catalogue" distributed by respondents throughout the United States in that the true generic names of the fibers contained in such textile fiber products were not set forth in said catalogue.

PAR. 8. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that the said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

C. Fiber trademarks were used in advertising textile fiber products containing only one fiber, and such fiber trademark did not appear, at least once 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. 9. The acts and practices of the respondents as set forth in Paragraphs Seven and Eight were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and constituted, and now constitute unfair methods of competition and unfair or deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Norm Thompson Outfitters, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 1805 NW. Thurman Street, Portland, Oregon.

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

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

ORDER

It is ordered, That respondents Norm Thompson Outfitters, Inc., a corporation, and its officers, and Bernard A. Alport, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, delivery for shipment or shipment, in commerce, of wool products as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

It is further ordered, That respondents Norm Thompson Outfitters, Inc., a corporation, and its officers, and Bernard A. Alport, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been ad-

vertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from falsely and deceptively advertising textile fiber products by:

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

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

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

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

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

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

IN THE MATTER OF

MRS. LILLIAN EBERHARDT TRADING AS LIL'S CRAFT SHOP

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

Docket C-1579. Complaint, Aug. 7, 1969—Decision, Aug. 7, 1969

Consent order requiring the owner of a Navarre, Ohio, crafts shop to cease marketing dangerously flammable fabrics and submit a report on plans for disposal of the stock on hand.

COMPLAINT

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

PARAGRAPH 1. Respondent Mrs. Lillian Eberhardt is an individual trading as Lil's Craft Shop. She is engaged in the sale of various consumer goods, including, but not limited to, wood fiber chips. The business address of the respondent is 116 East Wooster Street, Navarre, Ohio.

PAR. 2. Respondent is now and for some time last past, has been engaged in the sale and offering for sale, in commerce, and in the importation into the United States, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, fabrics, as the terms "commerce" and "fabric" are defined in the Flammable Fabrics Act, as amended, which fabrics failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such fabrics mentioned hereinabove were wood fiber chips.

PAR. 3. The aforesaid acts and practices of respondent were, and are in violation of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Mrs. Lillian Eberhardt is an individual trading as Lil's Craft Shop under and by virtue of the laws of the State of Ohio with her office and principal place of business located at 116 East Wooster Street, Navarre, Ohio.

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

ORDER

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

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

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

IN THE MATTER OF

BERNS AIR KING CORPORATION

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

Docket C-1580. Complaint, Aug. 8, 1969—Decision, Aug. 8, 1969

Consent order requiring a Chicago, Ill., manufacturer of dehumidifiers to cease misrepresenting the moisture-removing capabilities of its products by using tests and standards other than those generally accepted and used by the industry.

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

PARAGRAPH 1. Respondent Berns Air King Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 3050 North Rockwell Street, Chicago, Illinois, 60618.

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

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

PAR. 4. Respondent is in competition with not less than eight other manufacturers of dehumidifiers and a number of nationwide retailers who merchandise dehumidifiers under their own

brand names. The primary function of a dehumidifier is to remove moisture from the atmosphere. One representation made to prospective purchasers by respondent and its competitors respecting the performance characteristics of their dehumidifiers concerns its ability to remove moisture from the surrounding atmosphere. The dehumidifier is represented as being able to remove from room air in a 24 hour period a certain number of pints of water at a specified degree of temperature and a specified percentage of relative humidity. Within ordinary ranges, the higher the temperature and relative humidity used in testing a dehumidifier, the greater will be the amount of water removed. A dehumidifier rated by test conditions which employ a higher degree of temperature and greater relative humidity, therefore, will appear able to remove more moisture from room air than the same dehumidifier or comparable dehumidifier rated by test conditions which employ a lower degree of temperature and lower relative humidity.

Several years ago the industry voluntarily adopted uniform testing procedures for measuring the ability of a dehumidifier to remove moisture from its surrounding atmosphere under specified test conditions. Under the terms of the adopted program, each member agreed to advertise, promote or otherwise claim only the number of pints of water the dehumidifier can remove from room air in 24 hours at 80° F.—60 percent relative humidity. At the present time all of respondent's known competitors, who sell and distribute a substantial majority of all dehumidifiers sold in this country, test, rate and advertise the moisture removal capability of their dehumidifiers at 80° F.—60 percent relative humidity test conditions.

Respondent, in the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its dehumidifiers has made, and is now making, numerous statements and representations in promotional material and catalogs with respect to the moisture removal capability of its dehumidifiers at the specific test conditions of 80° F.—70 percent relative humidity, test conditions which differ substantially from the aforesaid test conditions used by other members of the industry.

Typical and illustrative, but not all inclusive of the said statements and representations made in respondent's promotional material and catalogs, are the following:

NEW Air King * * * Dehumidifier * * * Catalog Number DH 25-N * * * Water Removal Capacity 18 pints per day * * *.
Performance ratings of all dehumidifiers are determined under specific test conditions of 80° F., 70% relative humidity, which closely approximate average home conditions. Actual performance will vary with changes in temperature and humidity.
* * * * * * *
Budget Model DH–10 Water Removal Capacity 16 pints per day * * *
* * * * * * *
Deluxe Model DH–15 Water Removal Capacity 16 pints per day * * *.

PAR. 5. The aforesaid acts, practices, statements and representations, and others of similar import and meaning but not expressly set out herein, by respondent are unfair practices and are misleading and deceptive.

Respondent's failure clearly and conspicuously to reveal to prospective purchasers and purchasers the fact that the test conditions it employs to measure the moisture removal capability of its dehumidifiers differ from the test conditions employed by other industry members and result in higher moisture removal capability ratings makes it extremely difficult for such purchasers to make meaningful comparisons between respondent's and competing dehumidifiers. Furthermore, the failure to reveal said differences in test conditions and the resultant apparent higher moisture removal capabilities of respondent's dehumidifiers has the tendency and capacity to induce such purchasers incorrectly to conclude that respondent's dehumidifiers have a greater moisture removal capability than comparable competing dehumidifiers of its competitors.

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

PAR. 6. By the aforesaid acts and practices, respondent places in the hands of distributors, jobbers and retailers the means and instrumentalities by and through which they may mislead and deceive the public as to the capability of said products.

PAR. 7. In the course and conduct of its aforesaid business and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the manufacture and sale of products of the same general kind and nature as those sold by respondent.

PAR. 8. The use by the respondent of the aforesaid unfair practices and misleading and deceptive statements, representations

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

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

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Berns Air King Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3050 North Rockwell Street, in the city of Chicago, State of Illinois, 60618.

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

ORDER

It is ordered, That respondent Berns Air King Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of dehumidifiers or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making any statement or representation, directly or by implication, respecting the moisture removal capabilities of dehumidifiers which is not based on tests conforming in all respects to the testing standards and procedures generally accepted and used by industry members, without clearly and conspicuously setting forth in immediate connection therewith the following statement:

"Not rated by uniform industry testing methods. If industry tests were used, this dehumidifier would remove _____ pints less water per day or a daily total of _____ pints."

[Fill in correct number of pints.]

2. Failing to attach to each dehumidifier, with such security as to remain affixed thereto until sold and delivered to the ultimate purchaser, a tag or label conforming to the requirements of paragraph 1 hereof in connection with any statement or representation respecting the moisture removal capabilities of dehumidifiers which is not based on tests conforming in all respects to the testing standards and procedures generally accepted and used by industry members.

3. Misrepresenting, in any manner, the performance capabilities of any of respondent's products.

4. Furnishing to or otherwise placing in the hands of others any means or instrumentalities whereby prospective purchasers or purchasers may be misled or deceived in the manner or as to the things prohibited by this order.

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

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

IN THE MATTER OF

COX BROADCASTING CORPORATION, ET AL.

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

Docket C-1581. Complaint, Aug. 11, 1969—Decision, Aug. 11, 1969

Consent order requiring an Atlanta, Ga., television broadcasting company and its TV station in Pittsburgh, Pa., to cease using "hypoing" practices in the Pittsburgh market area—that is, engaging in unusual promotional schemes designed to increase temporarily the size of their broadcast audience during rating periods.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Cox Broadcasting Corporation, a corporation, and WIIC-TV Corporation, a 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 Cox Broadcasting Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1601 West Peachtree Street, NE., in the city of Atlanta, State of Georgia.

Respondent WIIC-TV Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 341 Rising Main Avenue in the city of Pittsburgh, State of Pennsylvania.

WIIC-TV Corporation is a wholly owned subsidiary of Cox Broadcasting Corporation which owns the entire capital stock of

WIIC-TV Corporation. Cox Broadcasting directs and controls the acts and practices of WIIC-TV Corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in television broadcasting and in the offering for sale and sale of television broadcast time to advertisers and advertising agencies.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now sell and offer for sale, and for some time last past have sold and offered for sale, broadcast time for advertising purposes to advertisers and advertising agencies located both in the State of Pennsylvania and in various other States of the United States, and respondents now cause, and for some time last past have caused, the broadcasting of television signals, including, among other things, the aforementioned advertising, from their transmitter and place of business in the State of Pennsylvania into various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in the sale of broadcast time and in broadcasting in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents and other TV broadcasters purchase audience measurement reports as compiled and sold by market research companies for use in the sale of broadcast time to advertisers and advertising agencies. These reports are compiled from audience surveys as conducted in each particular market, and purport to contain statistical estimates of the ratings, audience size and audience composition of each TV station attaining certain minimal audience levels in the measured market.

Such reports are used by the respondents and other TV broadcasters to demonstrate to the purchasers of advertising time, the size and composition of the audience that is tuned to their station at any particular time of the day, and how the size and composition of their station's audience compares with that of competing TV broadcasters in the same market.

Advertisers and advertising agencies purchase the same reports for use in determining from which TV broadcaster in a particular market they will purchase broadcast time for advertising purposes.

PAR. 5. In the further course and conduct of their aforesaid business respondents engaged in certain unusual promotional practices during a rating period, to wit:

I. 1. Respondents conducted and broadcast a contest, designated "SPOT THE STARS," over their television station beginning on February 15, 1967, and ending February 28, 1967. During this entire fourteen (14) day period respondents' market was being surveyed and measured by both the "American Research Bureau" and "A.C. Nielsen Company." This contest was tied directly to, and required the viewing of, respondents' broadcasts. To participate one had to obtain certain names and numbers which were broadcast by respondents' at random times and in random order between the hours of 4:30 p.m. and midnight for the duration of the contest, and which could not be obtained elsewhere.

2. The value of each prize offered and awarded and the total value of all prizes offered and awarded during this contest was greater than that of prizes ordinarily offered and awarded by respondents in other contests.

3. No cosponsor or copromoter shared the cost of this contest or the cost of the prizes or participated in the promotion thereof whereas a cosponsor or copromoter does ordinarily share in the cost and in the promotion of respondents' contests.

4. Respondents placed fourteen (14) large (approximately ½ page) advertisements in area newspapers promoting this contest whereas respondents do not ordinarily utilize the newspaper media in the promotion of their contests.

II. During the months of February and March 1967 the respondents placed an unusually large number of advertisements in the local newspapers. In addition to the 14 advertisements for the "SPOT THE STARS" contest aforementioned, 149 other advertisements were run in local newspapers. Of the total of these 149 non-contest advertisements, 142 were run in the 29 days (February 15 through March 15) during which respondents' audience was being measured.

The aforesaid advertisements constituted unusual promotional practices in that such advertisements were substantially greater in number than respondents usually placed during comparable periods of time; they were not used in connection with the promotion of new programs or changes in programming; they were not used in connection with a current event or special network or local news or public affairs program, nor were they run under circumstances beyond the control of respondents, such as when advertisements are run in cooperation with the station's network which specifies the time periods within which the advertisements

are to be placed, or advertisements the timing and placement of which are determined by the station's sponsors.

PAR. 6. The employment of short term and unusual promotional practices by a broadcaster has the tendency and capacity to effect a temporary increase in the size of that broadcaster's audience. Such a temporary increase in the size of a broadcaster's audience occuring during a period when that broadcaster's market is being measured or surveyed would cause the survey or rating company to measure an audience for such broadcaster that would be larger than would have been measured but for such short term and unusual promotional practices, thereby causing the rating or survey company to publish in its report, ratings and other data that would appear to be estimates of such a broadcaster's customary and usual audience.

As set forth in Paragraph Four hereof, audience survey reports are extensively used by broadcasters and purchasers of broadcast time as a tool for establishing the cost of broadcast time and for evaluating broadcast audiences. It is therefore an unfair act or practice for a broadcaster to employ any short term and unusual promotional practice which has the tendency or capacity to temporarily distort or inflate viewing levels in a broadcast market during a period when that market is being measured or surveyed. Engaging in such a practice is known as "hypoing."

Therefore, the unusual promotional practices of the respondents, as set forth in Paragraph Five hereof, constitute unfair acts or practices.

PAR. 7. The acts and practices of respondents as set forth in Paragraph Five hereof were calculated or designed to cause A.C. Nielsen Company and American Research Bureau to publish in their February-March 1967 reports for the Pittsburgh, Pennsylvania, market, ratings and other audience data that would appear to be estimates of respondents' customary and usual audience but which would in fact be estimates based upon the measurement of an audience larger than respondents customarily or usually have, and to cause such companies to place in the hands of purchasers of such reports audience ratings and other data which would have the tendency and capacity to mislead and deceive such purchasers as to the size and composition of respondents' customary and usual audience.

Therefore the aforesaid unusual promotional practices of respondents constitute deceptive acts or practices.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of broadcast time of the same general nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid unfair or deceptive acts and practices has had, and now has, the capacity and tendency to mislead the purchasers of broadcast time into the erroneous and mistaken belief that the ratings and other audience data contained in the aforementioned February-March 1967, Pittsburgh, Pennsylvania, reports are estimates of the usual audience of the TV stations reported therein and into the purchase of substantial quantities of respondents' broadcast time by reason of said erroneous and mistaken belief.

As a consequence thereof substantial trade in commerce has been and is being unfairly diverted to the respondents from their competitors, and substantial injury has thereby been, and is being, done to competition in commerce.

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

DECISION AND ORDER

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

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

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

1. Respondent Cox Broadcasting Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1601 West Peachtree Street, NE., in the city of Atlanta, State of Georgia.

Respondent WIIC–TV Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 341 Rising Main Avenue in the city of Pittsburgh, State of Pennsylvania.

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, Cox Broadcasting Corporation, a corporation, and WIIC-TV Corporation, a corporation, their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the broadcasting, and the advertising, offering for sale or sale of broadcast time in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

> Conducting or participating in any unusual contest or give-away, or engaging in any unusual advertising or promotional practice, in the Pittsburgh, Pennsylvania, market, which is calculated or designed to temporarily increase the size of their broadcast audience only during a rating or survey period or which is calculated or designed to cause any rating or survey company to publish and place in the hands of purchasers thereof, audience rating or other data which may mislead or deceive such purchasers as to the size or composition of respondents' audience.

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

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

IN THE MATTER OF

VESELY COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket C-1582. Complaint, Aug. 20, 1969—Decision, Aug. 20, 1969

Consent order requiring a Lapeer, Mich., manufacturer of camping or tent trailers to cease entering into exclusive dealing agreements with any dealer or purchaser of its trailers, threatening to terminate any such dealerships, attempting to persuade dealers to discontinue handling camping equipment of competitors; report names of all dealers terminated for dealing in competitors' products, reinstate such terminated dealers, and report all refusals to deal for the next five years.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and hereinafter more fully described, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45) and Section 3 of the Clayton Act (15 U.S.C. § 14), 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 as follows:

PARAGRAPH 1. Respondent Vesely Company is a corporation organized and doing business under the laws of the State of Michigan, with its office and principal place of business located at 2101 North Lapeer Road, Lapeer, Michigan.

Respondent Eugene L. Vesely, an individual, of the same

address as respondent Vesely Company, is founder, president, chairman of the board of directors and principally responsible for the policies of Vesely Company.

PAR. 2. Respondent Vesely Company has been and is now engaged in the manufacture, distribution and sale of camping or tent trailers under the "Apache" brand name.

PAR. 3. Respondent Vesely Company sells and distributes its camping or tent trailers to a network of independent retail dealers throughout the United States. These dealers offer the camping or tent trailers for sale or rental directly to the public.

PAR. 4. In the course and conduct of their business, respondents are and have been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Clayton Act. Respondents ship or cause their camping or tent trailers to be shipped from their manufacturing plant located at Lapeer, Michigan to dealers and purchasers located throughout the United States. The dollar volume of net sales of camping or tent trailers by Vesely Company has increased from over $3,000,000 in 1962 to over $10,000,000 in 1967. There is and has been at all times mentioned herein a continuous and substantial current of trade in commerce in the sale and distribution of camping or tent trailers between and among the several States of the United States and the District of Columbia.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondents have been and are now in substantial competition with other firms engaged in the manufacture, distribution or sale of camping or tent trailers.

PAR. 6. For many years and continuing to the present time it has been the practice and policy of Vesely Company to establish, maintain and enforce a merchandising or distribution program and policy for sale and distribution of camping or tent trailers to its retail dealers under which contracts, agreements, arrangements and understandings are entered into with the dealers whereby those dealers are required to refrain from purchasing and selling or renting camping or tent trailers sold or distributed by a competitor or competitors.

PAR. 7. Respondents have established a system of policing dealers in order to ascertain deviations by its dealers from the provisions of respondents' merchandising programs. Respondents conduct such policing by directing their salesmen and field

representatives to secure and report information as to dealers purchasing or evidencing an intent to purchase camping or tent trailers sold or distributed by a competitor or competitors.

PAR. 8. Upon learning of dealers purchasing or intending to purchase camping or tent trailers manufactured by a competitor or competitors, respondent Vesely Company enforces their restrictive policy by various means and methods, of which the following are examples:

Contacting the dealers and securing or attempting to secure from the dealers assurances that they will observe or comply with respondent's restrictive merchandising and distribution policy in the future;

Threatening to discontinue selling camping or tent trailers to the dealers who fail to observe and comply with the restrictive policy;

Threatening to place another dealer handling Vesely Company's camping or tent trailers in the immediate vicinity of dealers failing to observe and comply with its restrictive policy, so as to destroy the value of the offending dealer's business; and

Terminating and refusing to sell their camping or tent trailers to dealers failing to observe and comply with its restrictive policy.

PAR. 9. The effects of the sales and contracts of sale upon such conditions, agreements and understandings, and pursuant to the practices of respondents as herein described, may be to substantially lessen competition and may tend to create a monopoly in respondent Vesely Company in the manufacture, distribution and sale of camping or tent trailers.

PAR. 10. The aforesaid acts and practices of respondents constitute unreasonable restraints of trade and unfair acts and practices or unfair methods of competition in violation of the provisions of Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton Act.

DECISION AND ORDER

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

charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Vesely Company is a corporation organized and doing business under the laws of the State of Michigan, with its office and principal place of business located at 2101 North Lapeer Road, Lapeer, Michigan.

Respondent Eugene L. Vesely, an individual, of the same address as respondent Vesely Company, is founder, president, chairman of the board of directors and principally responsible for the policies of Vesely Company.

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

ORDER

It is ordered, That respondent Vesely Company, a corporation, and its officers, and Eugene L. Vesely, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the manufacture and distribution of camping or tent trailers to dealers or purchasers for sale or rental in commerce, as "commerce" is defined in the Federal

Trade Commission Act and the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any camping or tent trailer on the condition, agreement or understanding that the dealer or purchaser thereof shall not purchase or deal in camping or tent trailers manufactured or distributed by a competitor or competitors;

2. Securing or attempting to secure assurances from dealers or purchasers that they will not purchase or deal in camping or tent trailers manufactured or distributed by a competitor or competitors;

3. Threatening to discontinue to sell camping or tent trailers to dealers or purchasers that indicate or state that they intend to purchase or deal in camping or tent trailers manufactured or distributed by a competitor or competitors;

4. Threatening to place another dealer selling or dealing in camping or tent trailers in the immediate vicinity of any dealer purchasing, intending to purchase, or dealing in camping or tent trailers manufactured or distributed by a competitor or competitors; and

5. Terminating dealerships or refusing to sell camping or tent trailers to any dealer or purchaser because such purchaser or dealer purchases or deals in camping or tent trailers manufaceured or distributed by a competitor or competitors: *Provided however,* That respondents may terminate dealerships or refuse to sell to any dealer or purchaser that is or has been unable to adequately sell or service respondents' camping or tent trailers.

It is further ordered, That respondents Vesely Company, a corporation, and Eugene L. Vesely, individually and as an officer of said corporation, shall:

1. Within sixty (60) days after service upon them of this Order send by mail a copy of this Order to:

(a) All of the current dealers or purchasers of camping or tent trailers;

(b) All of the dealers or purchasers who were terminated or whom Vesely Company refused to sell its camping or tent trailers to since October 1, 1965, for purchasing or dealing in camping or tent trailers manufactured by a competitor or competitors, including therein a letter signed by the president of Vesely Com-

pany advising these dealers or purchasers that they may apply in writing for reinstatement as a dealer or purchaser of camping or tent trailers within ninety (90) days after receipt of the letter; and

2. Reinstate as a dealer or purchaser of camping or tent trailers all dealers requesting reinstatement who are willing and able to adequately sell and service respondent's camping or tent trailers, pursuant to the provisions of 1(b) immediately preceding.

3. During the next five calendar years following the effective date of this Order, notify the Federal Trade Commission by letter of each instance whereby Vesely Company has refused to sell camping or tent trailers to any dealer or purchaser because the dealer or purchaser was unable to adequately sell or service respondents' camping or tent trailers, this notification to include the name of the dealer or purchaser, address, and a detailed statement of the reasons for the refusal to sell.

It is further ordered, That respondents Vesely Company, a corporation, and Eugene L. Vesely, individually and as an officer of said corporation, shall forthwith distribute a copy of this order to every one of its present or future salesmen, field representatives, and to any individual engaged in the approval or cancellation of dealers or purchasers of camping or tent trailers.

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

IN THE MATTER OF

MOTEL MANAGERS TRAINING CORPORATION, ET AL.

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

Docket C-1583. Complaint, Sept. 2, 1969—Decision, Sept. 2, 1969

Consent order requiring a Milwaukee, Wisc., distributor of correspondence courses in hotel and motel management, to cease misrepresenting the employment opportunities of its graduates, that respondent will place graduates regardless of age, that the course has been endorsed by an official of the Home Study Association, and that enrollment is limited.

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 Motel Managers Training Corporation, a corporation, and Richard D. Kolpin, individually and as an officer of said corporation, and Kathryn C. Kolpin, as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Motel Managers Training Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 2433 North Mayfair Road, Milwaukee, Wisconsin, 53226.

Respondents Richard D. Kolpin and Kathryn C. Kolpin are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of courses of instruction in hotel and motel management by correspondence through the United States mails and by resident training at various motels in the State of Wisconsin.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their courses, when sold, to be shipped from their place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States. Respondents also transmit to and receive from such purchasers contracts, checks and other instruments of a commercial nature in connection with the sale of such courses. Respondents maintain, and all times mentioned herein have maintained, a substantial course of trade in said course of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their course, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in

newspapers, periodicals and in other advertising material with respect to employment openings as managers of hotels and motels, salaries, and placement services made available by respondents.

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

Advertisements and statements appearing in brochures:

Chains like Holiday Inns and Howard Johnson are adding new motels almost weekly. Independent hotels and motels are thriving as never before.

Leading chains such as Holiday Inns, Ramada Inns, Howard Johnson's to name a few, plan about 400 motels each, scattered all over the country.

90,000 new, trained and qualified managers are needed. You can be one of them.

No matter if you are fifteen or sixty-five, age is no barrier.

MMTC-Approved by the Association of Home Study Schools.

Personal supervision and assistance by instructors experienced in Motel and Hotel work.

MMTC offers our graduates nationwide placement service.

This is to advise you that your enrollment has been accepted by our Department of Instruction.

The necessary files, records, and forms have been set up in the various departments to assure you of efficient service.

Advertisements appearing in periodicals:

Furnished apartment, plus $400–$1,000 monthly salary, if qualified as Motel Manager.

Earn up to $1,000 monthly plus furnished apartment.

Openings coast to coast. Choose your location.

Live in a climate of your choice.

Advertisements appearing in newspapers:

NO FEE for placement service. Openings coast to coast.
Train for high paying careers in a location of your choice.

Endorsement of Benjamin Klekner, Ph.D., Executive Director of the Association of Home Study Schools:

I want to take this opportunity to commend you upon the excellent quality of the course of training which your school has to offer.
The lessons which you submitted to us for examination indicate that they were well written * * * complete and contain valuable information for an individual who is desirous of preparing himself to become a motel manager.
The Association of Home Study Schools is pleased to "approve" your lesson material and accept your school to membership.

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

1. Graduates of respondents' course of instruction in hotel and motel management will be employed as managers of hotels and motels by virtue of completing such course.

2. Many openings as managers of hotels and motels are available to graduates of respondents' course of instruction in hotel and motel management.

3. Graduates of respondents' course of instruction in hotel and motel management earn as much as $1,000 per month as motel managers and in addition are provided with a furnished apartment.

4. A graduate of respondents' course in hotel and motel management can obtain employment as a manager of a hotel or motel regardless of his age or the fact that his children will be living with him.

5. Respondents have a placement service to assist graduates of their course in hotel and motel management to obtain positions as hotel and motel managers.

6. Graduates of respondents' course of instruction in hotel and motel management can obtain positions as managers of hotels and motels in the geographical area of their choice.

7. Respondents' residence training program is a necessary part of the course and is essential to obtaining employment as a motel or hotel manager.

8. Respondents' school is a large school with various departments and has a staff which is trained and experienced in teaching hotel and motel management.

9. Dr. Benjamin Klekner, Executive Director of the Association of Home Study Schools, endorsed respondents' course of instruction as a disinterested person.

10. Published testimonials of graduates of respondents' course of instruction in hotel and motel management are unsolicited and spontaneous expressions of these persons.

11. Enrollment in respondents' school is limited; that there is a great demand for enrollment; and that only one interview is granted to each prospective student.

PAR. 6. In truth and in fact:

1. Graduates of respondents' course of instruction in hotel and motel management will not be employed as managers of hotels and motels by virtue of completing such course.

2. Few, if any, openings as managers of hotels and motels are available to graduates of respondents' course of instruction in hotel and motel management.

3. Graduates of respondents' course of instruction in hotel and motel management do not earn as much as $1,000 per month as motel managers and are not provided a furnished apartment.

4. Certain motels have limitations regarding the age of prospective managers and restrictions as to children living with them; hence, graduates of respondents' course of instruction, even if otherwise qualified, would not be hired because of these factors.

5. Respondents do not have a placement service to assist graduates of their course in hotel and motel management to obtain positions as hotel and motel managers. Respondents merely advertise the availability of their graduates generally in various hotel and motel periodicals and advise graduates who request placement services to advertise in "help wanted" columns of newspapers.

6. Graduates of respondents' course of instruction in hotel and motel management in few, if any, instances can obtain positions as managers in the geographic area of their choice.

7. Respondents' residence training program is not a necessary part of the course and is not essential to obtaining employment as a motel or hotel manager. In fact, graduates of respondents' course of instruction were, in some instances, informed by respondents that the residence training program was unnecessary and not essential to obtaining employment as a hotel or motel manager.

8. Respondents' school is not large, it does not have departments and its staff is not trained and experienced in teaching hotel and motel management. Respondents' school is a two-room office and supply room with the staff consisting of the two individual respondents and four secretaries whose duties in connection with administration of said course is mainly clerical.

9. Dr. Klekner, Executive Director of the Association of Home Study Schools, wrote part of respondents' course in hotel and motel management; hence, his endorsement was not that of a disinterested person.

10. Published testimonials of graduates of respondents' course of instruction are not the unsolicited and spontaneous expressions of these persons. Instead, in many instances, these testimonials are sought by respondents or their representatives and the content of these testimonials is suggested to graduates of respondents' course by respondents or their representatives.

11. Enrollment in respondents' course in hotel and motel management is not limited; there is virtually no demand for enrollment in such course; and more than one interview will be granted.

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

PAR. 8. By and through the use of the aforesaid acts and practices respondents place in the hands of salesmen, representatives and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and to induce a substantial number thereof to subscribe and to purchase said course of instruction.

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

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Motel Managers Training Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 2433 North Mayfair Road, Milwaukee, Wisconsin, 53226.

Respondents Richard D. Kolpin and Kathryn C. Kolpin are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of 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 Motel Managers Training Corporation, a corporation, and its officers, and Richard D. Kolpin, individually and as an officer of said corporation, and Kathryn C. Kolpin, as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of courses of instruction in hotel and motel management or any other courses of study or instruction or other services or products, in commerce, as "commerce" is defined

in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Graduates of respondents' course of instruction in hotel and motel management will be employed as managers of hotels or motels by virtue of completing such course; or misrepresenting, in any manner, the value or effectiveness of respondents' courses of study or instruction in qualifying persons for employment.

2. Many openings as managers of hotels and motels are available to graduates of respondents' course of instruction in hotel and motel management; or misrepresenting, in any manner, the number or kind of job openings or the opportunities available to graduates of respondents' courses of study or instruction.

3. Graduates of respondents' courses of study or instruction will derive any stated amount or gross or net profits or other earnings; or representing, in any manner, the past earnings of graduates of respondents' courses of study or instruction unless in fact the past earnings represented are those of a substantial number of graduates and accurately reflect the average earnings of these graduates under circumstances similar to those of the prospective student to whom the representation is made; or misrepresenting, in any manner, the benefits afforded to graduates of respondents' courses of study.

4. A graduate of respondents' course in hotel and motel management can in all instances obtain employment as a manager of a hotel or motel regardless of his age or the fact that his dependent children will be living with him; or failing to disclose that in certain instances, a person's age or his having dependent children living with him is an obstacle in securing employment as a manager of a hotel or motel.

5. Respondents have a placement service to assist graduates of their course in hotel and motel management to obtain positions as hotel and motel managers unless they do, in fact, maintain a placement service and place graduates in such positions as represented; or misrepresenting, in any manner, the nature, extent or effectiveness of the assistance furnished to persons complet-

ing respondents' courses of study or instruction in finding employment.

6. Graduates of respondents' course of instruction in hotel and motel management can obtain positions as managers of hotels and motels in the geographical area of their choice.

7. Respondents' resident training program is a necessary part of the course in hotel and motel management or is essential to obtaining employment as a motel or hotel manager.

8. Respondents' school has various departments or has a staff which is trained and experienced in teaching hotel and motel management; or misrepresenting, in any manner, the size of the school or the qualifications of the staff.

9. Dr. Benjamin Klekner, Executive Director of the Association of Home Study Schools, endorsed respondents' course of instruction as a disinterested person; or falsely representing that any person purporting to endorse respondents' courses of instruction is a disinterested person.

10. Published testimonials of graduates of respondents' course of instruction or others which are not voluntary and genuine expressions of such persons, are unsolicited and spontaneous expressions of these persons.

11. Enrollment in respondents' school is limited; that there is a great demand for enrollment; or that only one interview is granted to each prospective student.

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

It is further ordered, That respondents shall furnish a copy of this order to each of their operating departments or divisions.

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

IN THE MATTER OF

REGALIA FURS, INC., ET AL.

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

Docket C-1584. Complaint, Sept. 2, 1969—Decision, Sept. 2, 1969

Consent order requiring a New York City manufacturing furrier to cease misbranding, falsely invoicing and deceptively guaranteeing its fur products.

COMPLAINT

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

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

Respondents Irving Trokel and Herman Lebow are officers of the said corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 345 Seventh Avenue, city of New York, State of New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale,

transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b) (2) of the Fur Products Labeling Act.

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

DECISION AND ORDER

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

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

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

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

Respondents Irving Trokel and Herman Lebow are officers of said corporation. They formulate, direct and control the policies, acts and practices 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 Regalia Furs, Inc., a corporation, and its officers, and Irving Trokel and Herman Lebow, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any

corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

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

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

B. Falsely or deceptively invoicing any fur product by:

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

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

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

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

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

IN THE MATTER OF

G. & T. FUR CORP., ET AL.

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

Docket C–1585. Complaint, Sept. 2, 1969—Decision, Sept. 2, 1969

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

COMPLAINT

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

PARAGRAPH 1. Respondent G. & T. Fur Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Arnold Goldstein and Louis Tama are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 307 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have

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

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was "color added," when in fact such fur was dyed, in violation of Section 4(1) of the Fur Products Labeling Act.

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

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

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that certain fur products were invoiced to show that the fur contained therein was "color added," when in fact such fur was dyed, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal

Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said Rules and Regulations under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent G. & T. Fur Corp. is a corporation organized, existing and doing business under and by virtue of the laws of

the State of New York with its office and principal place of business located at 307 Seventh Avenue, New York, New York.

Respondents Arnold Goldstein and Louis Tama are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of 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 G. & T. Fur Corp., a corporation, and its officers, and Arnold Goldstein and Louis Tama, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is "color added" when such fur is dyed.

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

B. Falsely or deceptively invoicing any fur product by:

1. Representing directly or by implication on an invoice that the fur contained in such fur product is "color added" when such fur is dyed.

2. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information re-

quired to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

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

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

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

IN THE MATTER OF

EDWARD GARDNER, INC., ET AL.

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

Docket C-1586. Complaint, Sept. 2, 1969—Decision, Sept. 2, 1969

Consent order requiring a New York City manufacturing furrier to cease misbranding, falsely invoicing and deceptively guaranteeing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Edward Gardner, Inc., a corporation, and Seymour Rabach and Irvin Fishman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act,

and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

Respondents Seymour Rabach and Irvin Fishman are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 251 West 30th Street, New York, New York.

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

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

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

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

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Proposed respondent Edward Gardner, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 251 West 30th Street, New York, New York.

Proposed respondents Seymour Rabach and Irvin Fishman are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is 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 Edward Gardner, Inc., a corporation, and its officers, and Seymour Rabach and Irvin Fishman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Falsely or deceptively labeling or otherwise falsely or deceptively identifying such fur product by represent-

ing directly or by implication that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

B. Falsely or deceptively invoicing any fur product by:

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

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

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

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

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

IN THE MATTER OF

BROOKFAIR HATS, INC., ET AL.

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

Docket C-1587. Complaint, Sept. 2, 1969—Decision, Sept. 2, 1969

Consent order requiring a New York City manufacturing furrier to cease misbranding, falsely invoicing and deceptively guaranteeing its fur products.

COMPLAINT

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

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

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

Respondents are manufacturers of fur products with their office and principal place of business located at 62 West 39th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in

whole or in part of furs which have been shipped and received in commerce as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

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

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and con-

stitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Brookfair Hats, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 62 West 39th Street, New York, New York.

Respondent David Kule 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 Brookfair Hats, Inc., a corporation, and its officers, and David Kule, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

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

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

B. Falsely or deceptively invoicing any fur product by:

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

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

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

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

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

IN THE MATTER OF

MARQUETTE CEMENT MANUFACTURING COMPANY

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 8685. Complaint, May 20, 1966—Decision, Sept. 8, 1969

Order modifying an earlier order dated January 7, 1969, 75 F.T.C. 32, which required a Chicago, Ill., cement manufacturing company to divest certain stock and/or assets of three acquired companies by (1) prohibiting respondent from selling to Westchester Concrete, Inc., more than 35 percent of its annual portland cement requirements so long as respondent retains a security interest in said company, (2) requiring a prompt divestiture of a ready-mix concrete plant in Yonkers, N.Y., (3) redivesting any assets respondent may acquire in Cooney Bros., Inc., and (4) prohibiting the acquiring of any ready-mix concrete companies for 10 years without Commission approval.

OPINION OF THE COMMISSION

SEPTEMBER 8, 1969

BY ELMAN, *Commissioner:*

In 1964, the respondent herein, a major manufacturer of portland cement, acquired the assets of a group of firms engaged in the production and sale of ready-mixed concrete.[1] On May 20, 1966, the Commission issued a complaint against respondent charging that the acquisitions violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. After a hearing and appeal from the initial decision of the hearing exam-

[1] The companies whose assets were acquired were known as Cooney Bros., Inc., Plaza Concrete Corp., and Mamaroneck Stone Corp. All three firms were controlled by the Cooney family and are sometimes referred to collectively in this opinion as "the Cooney companies."

iner, the Commission, having concluded that the acquisitions violated the Clayton Act as charged, issued an order on January 7, 1969 [75 F.T.C. 32], requiring respondents, *inter alia,* to "divest absolutely and in good faith" all stock and assets acquired illegally.[2] On March 10, 1969, pursuant to the provisions of Section 3.71 and Section 3.72 of the Commission's Rules of Practice,[3] respondent filed with the Commission a "Petition to Reopen the Proceedings and to Modify or Set Aside Order Due to Changed Conditions." Complaint counsel has filed a reply to respondent's petition in which modification of the Commission's present order is requested; respondent has filed an answer to complaint counsel's reply. In sum, respondent contends that since it had substantially divested itself of the illegally acquired assets before the Commission issued its order, the Commission's proceedings have been mooted and deprived of any public interest; respondent therefore moves that the proceedings be reopened, the complaint dismissed, and the order set aside.[4] Respondent further contends that, in the event the Commission determines that an order is still required, the order should be modified, with certain exceptions, along the lines proposed by complaint counsel.[5] We proceed to consider each of these contentions.

I

In March 1967, nearly a year after the Commission issued its complaint in this matter, respondent began to divest itself of the assets it had illegally acquired from the Cooney companies. Respondent substantially completed the divestiture begun on its own initiative in December 1968 shortly before the Commission issued its order. Respondent asserts, and complaint counsel agrees, "that respondent's divestiture of the acquired assets prior to the Commission's Order has been made in good faith and does substantially comply with the Commission's decision and Order in this

[2] The Commission's order will not become final until the expiration of the time allowed for filing a petition for review, 15 U.S.C. § 21(g); respondent has requested, and the Commission has not opposed, an extension of time for filing the record with the Court of Appeals for the Fifth Circuit until 40 days after the Commission decides the instant petition.

[3] Section 3.71 of the Commission's Rules provides for reopening a Commission proceeding either on the Commission's own initiative "or on the request of any party to the proceeding." Section 3.72 provides in relevant part that "Whenever an order to show cause or petition to reopen is not opposed, or if opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the order to show cause or petition and answer thereto . . . ."

[4] Respondent's petition, pp. 11–12.

[5] Respondent's answer, p. 1.

matter." [6] However, it does not follow that this case is thereby rendered moot or respondent is relieved of its liability under Section 7 of the Clayton Act. The Supreme Court has repeatedly held that voluntary cessation of conduct illegal under the antitrust laws does not in itself render a case moot. *U.S.* v. *Concentrated Phosphate Export Association,* 393 U.S. 199 (1968); *U.S.* v. *W. T. Grant,* 345 U.S. 629 (1953); *U.S.* v. *Trans-Missouri Freight Association,* 166 U.S. 290 (1897). Voluntary cessation of unlawful conduct may render a case moot "if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *U.S.* v. *Concentrated Phosphate Export Association,* 393 U.S. at 203.

However, while respondent asserts that there is nothing to indicate that it will embark upon a similarly unlawful course of action in the future, its self-serving statement is clearly insufficient to meet this standard. *Ibid.* In fact, as will be discussed more fully below, contrary to respondent's suggestion that there is nothing to indicate that it may again be found in violation of the Act, respondent has retained various security interests in the assets it has sold or leased and has also retained the right to repossess these assets in the event the transferees are unable to complete their financial obligations to respondent or establish themselves in the market in which they compete.[7] In these circumstances, the Commission is not only authorized, it is duty-bound to continue to exercise its jurisdiction to assure continued compliance with the requirements of the law. See *U.S.* v. *E. I. du Pont de Nemours & Co.,* 366 U.S. 316 (1961).[8] Moreover, if changed circumstances have made the Commission's present order inappropriate, it is the duty of the Commission to fashion an order which will effectively redress the proved violation of law, *cf.* 366 U.S. at 323. Respondent's contention that this case has been mooted by its voluntary divestiture is therefore rejected, and its request to the Commission that the complaint be dismissed and the Commission's order set aside is denied.

[6] Complaint counsel's reply to respondent's petition, p. 2. Of course, final determination as to whether respondent has substantially complied with the Commission's order rests with the Commission, not complaint counsel. The details of respondent's divestiture are discussed below.

[7] Respondent's petition, p. 8.

[8] "The proper disposition of antitrust cases is obviously of great importance and their remedial phase, more often than not, is crucial. For the suit has been a futile exercise if the Government proves a violation but fails to secure a remedy adequate to redress it. 'A public interest served by such civil suits is that they effectively pry open to competition a market that has been closed by defendants' illegal restraints. If this decree accomplishes less than that, the Government has won a lawsuit and lost a cause.' " 366 U.S. at 323–24.

II

The Commission is presented for the first time with the facts as to the manner in which respondent has effected a divestiture of the assets acquired from the Cooney companies. No dispute as to these facts is raised by the present pleadings. The principal issue before the Commission, therefore, is whether modification of the Commission's order is appropriate in view of respondent's divestiture and, if so, what modifications should be made.

In substance, the assets acquired by respondent from the Cooney companies consisted of five ready-mixed concrete plants with related equipment and associated leasehold interests, three mobile plants, and miscellaneous personalty and realty interests. Included among the assets at one of the fixed plant sites (Tarrytown) were dump trucks, aggregate hauling trucks, and related equipment as well as dock and yard facilities for the handling and storage of aggregates. The accompanying table* shows the present status of the assets acquired by respondents from the Cooney companies. Of the five fixed plants, three have been transferred to Westchester Concrete, Inc. (Westcon); one has been sold to the Village of Mamaroneck and dismantled; [9] and one—the plant at Yonkers, N.Y.—has been closed down by respondent after unsuccessful attempts by it to find a purchaser or lessee. Respondent retains possession of this plant. The mobile plants have either been transferred to Westcon or dismantled and most of the remaining miscellaneous assets have been sold or otherwise transferred to various purchasers. The dump trucks, aggregate hauling trucks and related equipment at the Tarrytown facility have been leased to Wren Lines, Inc. (Wren), a new company formed to haul aggregate from the Tarrytown dock site and to operate as a common carrier of material. The dock and yard facilities at Tarrytown have been leased to a division of the Martin-Marietta Corporation.

The foregoing brief recitation of the manner in which respondent has effected divestiture makes it abundantly clear that strict compliance with the terms of the Commission's present order is no longer a practical possibility and that these proceedings must be reopened so that the order may be modified in light of the

[9] The Village of Mamaroneck apparently considered this plant a nuisance and purchased it in connection with a harbor beautification plan. Respondent contends and complaint counsel does not dispute that the same condemnation would probably have taken place whether or not respondent had acquired this plant. Respondent's petition Exhibit C–5; Complaint counsel's reply, p. 4.

* [p. 366]

changed conditions which now exist. The Commission's present order required respondent to restore each of the acquired companies "as going concerns and effective competitors in the lines of commerce * * * in which they were engaged at the time of the acquisitions," and, pending divestiture, to make no changes in the properties of the acquired companies which would impair their market value or their capacity to function in the lines of commerce in which they were engaged. The transfer of the Mamaroneck plant and the fragmentation of the aggregates portion of the Cooney business by themselves make it impossible for the objectives of the Commission's present order to be fully achieved.[10] The question before the Commission, therefore, is how the order may best be modified to most nearly achieve the objectives of this litigation; to answer this question, it is necessary to review briefly some of the details of the divestiture to Westcon.

Westchester Concrete, Inc. (Westcon), is a corporation which was apparently formed primarily for the purpose of acquiring respondent's ready-mixed concrete business; respondent owns no stock in Westcon.[11] Although Westcon's incorporators were apparently at one time indirectly associated with respondent, no officer, director or employee of respondent presently operates or is affiliated with Westcon.[12] By a series of agreements made between March 13, 1967, and January 2, 1968, respondent transferred to Westcon the ready-mixed concrete plants in Newburgh, Verplanck, and Tarrytown, N.Y., and two mobile concrete batching plants. These transfers were not effected by outright cash sales; rather, Westcon is obligated to make quarterly payments on its indebtedness to respondent until the indebtedness is fully discharged; under the agreements, completion of all obligations would not occur before 1976.[13] In all agreements, respondent holds non-negotiable demand notes as well as a security interest in the assets sold to Westcon, together with a right to terminate the agreement and repossess the assets in the event of default by Westcon.[14] In addition to its basic obligations under the agreements referred to above, Westcon is indebted to respondent for

[10] Respondent alleges, and complaint counsel apparently concedes, that the sale of the Cooney assets as "an integral unit was not possible due to the lack of interest by anyone to purchase or lease those assets as an integral unit." Respondent's petition, Exhibit F.

[11] Respondent's petition, Exhibit F, p. 2; complaint counsel's reply, p. 4.

[12] Respondent's petition, Exhibit F, p. 3; complaint counsel's reply, p. 4.

[13] " * * * for the plants and equipment obtained through all of the above agreements, Westcon is obligated to pay respondent a total of $1,187,671 in quarterly installments totalling $37,116 over a period extending into 1976." Complaint counsel's reply, p. 7.

[14] See respondent's petition, Exhibits C-1, C-2, and C-4.

DISPOSITION BY RESPONDENT OF PROPERTIES ACQUIRED FROM COONEY COMPANIES

PROPERTY ACQUIRED	PRESENT STATUS
I. *From Cooney Bros., Inc.*	
(1) Newburgh, Orange County, N.Y. Ready-Mixed Concrete Plant and Equipment, on leased premises.	(1) Sold to Westcon (premises sublet) by agreement of June 5, 1967 (RPX C-2).
(2) Verplanck, Westchester County, N.Y. Ready-Mixed Concrete Plant and Equipment, on leased premises.	(2) Sold to Westcon (premises sublet) by agreement of March 13, 1967 (RPX C-1).
(3) Tarrytown, Westchester County, N.Y. Ready-Mixed Concrete Plant and Equipment; leased premises include	(3) Sold to Westcon by agreement of March 13, 1967 (RPX C-1);
(a) Plant premises;	(a) Leased to Martin-Marietta Corp. and subleased by it to Westcon (RPX A-1, A-2).
(b) Yard and dock facilities used as aggregates terminal.	(b) Leased to Martin-Marietta Corp. by agreement of March 13, 1967 (RPX A-1).
(4) Aggregate hauling trucks, replacements, and related equipment.	(4) Leased to Wren Lines, Inc. by agreement of March 13, 1967 and supplementary agreement (RPX B-1, B-2).
II. *From Plaza Concrete Corp.*	
(1) Yonkers, Westchester County, N.Y. Ready-Mixed Concrete Plant and Equipment, on leased premises.	(1) Closed by respondent on December 29, 1967 after temporary operation by Westcon under agreement of June 5, 1967 (RPX C-3). Westcon declined to exercise option to purchase. Respondent has unsuccessfully sought other purchasers for plant and equipment and does not intend to reopen plant.
III. *From Mamaroneck Stone Corp.*	
(1) Mamaroneck, Westchester County, N.Y. Ready-Mixed Concrete Plant and Equipment.	(1) Sold to Village of Mamaroneck by deed of September 5, 1967; plant and equipment dismantled by Village and site cleared.* (RPX C-5)
IV. *Other*	
(1) Portable Batching Plants in	(1)
(a) Binghamton, N.Y.	(a) Dismantled and moved to respondent's Corona, N.Y. site; respondent has unsuccessfully sought purchasers or lessees (Respondent's petition, pp. 6-7).

(b) Pellets Island, N.Y.	(b) Transferred to Westcon (RPX C–4).
(c) Stilesville, N.Y.	(c) Transferred to Westcon (RPX C–4).
(2) Miscellaneous assets.	(2) Sold to various purchasers (RPX D–1, D–2, D–3).

RPX: Respondent's petition Exhibit.

* Property purchased by Village for harbor beautification and to eliminate alleged nuisance.

credits against cement purchases in the amount of $793,219, which indebtedness is to be reduced to $575,000 by February 28, 1970.[15] Westcon is current on all payments to respondent under the agreements.

Data provided to the Commission by complaint counsel indicate that, for the first full year of operation by Westcon, the plants acquired by Westcon operated, on the whole, at levels of purchase and sale substantially greater than the levels at which the same plants had been operated by the Cooney companies prior to their acquisition by respondent.[16] However, 73 percent of Westcon's 1968 purchases of portland cement were made from respondent.[17] The forecast for Westcon's 1969 purchases indicates that a substantially lesser portion of their requirements (no more than 52 percent) would be met by purchases from respondent.[18] In sum, while both complaint counsel [19] and respondent [20] represent to the Commission that Westcon's financial prospects appear promising, and that the company has the potential to continue to operate as a successful competitor, Westcon is deeply indebted to respondent and appears to be operating at its sufferance.

[15] Complaint counsel's reply, p. 9.

[16] The following tables appear in complaint counsel's reply, p. 7:

Plant	Cement purchases of Cooney organization by plant (bbls.)			Cement purchases by Westcon,	Concrete sales of Cooney organization by plant (cu. yds.)			Concrete sales by Westcon,
	1962	1963	1964	1968	1962	1963	1964	1968
Tarrytown	125,578	87,925	72,861	166,673	95,712	63,288	56,419	121,659
Newburgh	44,433	47,810	59,715	77,629	54,435	63,455	51,350	57,932
Verplanck	10,679	9,552	22,306	78,672	15,282	21,352	27,220	59,152
Yonkers	56,230	67,537	70,642	---	44,520	58,691	59,221	---
Total	236,920	212,824	225,524	322,974	209,949	206,786	194,210	238,743

[17] Respondent's petition, Exhibit E.

[18] *Ibid.*

[19] See complaint counsel's reply, p. 9.

[20] See respondent's petition, p. 9, and Exhibit F, paragraph 6.

III

The principal vice of the Marquette-Cooney merger was that it added momentum to an established trend toward vertical integration in the cement industry in the New York Metropolitan Area (NYMA), foreclosing a substantial portion of the market for portland cement in the NYMA by tying Cooney, a major consumer, to Marquette, a major manufacturer.[21] The natural remedy suggested by the Clayton Act to redress the wrong done by this merger is to effect a complete undoing of the acquisition. *U.S.* v. *E. I. du Pont de Nemours & Co.*, 366 U.S. 316 (1961). Accordingly, the present Commission order requires respondent to divest itself of the Cooney assets "absolutely." Such an order, no less than an order directing "complete" divestiture, requires not only the transfer of ownership of the illegally acquired properties, but complete "severance of all managerial and all financial connections" between respondent and the acquired company or the divestee. *Utah Public Service Commission* v. *El Paso Natural Gas Company*, 395 U.S. 464 at 472 (1969). The transfer to Westcon described above obviously fails to meet these standards. Under the terms of respondent's agreements with Westcon, respondent is left with a substantial equitable interest in the assets acquired from the Cooney companies and has the right to reacquire these assets if the considerable indebtedness incurred by Westcon is not properly discharged. Moreover, in view of the fact that the major portion of Westcon's purchases continues to be made from the respondent, the divestiture has not yet effectively eliminated the substantial market foreclosure resulting from the merger.[22]

In view of the Supreme Court's recent decision in *Utah Public Service Commission* v. *El Paso Natural Gas Company, supra,* it may be urged that the Commission should not accept, as providing an adequate remedy for a violation of Section 7 of the Clayton Act, any divestiture which is less than complete. Nevertheless, there are several reasons why we are inclined to view the divestiture to Westcon as providing a practical basis for an effec-

[21] See *Marquette Cement Manufacturing Company*, FTC Docket No. 8685, slip op. p. 7, *et seq.* (January 7, 1969) [75 F.T.C. 32, at 95 *et seq.*].

[22] "Prior to the merger, Cooney purchased cement from a number of sources, including Marquette, with no one supplier dominating until 1964, the year of the merger, when the Colonial Sand & Stone Co., the leading firm in the market, supplied over 75 percent of Cooney's needs, the balance coming from nine smaller suppliers. In 1965 and 1966, after the merger, Marquette supplied 99.9 percent and 83.7 percent of Cooney's requirements. The balance was supplied by a cement producing subsidiary of the United States Steel Corp. in 1965, and by Colonial in 1966." *Marquette Cement Manufacturing Company*, F.T.C. Docket No. 8685, slip op. p. 4 (January 7, 1969) (footnote omitted) [75 F.T.C. 32, at 92].

tive remedy. The divestiture has evidently been undertaken in good faith and without any intention to undermine any order the Commission may have entered. It has created a going concern with the proven capacity to operate at levels comparable to the levels at which Cooney operated prior to the merger and with the potential for continuing to compete effectively in the principal market served by the Cooney companies. Moreover, the public interest in the prompt disposition of antitrust cases is a factor which must be considered and acceptance of the divestiture to Westcon may avoid the protracted delays which have operated, in other cases,[23] to frustrate the public interest in securing early relief from the adverse effects of antitrust violations. For these reasons and for other reasons peculiar to this case, the Commission accepts the divestiture to Westcon as providing substantial relief from the violation here. However, as the Supreme Court has observed, "The key to the whole question of an antitrust remedy is of course the discovery of measures effective to restore competition." *U.S.* v. *E. I. du Pont de Nemours & Co.*, 366 U.S. at 326 (1961). Therefore, acceptance of the transfer to Westcon as the basic remedy in this case requires the Commission to include in its order sufficient safeguards to assure that Westcon will function, as much as possible, as an independent force in the marketplace and that the remaining ties between Westcon and respondent do not operate to perpetuate the foreclosure accomplished by the merger. We therefore adopt, in essence, the proposal of complaint counsel to modify the order so as to prohibit respondent from selling to Westcon, so long as respondent retains a security interest in the assets transferred to Westcon or so long as Westcon is indebted to respondent in substantial amounts for purchases of portland cement, more than thirty-five percent of Westcon's portland cement requirements in any one year. Of course, the modified order still requires prompt divestiture of the Yonkers plant and will also contain appropriate provisions for redivestiture in the event respondent reacquires the Cooney assets.

While respondent had at one time stated that it would not oppose the imposition of a limitation upon its sales to Westcon during Westcon's indebtedness to respondent,[24] it now contends

[23] See, *e.g.*, *F.T.C.* v. *Proctor & Gamble Co.*, 386 U.S. 568 (1967) (10 years between merger and final decision of the Supreme Court directing divestiture); *General Foods Corp.* v. *F.T.C.*, 386 F. 2d 936 (3rd Cir. 1967), *cert. denied*, 391 U.S. 919 (1968) (10 years between merger and denial of certiorari by Supreme Court); the acquisition challenged in *Utah Public Service Commission* v. *El Paso Natural Gas Company*, 395 U.S. 464 (1969), occurred in 1957 and the matter is still in litigation.

[24] Respondent's answer, p. 2.

that it should not be subjected to such a restriction principally because it would amount to a "penalty" which is more harsh than the original order and which would not have been imposed on respondent had it divested itself, under the Commission's present order, of the Cooney assets in the same manner as it now has.[25] The fallacy in respondent's argument is evident. Had the respondent divested itself "absolutely" of the Cooney assets as required by the present order, the Commission would have had no need to adopt measures designed to limit the potentially pernicious effects of respondent's continuing interest in the Cooney assets. Moreover, since the Commission clearly has the authority to compel absolute divestiture, the authority to take lesser steps in order to restore competition where divestiture has been less than absolute is well within its power; the Commission acts within its remedial powers wherever the remedy selected is reasonably related to the injury to be avoided, *F.T.C.* v. *Ruberoid Co.*, 343 U.S. 470 (1952). Respondent's objections to this limitation are therefore without merit.[26]

IV

One further question remains to be considered. The Commission's present order prohibits respondent from acquiring, without the prior approval of the Commission, any corporation "engaged in the sale of ready-mixed concrete or concrete products" in respondent's marketing area.[27] Respondent objects to this provision of the order insofar at it bars acquisition, without prior Commission approval, of companies engaged in the sale of "concrete products." Respondent maintains that the prohibition goes beyond the scope of the complaint, record and findings and that it is vague and overly broad. Respondent also points out that no such provi-

[25] *Id.* at pp. 2–3.

[26] In the modified order proposed by complaint counsel, sales "of portland cement for consumption by Westcon, as a result of specification by a customer, in a written agreement, requiring the purchase of portland cement manufactured by Marquette * * *" were to be exempted from calculation of the thirty-five percent limitation. We do not adopt this exemption in our order. If such an exemption would substantially increase Westcon's purchases from respondent, it would defeat the purposes of our order to fail to compute these sales within the limitation. On the other hand, since portland cement is a fairly standardized product (see Examiner's Finding 25 in this proceeding) it is extremely unlikely that elimination of the exemption would adversely affect Westcon's ability to meet the demands of its customers. Prior to the merger, Cooney purchased much less than 35 percent of its requirements from Marquette (see footnote 22, *supra*); consequently, an absolute limitation of 35 percent provides Marquette with market access to the former Cooney companies at a level greater than its pre-merger sales and is, if anything, favorable to respondent.

[27] The order also prohibits acquisition of any corporation "which purchased in excess of 10,000 barrels of portland cement in any of the five (5) years preceeding the merger." Respondent does not challenge the appropriateness of this provision of the order in the present pleadings.

sion has been included in Commission orders entered in similar cases so that, under the present order, respondent would be subject to restrictions not imposed upon any of its competitors.[28]

This provision of the order was included in view of the demonstrated trend toward competitively injurious vertical mergers in the cement industry and in view of respondent's participation in this movement.[29] It was formulated to assure that respondent would not be able to defeat the ultimate purposes of the order by acquiring any company which, even though not engaged in the sale of ready-mixed concrete, was an important consumer of portland cement. It is well established that the remedial powers of the Commission include the power to frame its orders broadly enough to prevent respondents from engaging in practices in the future which are similar to the illegal practices which initially prompted Commission action, see, *e.g.*, *Federal Trade Commission* v. *Colgate-Palmolive Co.*, 380 U.S. 374, at 394–95 (1965); see also *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, at 612–13 (1946). Moreover, in enforcing the law, the Commission is not required to act on an industry-wide basis but may enter and enforce its orders against particular industry members, as the facts warrant, in its discretion, see *Federal Trade Commission* v. *Universal-Rundle Corp.*, 387 U.S. 244 (1967). Consequently, we reject respondent's contention that the Commission is without the power to include such a provision in its order. However, while the Commission does not lack the authority to include such a provision in its order, upon reconsideration and in the exercise of our discretion, we are inclined to delete the provision here. While other cases may require inclusion of such a provision, we are satisfied that in the particular circumstances of this case the public interest will be adequately protected by the entry of an order prohibiting acquisition of ready-mixed concrete companies without prior Commission approval. The order will be so modified.

Commissioner MacIntyre did not participate in this action.

ORDER REOPENING PROCEEDING AND MODIFYING PREVIOUS ORDER

The Commission having issued an order and decision in this matter on January 7, 1969 [75 F.T.C. 32], ordering respondent, Marquette Cement Manufacturing Company, to divest absolutely

[28] Respondent's answer, pp. 3–6.

[29] *Marquette Cement Manufacturing Co.*, FTC Docket No. 8685, slip op. p. 21 (January 7, 1969 [75 F.T.C. 32, 104].

and in good faith certain stock and/or assets acquired by respondent as a result of its acquisition of Cooney Bros., Inc., Plaza Concrete Corporation, and Mamaroneck Stone Corp., and respondent having filed on March 10, 1969, a petition to reopen the proceedings and modify or set aside the order due to changed conditions, and respondent having informed the Commission of the divestiture which respondent has made to Westchester Concrete, Inc., and Wren Line, Inc., prior to issuance of the order, the Commission, for the reasons stated in the accompanying opinion, has determined that changed conditions of fact and the public interest require that these proceedings be reopened and that the order previously entered herein be modified to provide as follows:

It is ordered, That so long as respondent, Marquette Cement Manufacturing Company, a corporation, or any of its subsidiaries either (1) retains a bona fide lien, mortgage, deed of trust, or other security interest in any of the assets divested to Westchester Concrete, Inc., (Westcon) for the purpose of securing payment of the price at which said assets were transferred to Westcon, or (2) so long as the extension of credit by respondent or any of its subsidiaries to Westcon for portland cement purchases exceeds $50,000, neither respondent nor any of its subsidiaries shall in any calendar year supply more than thirty-five (35) percent of the portland cement purchased by Westcon.

It is further ordered, That during the period respondent or any of its subsidiaries retain a bona fide lien, mortgage, deed of trust, or other security interest in the assets divested to Westcon, and so long as the extension of credit by respondent or any of its subsidiaries to Westcon for portland cement purchases exceeds $50,000, respondent will submit a written report showing the balance of credit extended and its sales of portland cement, in barrels, to Westcon for each six months of the calendar year commencing in January 1970.

It is further ordered, That if respondent or any of its subsidiaries for any reason reacquires possession, ownership or control of any of the assets divested to Westcon or Wren, respondent shall absolutely, and in good faith, divest itself of said assets within six (6) months from the time of said reacquisition so as to reestablish going concerns and effective competitors in the lines of commerce and geographic markets in which Westcon and Wren are engaged.

It is further ordered, That respondent and its subsidiaries, of-

ficers, directors, agents, representatives, employees, affiliates, successors and assigns, within one (1) year from the date that this order becomes final, shall divest absolutely and in good faith all assets and properties, tangible and intangible, including but not limited to all plants, machinery, equipment, trade names, contract rights, trademarks, and good will acquired by Marquette and its subsidiaries as a result of its acquisition of the stock and/or assets of Cooney Bros., Inc., Plaza Concrete Corporation and Mamaroneck Stone Corp. and which are now located at the former ready-mix concrete plant site of Plaza Concrete Corporation at Yonkers, Westchester County, New York. None of the assets, properties, rights or privileges, described in this paragraph, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of Marquette Cement Manufacturing Company or any subsidiary or affiliated corporations of Marquette Cement Manufacturing Company, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Marquette Cement Manufacturing Company, or to any purchaser who is not approved in advance by the Federal Trade Commission.

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

It is further ordered, That respondent shall, within sixty (60) days from the date this order becomes final and every ninety (90) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of its actions, plans and progress in complying with the provisions of this order and fulfilling its objectives. All reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the stock and/or assets to be divested under this order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

Commissioner MacIntyre not participating.