ORDER GRANTING MOTION TO DISMISS BY RESPONDENTS HENRY S. CLAY, JR. AND ROBERT E. LATHAM

For the reasons stated in the accompanying opinion,

It is ordered, That the motion to dismiss of December 2, 1968, filed by and on behalf of respondents Henry S. Clay, Jr., and Robert E. Latham, be granted;

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed with respect to all respondents.

By the Commission, with Commissioner MacIntyre not participating.

IN THE MATTER OF

ASSOCIATED CHINCHILLA SERVICES OF NEW ENGLAND, INC., DOING BUSINESS AS CHINCHILLA PRODUCERS ASSOCIATION, ET AL.

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

Docket C-1488. Complaint, Jan. 31, 1969—Decision, Jan. 31, 1969

Consent order requiring a Hartford, Conn., seller of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality of its stock, deceptively guaranteeing the fertility of its stock, and misrepresenting its services to purchasers.

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 Associated Chinchilla Services of New England, Inc., a corporation, formerly doing business under its own name and now doing business as Chinchilla Producers Association, and John O. Lindgren, Billie J. Lindgren and Troy R. Loun, Jr., individually and as officers and directors 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 Associated Chinchilla Services of New England, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 111 Pearl Street, Suite 718, Hartford, Connecticut 06103.

Respondents John O. Lindgren, Billie J. Lindgren and Troy R. Loun, Jr., are officers and directors of said corporate respondent and formulate, direct and control its acts and practices, including the acts and practices hereinafter set forth. The address of respondents John O. Lindgren and Billie J. Lindgren is the same as that of the corporate respondent. The address of respondent Troy R. Loun, Jr., is 111 Pinewoods Road, Granby, Connecticut 06035.

Respondent John O. Lindgren, from January 1966 to September 1966, traded and did business as The Chinchilla Guild of America, New England Division. His principal office and place of business was located at 111 Pearl Street, Suite 718, Hartford, Connecticut. In September 1966, respondent John O. Lindgren and respondents Billie J. Lindgren and Troy R. Loun, Jr., organized and incorporated said Associated Chinchilla Services of New England, Inc. From September 1966 to April 1967, the corporate respondent did business under its own name. Since April 1967, the corporate respondent has been doing business as Chinchilla Producers Association.

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

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, respondents make numerous statements and representations in direct mail advertising in newspaper and magazine advertising, and through the oral statements and display of promotional material to prospective purchasers by their salesmen, with respect to the

breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, the expected return from the sale of their pelts, the market value of said animals as breeding stock, their quality, their warranty, and the training assistance to be made available to purchasers.

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

YOU CAN BE A
CHINCHILLA RANCHER
RIGHT WHERE YOU LIVE

And enjoy a substantial income for retirement, college financing or a higher standard of living.

WE PROVIDE exclusively

- Thorough training.
- Professional guidance, counseling, inspection.
- Pelting, priming, marketing.
- GUARANTEED ANIMALS.

YOU PROVIDE:

- A love for animals.
- A little spare time.
- A spare room, garage or small building.

You invest $2,100 or more * * * .

* * * * * * *

RAISE CHINCHILLAS FOR PROFIT!

A small investment can grow into a substantial return. Your potential earnings are several thousand dollars annually.

* * * * * * *

Chinchillas can be raised anywhere. In a spare room, basement or garage.

* * * * * * *

Gentlemen: Please send me (without obligation) information on The Guild's method of chinchilla production.

I am interested in additional annual income of (Check one)

$2,500 ☐ $5,000 ☐ $7,500 ☐ $10,000 ☐ $15,000 ☐

* * * * * * *

Every name on this page sold chinchilla pelts for $28 to $61 last month. Are you on this list? These are some of our ranchers.

* * * * * * *

Chinchilla ranchers are earning thousands of dollars a year IN THEIR SPARE TIME. Turn extra room into income for Education, Travel, Retirement.

* * * * * * *

Guild Breeders are warranted to live 3 years, and reproduce.

Professional Assistance from well-trained Ranch Inspectors assures success, even if you have no experience.

Profit is High * * * The demand for pelts increases every year.

* * * * * * *

The average value of the white pelts that are in New York now is just a hair over $200.00.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, and through the oral statements and representations made in sales presentations to purchasers, respondents represent and have represented, directly or by implication, that:

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

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

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

4. All of the offspring referred to in Paragraph Five (3) above will have pelts selling for an average price of $30 per pelt, and that pelts from offspring of respondents' breeding stock generally sell from $28 to $61 each.

5. Chinchillas sold by respondents are high quality or "Empress Certified" quality breeding stock.

6. Each female chinchilla purchased from respondents and each female offspring will produce at least four live young per year.

7. A purchaser starting with three females and one male of respondents' chinchillas will have an annual income of $5,250 a year from the sale of pelts at the end of the fifth year.

8. Chinchilla breeding stock purchased from respondents is unconditionally warranted to live three years and within 18 month reproduce a number of offspring equal to the number of animals originally purchased.

9. Breeding chinchillas by mated pairs produces more offspring of better quality than using one male to breed several females, called polygamous breeding.

10. Respondents doing business as Chinchilla Producers Association have been in the chinchilla business for more than 13 years.

11. Chinchillas are hardy animals and are not susceptible to diseases.

12. Chinchilla mutation breeding stock has a market value of $350 each and the pelts of the offspring of chinchilla mutations having a white, silver or beige color, generally sell for $80 to $200 each.

13. Purchasers of respondents' chinchilla breeding stock will receive professional assistance or guidance in the care and breeding of chinchillas from well-trained ranch inspectors.

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

15. A purchaser investing $2,500 in respondents' chinchillas will make $10,500 a year in net profits five years after the purchase of respondents' chinchillas.

PAR. 6. In truth and in fact:

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

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

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

4. All of the offspring referred to in subparagraph (4) of Paragraph Five above will not produce pelts selling for an average price of $30 per pelt but substantially less than that amount;

and pelts from offspring of respondents' breeding stock will generally not sell for $28 to $61 each since some of the pelts are not marketable at all and others would not sell for $28 but substantially less than that amount.

5. Chinchillas sold by respondents are not high quality or "Empress Certified" quality breeding stock.

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

7. A purchaser starting with three females and one male of respondents' breeding stock will not have an annual income of $5,250 from the sale of pelts at the end of the fifth year, but substantially less than that amount.

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

9. Breeding chinchillas by mated pairs does not produce more offspring or offspring of better quality than the polygamous breeding method.

10. Respondents doing business as Chinchilla Producers Association have not been in the chinchilla business for more than 13 years. They have been doing business under this name for less than two years.

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

12. Chinchilla mutation breeding stock does not have a market value of $350 each but substantially less than that amount, and the pelts of the offspring of chinchilla mutations having a white, silver, or beige color do not generally sell for $80 to $200 each. Such pelts have seldom, if ever, been sold and when sold have brought substantially less than those amounts.

13. Purchasers of respondents' chinchilla breeding stock do not receive professional assistance or guidance in the care and breeding of chinchillas from well-trained ranch inspectors. Many of respondents' inspectors have little, if any, training in the care and breeding of chinchillas and are not competent to advise or assist purchasers in the care and breeding of chinchillas.

14. Purchasers of respondents' breeding stock cannot expect a great demand for the offspring or the pelts of the offspring of respondents' chinchillas.

15. A purchaser investing $2,500 in respondents' chinchillas will not make $10,500 a year in net profits five years after the purchase of respondents' chinchillas. Such purchasers can make little, if any, profit five years after said purchase.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of chinchilla breeding stock.

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

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been

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

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

1. Respondent Associated Chinchilla Services of New England, Inc., formerly doing business under its own name and now doing business as Chinchilla Producers Association, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 111 Pearl Street, Suite 718, Hartford, Connecticut 06103.

Respondents John O. Lindgren and Billie J. Lindgren are officers and directors of said corporation and their address is the same as that of said corporation. Respondent Troy R. Loun, Jr. is an officer and director of said corporation and his address is 111 Pinewoods Road, Granby, Connecticut 06035.

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 Associated Chinchilla Services of New England, Inc., a corporation, doing business under its own name or as Chinchilla Producers Association, or under any other trade name or names and its officers, and John O. Lindgren, Billie J. Lindgren and Troy R. Loun, Jr., individually and as officers and directors 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 chinchilla breeding stock or any other products in commerce, as "commerce" is defined in the federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. It is commercially feasible to breed or raise chin-

chillas in homes, basements, garages, spare rooms or other quarters or buildings or that large profits can be made in this manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented quarters or buildings have the requisite space, temperature, humidity, ventilation and other environmental conditions which would make them adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis and that large profits can be made in this manner.

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

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

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

5. Pelts from the offspring of respondents' chinchilla breeding stock sell for an average price of $30.00 per pelt; or that pelts from the offspring of respondents' breeding stock generally sell from $28 to $61 each.

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

7. Purchasers of respondents' chinchilla breeding stock will receive high quality or "Empress Certified" quality chinchillas or any other grade or quality of chinchillas: *Provided, however,* That it shall be a defense in

any enforcement proceeding instituted hereunder for respondents to establish that purchasers do actually receive chinchillas of the represented grade or quality.

8. Each female chinchilla purchased from respondents and each female offspring produce at least four live young per year.

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

10. A purchaser starting with three females and one male of respondents' chinchillas will have, from the sale of pelts, an annual income, earnings or profits of $5,250 at the end of the fifth year after purchase.

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

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

13. Breeding chinchillas by mated pairs will produce more and better quality offspring than by polygamous breeding.

14. Respondents doing business as Chinchilla Producers Association or under any other trade or corporate name or as individuals have been in the chinchilla business for 13 years; or misrepresenting, in any manner, the length of time respondents individually or through any corporate or other device have been in business.

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

16. Chinchilla mutation breeding stock has a market value of $350 each or any other price or range of prices; or that the pelts of chinchilla mutants having a white, silver or beige color or any other color generally sell for $80 to $200 each or any price, average price or range of prices: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented price, average price or range of prices are actually and usually received for chinchilla mutation breeding stock and the pelts of the chinchilla mutants having a white, silver or beige color or other color.

17. Purchasers of respondents' chinchilla breeding stock are given guidance or professional assistance in the care and breeding of chinchillas; or that respondents' ranch inspectors are well trained or qualified to give guidance or professional assistance in the care and breeding of chinchillas: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the purchasers are actually given the represented guidance or professional assistance in the care and breeding of chinchillas and that their ranch inspectors are well trained and qualified to give such guidance and professional assistance in the care and breeding of chinchillas.

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

19. Purchasers investing $2,500 in respondents' chinchillas will make $10,500 in net profit each year five years after the purchase of respondents' chinchillas.

20. Purchasers investing any amount or range of amounts will make any amount, or range of amounts, in profit in any number of years or interval of time after the purchase of respondents' chinchillas: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that purchasers investing a stated amount, or range of amounts, actually and usually realize the represented number of years or interval of time.

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

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

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

It is further ordered, That the respondents' 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

SOUTHERN ALUMINUM DISCOUNT COMPANY, INC., ET AL.

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

Docket C-1489. Complaint, Feb. 3, 1969—Decision, Feb. 3, 1969

Consent order requiring two affiliated Springfield, Mo., home improvement companies to cease using bait advertisements, false pricing and savings claims, deceptive limited offers, and false guarantees in the sale of their products, and neglecting to disclose that purchasers' 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 Southern Aluminum Discount Company, Inc., a corporation, and Carpet Discount House, Inc., a corporation, and T. Doyle Mitchell and Bobbie Lou Mitchell, individually and as officers of said cor-

porations, 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 Southern Aluminum Discount Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business formerly being located at 1051 East Lynn, Springfield, Missouri, and now located at Suite 221 Woodruff Building, Jefferson at St. Louis Streets, Springfield, Missouri.

Respondent Carpet Discount House, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business formerly being located at 904 North Glenstone, Springfield, Missouri, and now located at Suite 221 Woodruff Building, Jefferson at St. Louis Streets, Springfield, Missouri.

Respondents T. Doyle Mitchell and Bobbie Lou Mitchell are individuals and officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is 2412 South Marlan, Springfield, Missouri. Respondents have cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of residential aluminum siding, and various other home improvement products to the public and in the installation thereof.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their residential aluminum siding and other home improvement products, respondents have made numerous statements and representations, through oral statements made to prospective purchasers by their salesmen or

representatives, in newspaper advertisements, and in direct mail advertising circulars and other promotional material, respecting the nature of their offer, price, time limitations, and their guarantee.

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

SAVE
ON SOUTHERN'S SPECIAL OFFER
This $488.00 Value NOW ONLY $288.00
NO EXTRAS
Completely Installed

ENJOY EVERLASTING HOME BEAUTY. Comfortable living and Savings * * * Now your home can be made into a truly modern home.

CLIP AND MAIL THIS COUPON TODAY
FOR A BONUS GIFT
YOUR CHOICE OF THREE FINE GIFTS
IF YOU ACT PROMPTLY
OFFER GOOD FOR LIMITED TIME ONLY

PAR. 5. By and through the use of the aforesaid statements and representations, and other of similar import and meaning not specifically set out herein, and through oral statements made by their salesmen or representatives, respondents represent, and have represented, directly or by implication, that:

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

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

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

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

5. Respondents' products are guaranteed in every respect without conditions or limitations for a period of twenty years.

6. Respondents' siding will not require repainting.

PAR. 6. In truth and in fact:

1. Respondents' said advertised offers are not genuine or bona fide offers but are made for the purpose of obtaining leads as to

persons interested in the purchase of respondents' products. After obtaining such leads, respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, they write a contract calling for the sale of the advertised product and the prospective purchaser is permitted to execute that contract. Immediately thereafter, respondents' salesmen or representatives disparage the advertised product and otherwise discourage the purchase thereof and attempt to void said contract and to sell and frequently do sell a different and more expensive product instead of the product for which the customer originally contracted.

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

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

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

5. Respondents' home improvement products are not guaranteed in every respect without conditions or limitations for a period of twenty years or for any other period of time. Such guarantee as may be provided is subject to numerous terms, conditions and limitations respecting the duration of the guarantee and fails to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder.

6. Respondents' siding materials will require repainting.

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

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of

their residential siding materials and other home improvement products, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

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

PAR. 8. In the conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of residential aluminum siding and other home improvement products of the same general kind and nature as those sold by respondents.

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

PAR. 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 fur-

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

1. Respondent Southern Aluminum Discount Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business formerly located at 1051 East Lynn, Springfield, Missouri, and now located at Suite 221 Woodruff Building, Jefferson at St. Louis Streets, Springfield, Missouri.

Respondent Carpet Discount House, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business formerly located at 904 North Glenstone, Springfield, Missouri, and now located at Suite 221 Woodruff Building, Jefferson at St. Louis Streets, Springfield, Missouri.

Respondents T. Doyle Mitchell and Bobbie Lou Mitchell are officers of said corporations and their address is 2412 South Marlan, Springfield, Missouri.

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 Southern Aluminum Discount Company, Inc., a corporation, and Carpet Discount House, Inc., a corporation, and their officers, and T. Doyle Mitchell and Bobbie Lou Mitchell, individually and as officers of said corporations and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution or installation of residential siding, or other home improvement products or any 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 other merchandise or services.

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

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

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

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

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

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

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

9. Representing, directly or by implication, that respondents' products will never require repainting, or misrepresenting in any manner, the serviceability or utility of respondents' products.

10. Representing, directly or by implication, that any of respondents' products are guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; or making any direct or implied representation that any of respondents' products are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations.

11. Failing to clearly and conspicuously incorporate the following statement on the face of all negotiable instruments executed by respondents' customers:

"NOTICE"

"Any holder of this note shall take this note subject to all defenses of any party which would be available in an action on a simple contract."

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

It is further ordered, That the respondent 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

SANITARY CARPET AND RUG CLEANING COMPANY, INC., TRADING AS CARPETLAND, ET AL.

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

Docket C-1490. Complaint, Feb. 3, 1969—Decision, Feb. 3, 1969

Consent order requiring a Rockville, Md., seller of rugs and carpets to cease misbranding, falsely advertising, and deceptively pricing its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sanitary Carpet and Rug Cleaning Company, Inc., a corporation, trading and doing business as Carpetland, and Aram Sakayan and Edward Turmanian, individually and as officers of said corporation, and George Sakayan, individually and as General Manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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 it charges in that respect as follows:

PARAGRAPH 1. Respondent Sanitary Carpet and Rug Cleaning Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 5414 Randolph Road, Rockville, Maryland.

Respondents Aram Sakayan and Edward Turmanian are

individuals and are officers of the corporate respondent. Respondent George Sakayan is an individual and is the General Manager of the corporate respondent. Said individuals formulate, direct and control the policies, acts and practices of said 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 introduction, delivery of 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 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 The Washington Post and The Evening Star, newspapers published in the city of Washington, District of Columbia, and having a wide circulation in said District of Columbia and various States of the United States, in that the respondents in disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor coverings and not to the exempted backings, fillings, or paddings.

PAR. 4. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosure or implications as to the fiber content of such textile fiber prod-

ucts in written advertisements used to aid, promote and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were carpets which were falsely and deceptively advertised by means of printed matter, in newspapers, distributed by the respondents throughout the United States to customers and salesmen. The aforementioned carpets were described by such fiber connoting terms among which, but not limited thereto was "acrilan," and the true generic name of the fiber contained in such products was not set forth.

PAR. 5. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents have falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

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

PAR. 6. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identi-

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

PAR. 7. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of rugs and carpeting to the public.

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

PAR. 9. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their rugs and carpeting, respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers, respecting the prices of their merchandise and the savings available to purchasers.

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

LEES ACRYLIC
SAVE OVER 1/2 PRICE
Reg. $8 sq. yd. on sale now ..... $3.20 sq. yd.

* * * * * * *

4-HOUR WAREHOUSE SALE
* * * TODAY SAVE 50% TO 75% OFF
PRICES IF SOLD FROM THE ROLL!

* * * * * * *

SPECIAL PURCHASE SALE

* * * * * * *

FAMOUS MILL'S VELVET
SMOOTH PLUSH NYLON
* * * completely installed over
sponge rubber padding! * * *
Sale price covers carpet,
padding and installation;
nothing more to pay!

PAR. 10. By and through the use of the above-quoted statements and respresentations, and other of similar import and meaning not expressly set out herein, respondents, have represented and are now representing, directly or by implication, that:

1. The higher stated price amounts set out in the said advertisements, and others not quoted herein, in connection with the term "Reg.," or other terms of similar import and meaning, were the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business, and purchasers thereof save the difference between respondents' advertised selling price and the corresponding higher price.

2. Purchasers of merchandise advertised as "SAVE 50% TO 75%," "SAVE OVER ½ PRICE," or other terms of simliar import and meaning, would realize a savings of the stated amount from the actual bona fide price at which said merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business.

3. By the use of the words "WAREHOUSE SALE," "Sale price," or other words of similar import and meaning, respondents' advertised price constituted a substantial reduction from the price at which such merchandise was sold or offered for sale in good faith for a reasonably substantial period of time by respondents in the recent, regular course of their business.

4. Merchandise advertised as "SPECIAL PURCHASE SALE," or other words of similar import and meaning, has been purchased by respondents at prices substantially below the prices usually and customarily paid by respondents for the same merchandise, and purchasers are thereby afforded bona fide savings from respondents' usual and customary retail price for such merchandise.

5. Carpeting advertised is installed over sponge rubber padding at the price represented.

PAR. 11. In truth and in fact,

1. The higher stated price amounts set out in the said advertisements, and others not quoted herein, in connection with the term "Reg." or other terms of similar import and meaning, were not the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent, regular course of

their business, and purchasers thereof do not save the difference between respondents' advertised selling price and the corresponding higher price.

2. Purchasers of the merchandise advertised as "SAVE 50% TO 75%," "SAVE OVER ½ PRICE," or other terms of similar import and meaning, would not realize a savings of the stated amount from the actual bona fide price at which said merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business.

3. The prices set out in said advertising in connection with the words "WAREHOUSE SALE," "Sale price," or other words of similar import and meaning, did not constitute a substantial reduction from the price at which such merchandise was sold or offered for sale in good faith for a reasonably substantial period of time by respondents in the recent, regular course of their business.

4. The merchandise advertised as "SPECIAL PURCHASE SALE" or other words of similar import and meaning, has not been purchased by respondents at prices substantially below the prices usually and customarily paid by respondents for the same merchandise, and purchasers are not thereby afforded bona fide savings from respondents' usual and customary retail price for such merchandise.

5. All of the carpeting advertised is not installed over sponge rubber padding at the price represented. Instead, the padding customarily used for such installation is essentially composed of jute and hair fibers.

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

PAR. 12. 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 rugs and carpeting of the same general kind and nature as those sold by respondents.

PAR. 13. 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. 14. 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 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 Sanitary Carpet and Rug Cleaning Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 5414 Randolph Road, Rockville, Maryland.

Respondents Aram Sakayan and Edward Turmanian are officers of and respondent George Sakayan is the general manager of said corporation. 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 Sanitary Carpet and Rug Cleaning Company, Inc., a corporation, trading and doing business as Carpetland, or under any other name, and its officers, and Aram Sakayan and Edward Turmanian, individually and as officers of said corporation, and George Sakayan, individually and as general manager of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. 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 backing, filling or padding, when such is the case.

B. Falsely and deceptively advertising textile fiber products by:

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

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

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

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

It is further ordered, That respondents Sanitary Carpet and Rug Cleaning Company, Inc., a corporation, trading and doing business as Carpetland, or under any other name, and its officers, and Aram Sakayan and Edward Turmanian, individually and as officers of said corporation, and George Sakayan, individually and as general manager 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 carpeting, rugs, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Reg." or any other word or words of similar import or meaning, to refer to any amount which is in excess of the price at which such merchandise has been

sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business, or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by respondents.

2. Using the word "SAVE," or any other word or words of similar import or meaning, in conjunction with a stated percentage, fraction, dollar or other amount of savings: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the stated amount of savings actually represents the difference between the offering price and the actual bona fide price at which such merchandise has been sold or offered for sale on a regular basis to the public by respondents for a reasonably substantial period of time in the recent, regular course of their business.

3. Using the words "WAREHOUSE SALE," "Sale price," or any other term or words of similar import or meaning, in conjunction with any stated price or prices: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that their prices for the merchandise so advertised have been substantially reduced below respondents' usual selling prices, or the prices at which such merchandise has been offered for sale in good faith by respondents during the recent, regular course of their business.

4. Using the words "SPECIAL PURCHASE SALE" or any other term or words of similar import or meaning, either alone or in conjunction with an offering price: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the offering price during said sale is a substantial reduction from the price usually and customarily paid by respondents for the same merchandise, and purchasers are thereby afforded bona fide savings from respondents' usual and customary retail prices for such merchandise.

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

6. Representing, through advertisements or in any other

manner, that sponge rubber padding will be installed with respondents' rugs or carpeting unless such padding is, in fact, installed in every instance as represented, or misrepresenting, in any manner the nature or type of padding sold or installed by respondents.

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

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

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

IN THE MATTER OF

THE CROWELL-COLLIER PUBLISHING COMPANY, ET AL.*[1]

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

Docket 7751. Complaint, Jan. 18, 1960—Decision, Feb. 4, 1969

Final order making effective the cease and desist order of September 30, 1966, 70 F.T.C. 977, prohibiting a New York City publisher from using false claims in selling its encyclopedias by door-to-door solicitation, and making the same order effective against the respondent parent corporation, its successor and the new subsidiary.

INITIAL DECISION ON REMAND BY WALTER R. JOHNSON, HEARING EXAMINER

JANUARY 4, 1968

The complaint herein, which was issued on January 18, 1960, charged that respondents made false, misleading, and deceptive

*Now known as Crowell Collier and Macmillan, Inc.

[1] This respondent was incorporated in 1920 as "THE CROWELL PUBLISHING COMPANY," changing its title to "THE CROWELL-COLLIER PUBLISHING COMPANY" in 1939, and to "CROWELL-COLLIER AND MACMILLAN, INC." in 1965 (CX 258 A–B).

statements in connection with the sale of their books, including Collier's Encyclopedia, at retail to the general public. Said complaint alleged that the parent company, Crowell-Collier Publishing Company, dominated, controlled, and dictated the acts and practices of its wholly owned subsidiary, P. F. Collier & Son Corporation. Hearings were held for over a five year period before Hearing Examiner Loren H. Laughlin (now deceased), and in his initial decision, dated September 3, 1965 [70 F.T.C. 977], he ordered that the complaint be dismissed as to both respondents, concluding that the parent corporation was not engaged in commerce; that it did not control, dictate, or dominate the acts of its subsidiary; and that its subsidiary, P. F. Collier & Son Corporation, was dissolved and went out of existence in December 1960. In the initial decision, it is noted that P. F. Collier, Inc. (not a party to the proceeding), was organized, and that there was "some rather vague testimony * * * that the new corporation sold Collier's Encyclopedias and occupied the same offices as did the dissolved corporation," but it was never developed what the relationship was between the dissolved and the new corporation. By reason of the rulings made as to the nonliability of the two respondent corporations, the Hearing Examiner did not, in his initial decision, analyze and discuss the evidence in the record upon the issues relating to the alleged false, misleading, and deceptive statements.

Complaint counsel appealed the initial decision and, under date of September 30, 1966, the Commission vacated the initial decision finding that the respondent, P. F. Collier & Son Corporation, had violated the Federal Trade Commission Act as charged in the complaint. It issued a cease and desist order against said dissolved respondent and "its successor or assign," but directed that the order should not become effective until further order of the Commission. The Commission remanded the case to a hearing examiner to conduct hearings and take evidence on the issues of whether the parent company had dominated, controlled, and dictated the acts and practices of P. F. Collier & Son Corporation, and whether P. F. Collier, Inc. is the successor to P. F. Collier & Son Corporation and, as such, subject to an order. The Commission issued a notice of the remand to P. F. Collier, Inc., and ordered that it "be afforded the opportunity to participate in the taking of further evidence in this matter and presenting any evidence or argument which it may desire, in reply to the evidence and argument that may be introduced by counsel support-

ing the complaint." On November 1, 1966, this hearing examiner was designated to conduct the remand hearings.

On November 3, 1966, the hearing examiner contacted counsel for each side, informing them that he intended to schedule hearings during the week of December 12th and requested them to meet with him in a pre-hearing conference on November 16, 1966. Counsel for the parties met with the hearing examiner on the latter date and efforts to bring about agreements that would expedite the remand proceeding proved unsuccessful. Although complaint counsel were agreeable to suggested procedures, respondents contended that the remand proceeding was illegal and refused to commit themselves in any manner. Over respondents' objections, hearings were scheduled to begin December 12, 1966. At the pre-trial meeting, the hearing examiner denied a motion of the respondents, filed on November 15, asking him to certify to the Commission respondents' request for clarification of the Commission's remand order. Respondents filed an interlocutory appeal with the Commission, which was denied by the Commission on December 6, 1966.

On December 6, 1966, the respondents filed a motion to quash certain subpoenas issued at the request of complaint counsel. On the morning of December 8, 1966, counsel for the parties met with the hearing examiner at a stenographically reported conference and, following oral argument, the motion to quash was denied; whereupon, respondents filed an appeal with the Commission which was denied on March 3, 1967.

On December 8, 1966, P. F. Collier, Inc., and the respondent, Crowell Collier and Macmillan, Inc., filed a complaint in the United States District Court for the District of Columbia, Civil Action No. 3251–66, naming the hearing examiner, the Federal Trade Commission, and the individual members of the Commission as defendants, the purpose of the suit being to enjoin the proposed remand hearings as unlawful. The named defendants moved to dismiss the complaint, or, in the alternative, for summary judgement. Subsequent to the filing of the injunctive action, the hearing examiner cancelled the scheduled hearings set to begin on December 12, 1966, in New York, New York, and on December 16, 1966, in Washington, D.C., and did not reset remand hearings during the pendency of the matter in the District Court. On May 26, 1967, the United States District Court granted the defendants' motion to dismiss. On the same day, the District Court in a separate order denied plaintiffs' motion for a stay

pending appeal. On June 1, 1967, plaintiffs filed their notice of appeal to the United States Court of Appeals for the District of Columbia Circuit, and on June 23, 1967, they filed in said Court a motion for a stay pending appeal. By per curiam order dated July 25, 1967, the Court of Appeals denied appellants' (plaintiffs') motion for stay pending appeal.[2]

When counsel for respondents refused to agree to the scheduling of hearings at any time, the hearing examiner issued an order for a pre-hearing conference which was held on July 5, 1967. Counsel for respondents were present at the conference, which was stenographically reported but not public, and such counsel announced that they did not waive any jurisdictional objections that they might have by such appearance. After considerable discussion on and off the record, hearings were scheduled and were held in New York City on August 2, 3, 4, 7, 8, and 9, and in Washington, D.C., on August 9, 14, 16, and 17, 1967, and at such times and places counsel supporting the complaint put in their case. On September 12, 1967, counsel for the parties met with the hearing examiner in a pre-hearing conference, which was stenographically reported but not public, for the purpose of scheduling hearings to give the respondents and P. F. Collier, Inc. the opportunity to submit any evidence in rebuttal to that which was submitted by complaint counsel. Such hearings were held in Miami, Florida, on September 27 and 28, in New York, N.Y., on October 3, 4, and 5, and in Washington, D.C., on October 10 and 16, 1967. On the latter date, the record was closed for the receipt of evidence. Proposed findings and replies thereto were submitted by the parties on November 17, and December 4, 1967, respectively.

The hearing examiner has given full consideration to the evidence submitted by the parties and, pursuant to the directions of the Commission, he hereby certifies to it the record with the following findings of fact and conclusion on the limited issues involved in the remand for final disposition:

The respondent, The Crowell-Collier Publishing Company (sometimes hereinafter referred to as Respondent #1 or the parent company) was incorporated in the State of Delaware on May 6, 1920, under the name of "THE CROWELL PUBLISHING COMPANY," said name being changed to "THE CROWELL-COLLIER PUBLISHING COMPANY" on May 26, 1939, and to "CROWELL COLLIER

[2] During the course of the hearings hereinafter referred to, respondents' counsel announced that they were abandoning the appeal.

AND MACMILLAN, INC.," on May 6, 1965 (CX 258 A–B). There are in the record annual reports of such company filed by it with the Delaware Secretary of State for the years 1949 through 1965 (CX 259–275), which list the nature of the corporation's business for the years 1949 through 1956 as "Printing and Publishing" of magazines, in 1957 as "Printing & Publishing," and 1958 through 1965 as "Publishing." All such reports show the location of its principal office in Delaware to be 129 South State Street, Dover, Delaware, and, with the exception for the year 1949, it lists 640 Fifth Avenue, New York, New York, as its principal place of business outside of Delaware. The address of its New York City office at present is 866 Third Avenue (Tr. 3720).

The respondent, P. F. Collier & Son Corporation (sometimes referred to herein as Respondent #2), a wholly owned subsidiary of the parent company, was incorporated under the laws of the State of Delaware. Although its articles of incorporation were filed on February 4, 1952, its corporate setup was not completed until July 16, 1954. On December 30, 1960, it was merged into the parent company and its corporate existence was terminated (CX 245 A–I, 246 A–L, 247 A–D, 248). Each of the annual reports by Respondent #2, filed with the Delaware Secretary of State for the years 1954 through 1960, shows the nature of the corporation's business to be the sale of books; that the location of its principal office in Delaware is 129 South State Street, Dover, Delaware; and that its principal place of business outside of Delaware is 640 Fifth Avenue, New York, New York.

P. F. Collier, Inc. (sometimes hereinafter referred to as the new subsidiary), a wholly owned subsidiary of the parent company, was incorporated under the laws of the State of Delaware on December 22, 1960 (CX 276 A–K, 277). Its annual reports, filed with the Delaware Secretary of State for each of the years of 1961 through 1965 show the nature of the corporation's business to be the sale of books; that the location of its principal office in Delaware in 129 South State Street, Dover, Delaware; and that its principal place of business outside of Delaware is 640 Fifth Avenue, New York, New York.

The officers of Respondent #2 during the last year of its existence were John Boe, President; E. J. McCaffrey, vice-president; Norman Bennett, vice-president; J. M. MacDonald, secretary; and William J. Seif, treasurer. Its board of directors were Raymond C. Hagel, W. D. Cole, E. J. McCaffrey, Sumner Blossom, John Boe, and Norman E. Bennett (CX 256 A–C). The same

individuals served in the same capacities with the new subsidiary during its first year of existence (CX 278). Each one of the named individuals during 1960 served the parent company as follows: W. D. Cole, chairman of the board and a director; Sumner Blossom, vice chairman of the board and a director; Raymond C. Hagel, president and a director; John Boe, vice president; Norman Bennett, vice president; J. M. MacDonald, secretary; and W. J. Seif, controller.

A comparison of the articles of incorporation of Respondent #2 (CX 246 A–L) and the articles of incorporation of the new subsidiary (CX 276 A–K) as to the nature of the business of the corporations and the objects or purposes to be transacted, promoted or carried on by them shows that word for word they are the same.

With reference to the merger and dissolution of Respondent #2 and the creation of the new subsidiary, the minutes of the meeting of the board of directors of the parent company, held on December 13, 1960, read:

The Chairman presented a plan for the liquidation of its wholly-owned subsidiary, P. F. Collier & Son Corporation and merger into the parent company, as well as the organization, in the State of Delaware, of two new wholly-owned subsidiary corporations, and outlined the advantages obtainable under the new corporate alignment.

After full discussion, upon motion duly made, seconded and carried, it was

RESOLVED, that the Plan of Merger and Liquidation of P. F. Collier & Son Corporation presented to this meeting and marked Exhibit 1 be and the same hereby is adopted and approved.

EXHIBIT 1
PLAN OF MERGER AND LIQUIDATION
OF P. F. COLLIER & SON CORPORATION

The outstanding stock of P. F. Collier & Son Corporation ("P. F. Collier"), a Delaware corporation, consists of 15,000 shares of Common Stock of the par value of $100 each, all of which shares are owned and held by The Crowell-Collier Publishing Company ("Crowell-Collier"), a Delaware Corporation. Upon the filing with the Secretary of State of Delaware and the recording of a Certificate of Ownership and Merger conforming to the requirements of Section 253 of the Delaware Corporation Law, all of the aforesaid capital stock shall be cancelled and P. F. Collier shall be merged and liquidated into Crowell-Collier and all of the assets of P. F. Collier shall vest in Crowell-Collier subject to all the liabilities of P. F. Collier and the rights of all creditors thereof.

RESOLVED, that P. F. Collier & Son Corporation, a Delaware corporation, be merged into The Crowell-Collier Publishing Company, a Delaware corporation, that said The Crowell-Collier Publishing Company shall be the surviving corporation, and that upon the filing in the Office of the Secretary of State of Delaware and recording of the Certificate of Ownership and

Merger hereinafter in the[s]e resolutions authorized, said The Crowell-Collier Publishing Company shall assume all of the obligations of said P. F. Collier & Son Corporation; and be it further

* * * * * * *

The Chairman stated the Company proposed to organize under the laws of the State of Delaware two corporations, P. F. Collier, Inc. ("P. F. Inc.") and Collier Services, Inc. ("Services"), all of the outstanding capital stock of which is to be owned by the Company.

After discussion, upon motion duly made, seconded and carried, it was

RESOLVED, that subject to the merger of P. F. Collier & Son Corporation ("P. F. Collier") into the Company becoming effective, the Chairman of the Board, Vice Chairman of the Board, President, any Vice President or the Treasurer be and they hereby are authorized:

1. to subscribe to 25,000 shares of the Common Stock of P. F. Inc. of the par value of $100 each at the price of $100 per share, said subscription to be paid by the transfer to P. F. Inc. of such furniture, fixtures, equipment, inventories, leases and prepaid expenses of P. F. Collier vested in the Company pursuant to the aforesaid merger as may be designated by such officers, plus cash for the balance of said subscription price;

2. to subscribe to 2,000 shares of the Common Stock of Services of the par value of $100 each at the price of $100 per share, said subscription to be paid in cash;

3. to execute, acknowledge and deliver such deeds, assignments of leases, bills of sale, assignments of contracts, assignments of copyrights and other appropriate instruments of transfer, and to execute such other certificates and documents and to do such other acts and things, as may be necessary or appropriate to effect the transfer of assets to P. F. Inc. in partial payment of the aforesaid subscription;

4. to enter into an agreeement with P. F. Inc. whereunder P. F. Inc. would purchase from the Company for resale by P. F. Inc. Collier's Encyclopedia, Harvard Classics, Collier's Encyclopedia Year Books and other publications at cost to the Company plus $35 for the Encyclopedia and the Harvard Classics, 50¢ for the Year Books and $1 for other publications, whereunder P. F. Inc. would act as the collection agent for the Company to collect installment contracts and other accounts receivable of the Company for a charge of ½% of the amount collected plus actual collection expenses incurred, and whereunder P. F. Inc. would have the right to use mailing lists vested in the Company pursuant to said merger in exchange for the obligation to maintain and keep current such lists; and containing such other terms and conditions as the proper officers shall determine; * * * . (RX 69 J-L.)

Eugene J. McCaffrey, assistant secretary of the parent corporation from September 1951 to December 31, 1953, then treasurer until December 31, 1962, also vice president from 1959 to the end of 1962, an accountant by profession, was called as a witness by the defense and testified that he knew the facts surrounding the dissolution of Respondent #2; that he had recommended

the dissolution; and that the reason for the dissolution was entirely financial. His explanation, which was given in some detail, will not be discussed as it would serve no purpose (Tr. 4460–62). He stated that the dissolution was not effected because of the pendency of a Federal Trade Commission proceeding (Tr. 4464–65), a conclusion which the hearing examiner regards as of doubtful value.

Mr. McCaffrey also testified with reference to the dissolution in 1952 of the P. F. Collier & Son Corporation (Tr. 4467–68). This company, a wholly owned subsidiary of Respondent #1, was incorporated under the laws of the State of Delaware on July 29, 1939 (CX 242). He stated that he was assigned to put the plan into effect, explaining (Tr. 4468):

> We had to merge offices in thirty-three cities where the Crowell-Collier magazine organization had an office and the P. F. Collier combined magazine and book department had offices. So we developed a plan of merger of the two organizations which enabled us to separate the selling of magazines to one sales manager's control, the selling of books to a book sales manager's control, and collection for the two organizations under the control of a collection manager.

He stated further that the dissolution did not have relationship to any pending legal proceedings. On cross-examination, he stated that he was not aware of a proceeding entitled *United States* versus *P. F. Collier & Son Corporation* for violation of the Fair Labor Standards Act of 1938. On request of complaint counsel, the hearing examiner took official notice of said proceeding reported in 208 F. 2d 936. Therein the United States, on September 10, 1952, filed in the United States District Court for the Southern District of Indiana a criminal information charging the corporate and individual defendants with numerous violations of the Fair Labor Standards Act of 1938. A motion was made to quash service on the corporate defendant and to dismiss the information as to it upon the ground that the corporation had been dissolved on January 2, 1952. The District Court entered an order allowing the motion, and the United States appealed. The Court of Appeals (Seventh Circuit) reversed holding that the dissolved corporation may thereafter be proceeded against either criminally or civilly as authorized by the laws of the State of Delaware.

Kenneth Ernst, a certified public accountant, also testified for the defense as to the reasons for the January 1952 dissolution, saying in part (Tr. 4566–67):

* * * As I remember, the accounting practice of P. F. Collier and Son Corporation with respect to the magazines that it sold was different than the accounting practice that parent company, Crowell-Collier Publishing Company, used in its sale of magazines. And it was decided that it was desirable to conform these two policies, and one way of doing it was to liquidate P. F. Collier and Son Corporation, which of course, automatically changed the accounting. That's my recollection of the situation.

On completion of the direct examination, the following exchange took place between the hearing examiner and the witness (Tr. 4567–68):

HEARING EXAMINER JOHNSON: I'd like to ask a question. Why is it necessary to liquidate a corporation to make a change in an accounting system of the existing corporation?

THE WITNESS: I think it is conceivable that the change could have been made without liquidating the company—the corporation, but you would have to then file application with the tax authorities to change, and all that kind of thing.

HEARING EXAMINER JOHNSON: Well, I can't understand why it is necessary to liquidate a corporation to change its accounting system.

THE WITNESS: Well, I agree, Your Honor, that I wouldn't say it was necessary. I think it was a simple way of doing it. That's the answer.

The minutes of a regular meeting of the board of directors of the parent company held on December 26, 1951, read in part (RX 68 B–C):

The Chairman stated that the officers of the Company had been considering the advisability of conducting directly the business which had been conducted by the Company's wholly-owned subsidiary, P. F. Collier & Son Corporation. He advised the Board that, after full consideration and after discussion with counsel, the officers of the Company recommended that the Company should begin conducting the P. F. Collier business at the opening of the next fiscal year and that in connection therewith P. F. Collier & Son Corporation would be dissolved and liquidated as at the opening of business on January 2, 1952. He submitted a proposed Plan of Liquidation for this purpose.

After discussion, upon motion duly made, seconded and unanimously carried, it was

RESOLVED, that the Board of Directors of this Company hereby authorizes, approves and directs that the Company's wholly-owned subsidiary, P. F. Collier & Son Corporation, a Delaware corporation, be dissolved and liquidated at the opening of business on January 2, 1952, pursuant to the following Plan of Liquidation:

Plan of Liquidation

"1. P. F. Collier & Son Corporation, a Delaware corporation (herein called 'P. F. Collier'), which is a wholly-owned subsidiary of The Crowell-Collier Publishing Company, a Delaware corporation (herein called 'Crowell-Collier'), shall be dissolved and liquidated, effective as at the opening of

business on January 2, 1952. Pursuant to this Plan, a Certificate of Dissolution of P. F. Collier shall be filed with the appropriate authorities of the State of Delaware at the opening of business on January 2, 1952.

"2. P. F. Collier shall, effective as at the opening of business on January 2, 1952, distribute all its assets to Crowell-Collier against surrender for cancellation of all stock of P. F. Collier which is owned by Crowell-Collier.

"3. Crowell-Collier shall assume all liabilities of P. F. Collier."

On January 14, 1939, the Federal Trade Commission issued its complaint (Docket No. 3687) against P. F. Collier & Son Corporation, a New Jersey corporation, with its home office and principal place of business located at 250 Park Avenue, New York, New York, charging the respondent with deceptive practices in connection with the sale of encyclopedias (National Encyclopedias) (CX 320 A–J). On January 9, 1941 [32 F.T.C. 1639], the Commission issued an order closing the case for the reason that the respondent corporation had been dissolved (CX 320 O). The said corporation was dissolved on September 28, 1939 (CX 217 P). The minutes of the meeting of the board of directors of the parent company, held on July 25, 1939, read in part (RX 67 A–B):

The Chairman stated that within the past year the City of Jersey City, New Jersey, had adopted a policy of assessing property taxes against all of the intangible as well as tangible property of New Jersey corporations, with the result that P. F. Collier & Son Corporation, a wholly owned subsidiary of this company, had been assessed for $10,000,000 of property by Jersey City for the year 1937. It is likely that P. F. Collier & Son Corporation will be assessed in a large amount for the year 1938. A large assessment has also been made for the year 1939. These assessments are in addition to the small assessment made by the City of Newark, where the Collier Corporation's office is located.

Efforts have been made by the company and its counsel to have these assessments removed or reduced.

The Chairman recommended that, in order to prevent incurring further large tax liability in the State of New Jersey, steps be taken to reincorporate the subsidiary, P. F. Collier & Son Corporation, under the laws of the State of Delaware. To that end, he recommended that the officers of this company form a new corporation under the laws of the State of Delaware, transfer to said new Delaware corporation all of the stock owned by this company in the present New Jersey corporation, P. F. Collier & Son Corporation, and authorize such action by the directors of the New Jersey and Delaware corporations as may be deemed advisable, either by merger or dissolution, to accomplish the reincorporation of the corporation, P. F. Collier & Son Corporation under the laws of the State of Delaware.

After discussion it was, upon motion duly seconded and unanimously carried:

RESOLVED, That the officers of this corporation, or any of them, be and they hereby are authorized and directed to form, or cause to be formed, a corporation under the laws of the State of Delaware under the name of P. F. Collier & Son Corporation, or such variation thereof as may be determined upon and found to be available, and with such capital as the officers in their discretion may determine; and upon the formation of said corporation, to assign, transfer and deliver to said Delaware corporation, in exchange for all of its capital stock, 500 shares, including the qualifying shares for directors, being all of the issued and outstanding shares of stock of P. F. Collier & Son Corporation, the New Jersey corporation, now owned and held by this company; and further * * *.

The P. F. Collier & Son Corporation was incorporated under the laws of the State of Delaware of July 29, 1939, and dissolved on January 4, 1952 (CX 242).

On November 8, 1940 [32 F.T.C. 1640], the Federal Trade Commission issued its complaint (Docket No. 4372) against Crowell-Collier Publishing Company (Respondent #1 herein), P. F. Collier and Son Corporation, a Delaware corporation, and individuals who are officials of the corporate respondents charging the respondents with unfair and deceptive acts in the sale of encyclopedias (CX 321 A–O). In the answer filed by the respondents (CX 321 P–W), they admit that the "respondent The Crowell-Collier Publishing Company is now and for the several years last past has been engaged in the business of editing magazines, books, encyclopedias or reference books and in the sale and distribution of magazines in commerce"; admit "that in the course and conduct of its business respondent The Crowell-Collier Publishing Company is now and at all times herein mentioned has been in competition with other corporations and with firms, partnerships and individuals engaged in the business of editing and compiling books and magazines and in the sale and distribution thereof in commerce"; admit the plans, methods, statements and representations as alleged in the complaint are deceptive and misleading, but deny that such plans, methods, statements, and representations were or are used, authorized, permitted or condoned by respondents. For a separate defense, it is alleged in part (CX 321 U):

In 1939 P. F. Collier and Son Corporation, a New Jersey corporation, and, after its organization, respondent P. F. Collier and Son Corporation, a Delaware corporation, took the lead in the industry in attempting to establish fair trade practice rules for the industry. To accomplish this purpose, such corporations were the prime movers in bringing about the formation of The Subscription Book Publishers' Institute and in assisting such Institute

in the preparation of the suggested fair trade practice rules, for the approval of which application was made to the Federal Trade Commission. * * *

The Commission entered an order closing the case, reading (CX 321 Z):

This matter coming on to be heard by the Commission upon the petition of respondents that the complaint herein be dismissed, and it appearing from said petition that the respondents had not engaged in the unfair practices alleged in the complaint for a considerable period of time prior to the issuance of the complaint, and that respondents Crowell-Collier Publishing Company, a corporation, and P. F. Collier and Son Corporation, a corporation, have executed agreements to abide by the Trade Practice Conference rules for the Subscription and Mail Order Book Publishing Industry, promulgated by the Commission on September 3, 1940, and that they have since the promulgation of said rules complied therewith in all respects, and the Commission having duly considered said petition and the record herein, and being now fully advised in the premises;

IT IS ORDERED that the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

By the Commission.

The sale of Collier's Encyclopedias by the parent company or one of its subsidiaries has been continuous from the time publication was started in 1950 to the present date (Tr. 3896–99). Such sales were made as follows: By P. F. Collier & Son Corporation from 1950 to the date it was dissolved, January 2, 1952; from the latter date to July 16, 1954, by the parent company through its division styled P. F. Collier & Son; from July 16, 1954, to December 30, 1960, by P. F. Collier & Son Corporation, Respondent #2 herein, and thereafter to the present date by the new subsidiary, P. F. Collier, Inc. When P. F. Collier & Son Corporation was dissolved in 1952, its sales managers went to work for P. F. Collier & Son, a division of the parent company (Tr. 3897). The managers of the branch offices, who were in charge of crews engaged in the sale of Collier's Encyclopedias during the last year of the operation of Respondent #2 (1960), were substantially the same persons performing the same functions for P. F. Collier, Inc., during the first year of its operation (1961) (Tr. 3896). The billing and the collection of accounts receivable for P. F. Collier, Inc., have been performed by its field offices throughout the United States. The same organizational structure was employed by the parent company and Respondent #2 at least since 1951. When

P. F. Collier & Son Corporation was merged into the parent company in 1960, the accounts receivable of the former were not passed on to the new subsidiary, but were retained by the parent company. The latter designated P. F. Collier, Inc., to make collections thereof for which it was paid a fee (Tr. 3919–3929).

John G. Ryan, called by complaint counsel as a witness, testified that he was associated with the Collier group of firms beginning in 1933 as assistant manager, traveling auditor, branch manager, assistant to the president, branch manager, general superintendent, general manager, vice president and president; that in January 1956 he was elected president of P. F. Collier & Son Corporation; that he reported to the officials of the parent company on the affairs of the subsidiary; that in 1956 he reported to Mr. McCaffrey, treasurer, and Mr. Vance Johnson of the parent company; that about March 1957 Mr. Cole became chairman of the board of Crowell-Collier to whom he reported concerning the operations of P. F. Collier & Son Corporation; that there was a planning or steering committee of the parent corporation made up of Mr. Cole, Mr. Blossom, Mr. McCaffrey, and himself, which met possibly once a week and discussed the affairs of P. F. Collier; that on April 2, 1959, the board of directors of the parent company authorized Mr. Cole to terminate his position as president of the subsidiary; and that Mr. Cole told him that he was not satisfied with the progress of P. F. Collier and fired him.

John Boe, chairman of the board of P. F. Collier, Inc., and senior vice president of the parent company, and Norman E. Bennett, president of P. F. Collier, Inc., and vice president of the parent company, called as witnesses by complaint counsel, both testified that they had never been members of any planning or management committee of the parent corporation. Mr. Boe testified (Tr. 3903):

By Mr. Cox:

Q. Have you ever served on the executive committee of The Crowell-Collier Publishing Company?

A. No, sir.

Q. Or the management committee?

A. I don't believe there is such a thing as a management committee.

Q. Are you a member of the planning committee of Crowell-Collier Publishing Company, and what is now known as Crowell Collier and Macmillan, Inc.?

A. I am not.

Q. Have you been?

A. I never have been. In fact, I don't know of the existence of such a committee.

Mr. Bennett testified (Tr. 3917–18):

MR. McNALLY: * * *.

Q. Are you now or have you ever been a member of any planning or steering or organizational committee of the parent corporation which had to do in its functions with the goals, operations or planning for the subsidiary having to do with the sale of encyclopedias, not other subsidiaries?

THE WITNESS: Please read the question.

(Question read.)

A. No.

Q. Do you know whether any such committee ever existed?

A. I know of no such committee as ever having existed.

Subsequent to the testimony of Mr. Boe and Mr. Bennett, complaint counsel offered The Crowell-Collier Publishing Company 1960 Annual Report, which was received in evidence and contains a picture of both of said witnesses in a group designated as an Operating Committee (CX 409, page 5). The description under the picture reads:

OPERATING COMMITTEE—To coordinate the activities of the subsidiaries and establish uniform policies. Crowell-Collier last year established a 14-man Operating Committee composed of the principal officers of each subsidiary as well as those of the parent organization. Members of the Committee are [left to right] (1) B. Y. Brett, President, The Macmillan Co.; (2) J. B. Bennett, Vice President and General Manager, The Macmillan Co.; (3) R. C. Whitin, Director of Operations Planning, The Crowell-Collier Publishing Co.; (4) W. B. Smith, Director of Marketing, The Crowell-Collier Publishing Co.; (5) Leonard Shatzkin, General Manager, Crowell-Collier Paperbacks; (6) Jeremiah Kaplan, President, The Free Press; (7) R. C. Hagel, President, The Crowell-Collier Publishing Co.; (8) E. J. McCaffrey, Treasurer, The Crowell-Collier Publishing Co.; (9) N. E. Bennett, Vice President, The Crowell-Collier Publishing Co.; (10) Sumner Blossom, Vice Chairman of the Board, The Crowell-Collier Publishing Co.; (11) R. M. Purcell, President, Crowell-Collier Broadcasting Corp.; (12) Warren Sullivan, Vice President, The Crowell-Collier Publishing Co.; (13) W. D. Cole, Chairman of the Board, The Crowell-Collier Publishing Co.; and (14) John Boe, President, P. F. Collier, Inc., and Vice President, The Crowell-Collier Publishing Co.

The Annual Report states (pages 3 and 4):

P. F. Collier & Son Corporation was merged with Crowell-Collier, the parent Company, on December 30, 1960. A new wholly-owned sales subsidiary, P. F. Collier, Inc., was established January 3, 1961 to distribute Collier's Encyclopedia, the Harvard Classics and the Company's other subscription book products.

It is apparent that the committee was created before Respondent #2 was dissolved and continued with the creation of P. F. Collier, Inc., by the parent company.

Sumner Blossom, called as a witness by the respondents, testified that he was employed by the parent corporation for 35 years as an editor of several of its magazines (Tr. 4424); that the magazines were liquidated by the company in 1956 (Tr. 4428); that he is now, and, with the exception of the year 1956, has been, a member of its board of directors since 1944 (Tr. 4427); that he was elected a vice president of the parent corporation in 1957 and was an officer thereof when he retired on December 31, 1965 (Tr. 4417–18); that there was an informal group in the period of 1957, 1958, and 1959 made up of John Ryan, the president of P. F. Collier Company, himself, Wilton Cole, chairman of the board of the parent corporation, and Eugene J. McCaffrey, who was treasurer, which met periodically to discuss company affairs (Tr. 4419); and that it was not the purpose of the group to dictate the acts and practices of P. F. Collier & Son Corporation. He stated (Tr. 4420–21):

> It was to keep the officers of the parent company advised as to the intent of the subsidiary company and its estimate of budgets and its future operational practices. That is to say its financial—of their estimate of sales and such things as that.

When shown a picture of a group designated as the "Operating Committee" in the 1960 Annual Report of the parent corporation (CX 409) and asked about the function of the committee, the witness said (Tr. 4419–4420):

> This was a committee which was organized by Raymond C. Hagel, who succeeded me as president of the Crowell Collier Publishing Company. Its purpose was to exchange ideas and to coordinate the activities of the several subsidiaries and the parent company. Its general purpose was to keep from duplicating expenditures, to keep the officers of the subsidiaries abreast of the salaries paid, and similar financial items; and also to consult with and exchange opinions with the officers of the parent company who are members of the committee.

When asked, "At any time in your knowledge, did the parent company ever dictate the acts and practices of the encyclopedia subsidiary?", he answered: "If you are talking about the day-to-day activities and the general policies to be followed, no" (Tr. 4421). He stated that the operating committee lasted four or five to six months; "It rather petered out, because apparently it accomplished nothing, * * *" (Tr. 4430). Mr. Blossom

confirmed the testimony of Mr. Ryan to the effect that his dismissal as president of Respondent #2 was the result of action taken by the board of the parent corporation. In this connection, he testified that he was president of the parent company when Mr. Ryan's services were terminated as president of the subsidiary; his services were terminated "because of the lack of results and because of Mr. Ryan's belief that the sale of encyclopedias, in this country at least, had reached the saturation point, and that we were on the sales plateau from which he could see no promise" (Tr. 4431); that the action was taken by the board of the parent corporation; "The board acted on a recommendation of Mr. Cole, who told the board that Mr. Ryan did not have any other belief in the future of the sales operation of the P. F. Collier Company, and that the results had not been set up to today" (Tr. 4432); "They authorized Mr. Cole the discretion to dismiss Mr. Ryan, which he did in my presence" (Tr. 4432). On cross-examination, the witness testified that the informal group did discuss the sales goals of the subsidiaries (Tr. 4423); that the main business of P. F. Collier Company was the sale of encyclopedias and the collection of accounts (Tr. 4423–24); that Mr. Ryan would make his reports on those two subjects at times (Tr. 4424); that he never knew "of any specific goals being set down, but he was expected to show an improvement over the previous year regularly, if he could" (Tr. 4424); that he never had anything to do with the operation of the P. F. Collier Company, even while he was a member of its board of directors, stating (Tr. 4427): "This was run pretty much—if not wholly, autonomously by the officers of the P. F. Collier Company."

There are in evidence numerous pages taken from the financial publications of Moody's and Standard & Poors relating to the parent company and its subsidiaries. For example, Moody's Industrial Manual for 1960 (CX 397 A–C) with reference to Crowell-Collier Publishing Co. reads in part:

Subsidiaries: Company *controls* the following:

* * * * * * *

P. F. Collier & Son Corp. (incorporated in Delaware Aug. 2, 1954), wholly owned, publishes and sells books in United States * * *. (Emphasis added.)

Complaint counsel seem to take the position that the use of the word "controls" is equivalent to saying that the parent company

dominated, controlled, and dictated the acts and practices of its subsidiary. The testimony of Mr. John Sherman Porter, who was with the Moody company from 1915, and was editor-in-chief of the Manual from about 1925 to the date of his retirement in June 1962, called as a witness by complaint counsel, shows that the word "controls" did not have such a broad meaning. On cross-examination, Mr. Porter testified (Tr. 3962–63):

Q. For example, in connection with Commission's Exhibit 343, on the third page, where it says "P. F. Collier & Son Company (controlled by Crowell Publishing Company)," you meant that all of the stock or substantially all of the stock was owned by Crowell Publishing?

A. At least 51 percent. That was our understanding of the word "controlled." Some companies would say "we don't control the management. They operate the company." This relates to stock control.

There are in the remand record a number of copyright exhibits received in evidence at the instance of complaint counsel. They are Commission Exhibits 309 through 319 and 462 through 465, described on pages 4281 through 4290 of the transcript. The hearing examiner has studied said documentary evidence and has come to the conclusion that the exhibits are meaningless insofar as the remand issues are concerned. See the testimony of Bella L. Linden, called as a witness for the respondents, set out on pages 4401 through 4415 of the transcript.

Norman E. Bennett, president of P. F. Collier, Inc., and vice president of the parent company, whose testimony has heretofore been in part cited, testified that the presentation utilized by salesmen did not use an introductory portion in which the man identified himself with the parent company nor was such use authorized. In this respect, the witness said (Tr. 4195–96):

Q. Are you familiar with the sales presentation utilized by salesmen in connection with the sale of Collier's encyclopedia at the present time?

A. Not completely, no.

Q. Is the type of sales presentation used in connection with the sale of Collier's encyclopedia under your jurisdiction?

A. Only in the sense that I am president of the company.

Q. But you have a concern that the salesmen adhere to an authorized form of sales presentation?

A. Basically, yes, sir.

Q. Does that authorized form of sales presentation include naming Crowell-Collier and Macmillan, Inc., in the sales presentation?

A. Yes, sir, in the sense that it shows the prospectus. The sample volume of the company shows the other divisions of the company of Crowell-Collier.

Q. Is it a fact that the presentation utilized by salesmen includes an

introductory portion in which the man identifies himself with Crowell-Collier and Macmillan, Inc.?

A. No, sir.

Q. It is not a fact?

A. No, sir, not to my knowledge.

* * * * * * *

Q. I am really referring to the introductory portion of the presentation used by the salesman before he gets to showing this prospectus.

A. No, sir. It is not authorized (Tr. 4197).

There were received in evidence copies of classified advertisements appearing in the "HELP, MEN" column in the May 11, 19, 21, 28, June 1 and 4, 1964 issues of The Washington Post where the abbreviated name of the parent corporation was used as the proposed employer (CX 441 B, 442, 443 B, 444, 445, 492). The Washington Post Company billed P. F. Collier, Inc., for said advertisements (CX 446, 447). For example, the advertisement appearing on May 21, 1964 reads (CX 443 B):

COLLEGE MEN
HERE IS YOUR OPPORTUNITY

Each summer we hire students for sales promotional work, who earn in excess of $550 per month salary plus a chance to win one of fifteen $1000 scholarships toward future education, trips to the world's fair and vacations in Europe available to other students. All applicants must be neat in appearance. Call between 9 a.m.–2 p.m.

* * * * * * *

Crowell Collier Corp. 1402 G St. n.w.

Pursuant to a subpoena issued at the request of complaint counsel, through witness John Boe, the respondents produced the order blank contracts used in connection with the sale of Collier's Encyclopedias by the parent company and its subsidiaries for the years from 1949 to date, which show that the parent company was held out as the publisher of the said encyclopedias (CX 410–420).

The form used in 1949 by P. F. Collier & Son Corporation under the Pre-Publication Plan reads (CX 410 A–D):

The story of COLLIER'S ENCYCLOPEDIA. Its sponsors, with 75 years' experience in publishing educational books, part of a great organization responsible for the success of three of America's outstanding publications—Collier's. The American, and Woman's Home Companion magazines, expended more than a year in an exhaustive program of preliminary planning and organizing this tremendous editorial undertaking.

The form used in 1951 by P. F. Collier & Son Corporation reads (CX 411 A–E):

Behind Collier's Encyclopedia is a reputation of seventy-five years of book publishing. In back of this is the comparably long and successful record of the parent company, The Crowell-Collier Publishing Company, publishers of Collier's, The American Magazine, and The Woman's Home Companion. With a feeling of confidence that our efforts have resulted in an unusual achievement of editorial excellence, we present these volumes to the reading public.

P. F. COLLIER & SON CORPORATION
(Sgd.) R. G. Smith
R. G. Smith
President

The form used in 1952 by the parent company reads (CX 412 A–D):

Behind Collier's Encyclopedia is a reputation of seventy-five years of book publishing. In back of this is the comparably long and successful record of the parent company, The Crowell-Collier Publishing Company, publishers of Collier's, The American Magazine, and The Woman's Home Companion. With a feeling of confidence that our efforts have resulted in an unusual achievement of editorial excellence, we present these volumes to the reading public.

P. F. COLLIER & SON
DIVISION OF THE CROWELL-COLLIER PUBLISHING COMPANY
(Sgd.) R. G. Smith
R. G. Smith
President

The form used in 1954 by the parent company reads (CX 413 A–D):

Behind Collier's Encyclopedia is a reputation of seventy-five years of book publishing. In back of this is the comparably long and successful record of the parent company, The Crowell-Collier Publishing Company, publishers of Collier's, The American Magazine, and The Woman's Home Companion. With a feeling of confidence that our efforts have resulted in an unusual achievement of editorial excellence, we present these volumes to the reading public.

P. F. COLLIER & SON
DIVISION OF THE CROWELL-COLLIER PUBLISHING COMPANY

The form used in 1955 by P. F. Collier & Son Corporation reads (CX 417 A–D):

The story of Collier's Encyclopedia is the story of five years of intensive planning, organizing, editing, and manufacturing. Behind it is a reputation of more than eighty years of reference book publishing plus the long and successful record of such outstanding magazines as Collier's, The Woman's Home Companion and The American Magazine.

The form used in 1958 by P. F. Collier & Son Corporation reads (CX 418 A–D):

Behind your new Collier's Encyclopedia is the experience and high standard developed through more than eighty-two years of reference book publishing.

The form used in 1962 by P. F. Collier, Inc. reads (CX 420 A–B):

P. F. COLLIER, INC.
The Crowell-Collier Publishing Company
640 Fifth Avenue
New York 19, N.Y.

Simon J. Nork, general superintendent of P. F. Collier, Inc., having been with said subsidiary since 1961, and prior thereto with respondent, P. F. Collier & Son Corporation, called as a witness in connection with the defense, testified that he has a staff or five girls whose duties include the review of the ads that have been placed in the various newspapers and "They have instructions to read each and every ad, and if there is anything that is in violation of the company rules they are to either call it to my attention or send what we term an error letter to the branch that has inserted that ad that is in violation of our rules" (Tr. 4442). The witness identified three so-called error letters or error sheets, which were sent out by his office to the branch offices of P. F. Collier, Inc.: One dated November 3, 1966, to the Boston office in regard to an ad in the Providence Journal of Providence, R.I., for young men, over 18, to help manager, Crowell-Collier & Macmillan, Inc. (RX 64 A–B); one dated January 24, 1967, to the Louisville office in regard to an ad appearing in The Jefferson Reporter, Louisville, Ky., for a young man to assist manager of local business, Crowell-Collier & McMillian (RX 65 A–B); and one dated April 13, 1967, to the Charlotte branch with reference to an ad where the name, Crowell Corp., was used (RX 66). He testified (Tr. 4451):

A. P. F. Collier, Inc. insists and have issued instructions from time to time to the effect that nobody associated with P. F. Collier, Inc. should or can in any way use the terminology that they represent Crowell-Collier and Macmillan.

Q. Does that policy encompass statements by salesmen as well as statements in classified ads?

A. It does.

The witness identified two letters, one dated May 4, 1965, and the second dated June 20, 1967, which were sent to all field offices of P. F. Collier and stated that the name of the parent

company was not to be used by the subsidiary in connection with the operation of the subsidiary (RX 62–63). The first time such a letter was sent out was on May 4, 1965, as indicated by the following exchange (Tr. 4446):

MR. McNALLY: To your knowledge, has a similar letter bearing the same type of message gone out in the past to the field offices?

THE WITNESS: That 6158—I think that is the number, the one that was issued in 1965 * * *.

MR. McNALLY: You are referring to Respondents' Exhibit 62?

THE WITNESS: Yes.

MR. McNALLY: Is that your answer to the question?

THE WITNESS: Yes.

On cross-examination, he testified that the district sales manager composes the ads and sends them to the papers for the branch offices in his district; that there are approximately 50 district offices located throughout the United States; that the district sales managers generally are men who have come through the ranks selling encyclopedias and their years of experience in the sales or supervision of sales of Collier's Encyclopedia vary from five to twenty-five years; that each district sales manager makes up his own pattern and some will follow the patterns of others because they believe their particular type of advertisement is better than the other fellow's; that he has noticed advertisements bearing the name of Crowell-Collier and Macmillan—there have been a few, but very isolated cases; that he cannot account for the use of the name, Crowell-Collier and Macmillan, by the district sales managers; and that it is his assumption that they feel that perhaps Crowell-Collier-Macmillan is more of a publicized name than P. F. Collier (Tr. 4452–56).

The testimony of two former salesmen of Collier's Encyclopedias, Jonathan Grumette and Dennis Kendig, which the hearing examiner regards as credible and uncontradicted, shows a continuation by P. F. Collier, Inc., of the practices prohibited by the Commission in its order against the respondent, P. F. Collier & Son Corporation. This evidence was received over the strong objections of counsel for respondents and P. F. Collier, Inc., who take the position that such evidence is beyond the scope of the remand. The hearing examiner disagrees with their position and relies on an order of the Commission issued on June 2, 1967, in *A. & M. Karagheusian, Inc.*, Docket No. 7636, where it is said in part (page 4) [71 F.T.C. 1700, at 1702–3].

* * * although the law relative to the application of administrative orders to successor corporations is not entirely settled, the courts in considering this question have on several occasions indicated that the fact that the successor continued the prohibited practice was of significance * * *.

Jonathan Grumette, of Brooklyn, New York (whose testimony appears on pages 4057 through 4125 of the transcript), a graduate of Dartmouth receiving his Bachelor of Arts degree in June of 1967, testified concerning his short career of six days as a trainee and salesman of Collier's Encyclopedias during January 1964 in Miami, Florida. During the latter part of December 1963, while in his junior year, he quit Dartmouth at the age of 18, and went to Florida where he had been promised certain employment which did not materialize. A Dartmouth school friend, Steve Dana, went to Florida with him. In response to an ad appearing in the Miami Herald in January of 1964, the two went to an office located at 400 Congress Street, Miami, which had some form of the name "Collier" on the door. They were interviewed by Mr. Galli. "He was the most important person in the office that I ever saw there. He was either the manager of the office or just beneath the manager" (Tr. 4059). Mr. Galli asked them about their family and college backgrounds and he mentioned that they would be involved with placing sets of encyclopedias. Mr. Galli told them the firm they would be associated with "was the Collier Company, the same company that used to publish Collier's Magazines, and that its headquarters was in the Crowell-Collier Building in New York. * * * And that this branch was part of The Crowell-Collier Company" (Tr. 4123–24). Mr. Grumette and Mr. Dana were told to return to the office later in the afternoon, which they did. They and a few other boys who had been interviewed the same day were taken in two cars to a suburb of Miami. Mr. Grumette rode in a car driven by Mr. Galli, and the second car was driven by George Castle, an instructor. They were dropped off at a corner and told to meet back there at 10 o'clock at night. Mr. Grumette's job was to go with Tony Grimaldi, who had been with the company two or three months, carry his brief case, and listen to him make his presentation to the people at their homes. When they returned to the car that night at 10 o'clock, Mr. Galli told Mr. Grumette that he had been accepted and to report the following morning.

On the second day, Mr. Galli handed him a mimeographed sheet encased in a plastic-type envelope, called the "Introduc-

tion" and the "Qualifier," representing portions of the speech to be given to people at their homes, which he copied word for word. It was checked by Mr. Galli and maybe Mr. Castle to see if it had been copied correctly. On the third day, he reported at 12 o'clock in accordance with instructions, and Mr. Castle gave an oral presentation relating to the showing of the parts of the encyclopedia to the people. "He gave it very, very slowly. We were told to copy it from his speech. At the end of it, he checked. He read it back and made sure that we had copied it correctly" (Tr. 4067). After that he was taken out to the field again, accompanying Mr. Grimaldi. Mr. Grimaldi said that in keeping with instructions he should memorize the sales presentation word for word. "If there was a slight mistake, even of two or three words, they would correct you and make you learn it perfectly" (Tr. 4075). Before he gave it to the public, he gave it "[t]o George Castle, in the office, in the classroom. He had to approve the way you gave the presentation before you were allowed to give it on your own" (Tr. 4075). Thereafter he was on his own, working three days from 3 or 4 o'clock until 10 o'clock each day, but he did not place any sets. He testified in some detail regarding the parts of the presentation he could remember that he gave to the people whom he called upon. It was about the end of this period that Steve Dana reported to him that a man in one of the homes he visited had shown Mr. Dana a document concerning P. F. Collier which Mr. Dana described to Mr. Grumette as some kind of Federal command to stop something. This prompted the two to sever their connections with Collier's. They went to the Better Business Bureau and talked with Mr. Proctor, who sent them to the Miami office of the Federal Trade Commission where Mr. Frost was in charge.

On cross-examination, Mr. Grumette revealed that on his third visit to the F.T.C. office on February 5, 1964, he gave a written statement which he had prepared, describing it as "A statement of everything that happened with Collier's" (Tr. 4088), his handwritten notes of the introduction and qualifier which he copied from the typewritten sheet given him by Mr. Galli, and the presentation dictated to him by George Castle. Mr. Grumette said that Steve Dana also had given a written statement. Counsel for the defense requested the production of the three mentioned documents, and, after marking each for identification in the order named as CX 427 A–R, CX 428 A–H,

and CX 429 A–R, complaint counsel voluntarily delivered the documents to defense counsel. At the latter's request, a recess of about twenty minutes was taken to give such counsel the opportunity to go over the documents before proceeding with further cross-examination. Subsequently, the documents were received in evidence on the request of complaint counsel.

On redirect examination, the witness identified a number of items handed over to Mr. Frost of the Commission's Miami office, which each had in his sales kit supplied by the employer. Among such items received in evidence were: An "Owner's Register" card which is presented to a buyer for his signature, reading: "I will cooperate with you in your Program and express my opinion of Collier's Encyclopedia. You may use my name as a Registered Owner" (CX 432); a "P. F. Collier, Inc. Identification Card" certifying that he was an authorized representative (CX 434); and a copy of a full-page ad by P. F. Collier, Inc., in Life magazine showing a picture of the 24 volumes of Collier's Encyclopedia setting forth in bold type the price of $539 (CX 436 A–B).

The sales representation that the witness was instructed to give and did give to the public in his efforts to place the encyclopedia is set forth in his handwritten notes (CX 428 A–H) reading:

INTRODUCTION

To Wife: May I speak to your husband please? (Could you call him for me please?)

To Husband: Hi there, my name is ..... I'm doing an opinion. It's a matter of a couple of questions I stopped by to ask you. Do you have a minute? Fine. The reason I stopped by in the evening is I thought it would be the best time to find both you and your wife at home. Can we get her in this, too? Fine.

QUALIFIER

Inside

Folks, I'll make this as brief as possible. I'm from Colliers, the same company that used to publish the old Colliers magazines.

I'm sure you know they stopped all their magazines about 6 years ago. Did you ever see them?

The reason for asking is that recently Colliers ran some ads in magazines, on your TV, and in newspapers, about a new field the company is going into. Tell me have you seen any of the ads? Would you associate the name Colliers with any product other than magazines. Actually few people know of this new Field but Colliers has spent the last 6 years and close to 12 million dollars compiling a new home reference library. So new it's not even on sale yet, and won't be for several months. This is some of the advertising, does it look familiar (show ad). The national advertising

has not been effective, so they are advertising on a family basis, and that's the only purpose of my call tonight. Colliers is going to ask a few families in each area who can qualify to help them with their advertising. Of course Colliers will pay these families. Now they don't pay in cash, but they will pay in merchandise.

Here's the program:

Colliers will do two things for the family if they will do two things for them.

1st—Colliers will actually place the complete 24 vols. Library in the house as an absolute advertising premium. The entire price will be marked off to advertising.

2ndly—Colliers will obligate themselves to keep the set up-to-date for the family, that's so the whole family especially the children will get full benefit and use of it. They will do this by sending out a big bound year book each year and also by enrolling the family in the Colliers Reference Service. Of course Colliers will expect the family to keep the set up to date by themselves. However, Colliers will do this at the school or library cost which is newspaper cost or about a dime a day. There is no other charge of any kind at any time.

But there are two things that Colliers will require of the family in return for placing the set with them on this premium basis.

1st—Within 30–90 days after receiving the set, the family must write a letter expressing their comments on the set. A testimonial letter. I'm sure you've seen testimonial letters on other products, right?

2ndly—Colliers will require the familys written permission to use their name and letter as part of their local advertising.

You see, the reason for the program, when the set goes on sale the school teachers and housewifes will contact the families about it, but because it is new, families will ask, who do we know that has the set, how do they like it? Instead of bothering advertising families with phone calls or visits the Collier personnel will show these families the letters.

I'm sure you can see the psychology behind the letter. The only thing I might add is I'm with Colliers, they've been in the publishing business for 88 years and are a multimillion dollar corp.

On this program they will actually place a complete 24 Vols. set in the families home as a premium. Their letter will pay for it. Colliers puts this in writing. Of course, we don't expect anyone to endorse something they haven't seen. But on the basis of what I have outlined if it were actually possible for Colliers to extend an invitation like this to your family, does this sound like something you might go along with them on. Would you be willing to write a letter for the set? Or just how does the program sound to you? Fine. I don't have the complete set with me, but the company has sent along a sample or preview Vol. to show you what you might be asked to write a letter for. Naturally we can take it or leave it from there. FAIR ENOUGH?

LEADINS TO PRESENTATION—Before showing sample—or while showing

1. C. E. Stretcher (explain)—this is what the backs of our library would look like in a familys home.

2. Prospectus (explain)—the company has supplied me with what they

call a Prospectus. In other words they have taken 20 to 40 pages out of each volume and put it in here to give you folks a better idea what the entire library will contain.

3. Hot Shot (explain)—I would like to show you folks what some of the top educators, librarians and colleges have to say about our new library, and also show you how an advertising familys letter and name will be used.

4. Reference Service (explain)—Part of my job this evening is to show a family how this library can be kept up to date with current events. We will have two sources of information—First, our reference service (explain reference service).

5. Yearbook Stretcher—Our second source of information will be our yearbook (explain yearbook).

6. Summary—I would like to show you folks in black and white what Colliers will do for an advertising family.

7. Verbal Close—I would like to summarize the entire program in one important question, and that is (verbal close).

8. Calender Bank—If you folks *promise not to laugh* I will show you how easily a family can handle their upkeep.

(Questions)

COMMITMENTS IN PRESENTATION—After sample—

1. C. E. Stretcher.

2. Prospectus—

a) Do you like what you have seen.

b) Would this be something you would use and appreciate having not only now, but especially over the years to come?

c) Would you be willing to write a letter for the set?

3. Hot Shot—

a) Can you see the full psychology behind the letter and using it in a matter like this.

b) Would you have any objection to our using your name and letter in a notebook like this.

4. Reference Service—

a) Because of the tremendous scope of the service most of the families I've talked with say that this could even be the most important part of the entire program. I'm sure you can see the many many ways in which you yourselves could use a service like this. *RIGHT?*

5. Yearbook Stretcher—

a) I'm sure you can see the importance of keeping a library up to date with services like these. Right?

6. Summary—

a) But, the upkeep is all handled for an advertising family at the current production cost of a dime a day, 7 dimes in a week, or in a year it comes to just 36.95. I'm sure that you would agree that that's somewhat of a discount from $60 dollars a year.

7. Verbal Close—

a) If Colliers will actually place the complete 24 volumes of their new library in your home as an absolute advertising premium, mark the price of 539 dollars off to advertising, naturally in exchange for your letter and your name, and then turn right around and further guarantee to keep the set up to date with both the yearbook and reference service for the first

ten years, and ten years only, at the company's own current production cost of a dime a day, or $36.95 a year, well then, do you think either one of you folks could have any possible objections in going along with the company in this program, and writing a good letter of comment for the set?

On cross-examination, the witness was not questioned in any particular as to the sales representations he was instructed to give, which is the meat of his testimony. None of the four witnesses called by the defense at the hearing at Miami for the purpose of rebutting Mr. Grumette's testimony gave any evidence that is contradictory or worthy of discussion.

Dennis Allen Kendig, of Dayton, Ohio (whose testimony appears on pages 4215 through 4277 of the transcript), a 20 year old student at DePaw University, entering his junior year, testified that in answer to an ad appearing on June 1, 1967 in the Dayton Herald, he went on Friday (probably June 2) to an office at 510 Commercial Building, Dayton, which said on the door "Warren Fishman Personnel" (Tr. 4215–17). He talked to Mr. Fishman, who explained to him and to a large group of college students (Tr. 4217–18):

* * * we would be seeking employment with Crowell-Collier-MacMillan Corporation and he proceeded with listing the assets and impressing upon us the magnitude and size of the corporation. He mentioned, for example, the Collier people were the ones who used to publish the Collier Magazine and the MacMillan people published 65 per cent of the nation's textbooks * * *.

Mr. Garsonic was introduced to them as a national trainee and he proceeded

to go through a presentation showing us the Collier Encyclopedia, presenting to us the entire program, telling us how Collier had quit the magazine field a decade or so ago and gone into the manufacturing and publishing of encyclopedias. He went through the entire presentation as someone would do in a home. He gave us perhaps additional details. He went through the entire program explaining costs and all, and asked if we had any questions (Tr. 4219–4220).

Mr. Kendig was told he would be notified "one way or the other about employment with Crowell-Collier and MacMillan Corporation" (Tr. 4221). Later that evening, he was told over the phone that he had been accepted and that he would be participating in a seven-day training program, the first four days to be in the classroom (Tr. 4221). He reported the next day (Saturday) and took down word for word a part of a sales presentation which was dictated to him. Over the week he typed up his handwritten notes which he memorized, and, on Monday morning when asked to run through the presentation, he was able to do it with only a slight flaw (Tr. 4223). On Monday, his

second day of training, he was required to copy from a notebook that was placed before him more of the presentation, and on the third and fourth days a similar procedure was followed. Each day Mr. Kendig took home his handwritten notes which he typed and memorized (Tr. 4223–26). On the fourth day he also was taken out in the field and he heard Mr. Mike Zimmerman give two full presentations, on the second of which he placed a set (Tr. 4226–27). Mr. Fishman told him, "Tomorrow is the big day for you, Dennis, you will be on your own to see if you can place a set" (Tr. 4227). The next day "they had me run through the whole presentation before all the other students in the office" (Tr. 4228). In the afternoon a group went to a town in Pennsylvania which was about 60 or 80 miles from Dayton. Mr. Kendig testified:

Between 4:30 and 6 o'clock we set up appointments with families for between 6 and 9:30. * * * I set up an appointment with Mr. and Mrs. Witham for about 6 o'clock. I went back to the house about 6 o'clock. For the first time in my life I went through the presentation for a family and I placed a set of Collier Encyclopedias (Tr. 4228–29).

On the following day, Friday, the witness was again in the field and he placed two sets. He stated (Tr. 4246):

On Saturday I found my anger rising. I had been told we only worked until noon. When I got there I was told we would work until 4 o'clock. I also objected in principle to the falsification of the working hours. I spent most of the day in a bowling alley. I didn't attempt to place any sets. I didn't go through the presentation I was supposed to do. Also I became a little curious about the company. On the preceding Friday evening two fellows had been picked up by the poilce in the community in which they had been.

On the following Monday he terminated his services, at which time he talked to Mr. Fishman, testifying (Tr. 4247):

I mentioned to him at the beginning of the program he told us there were six keys to being a good salesman. You have to have faith in this, faith in yourself, faith in the company. I said the one that intrigued me was faith in the company. I said I agreed you had to have this and I didn't have it and the reason I didn't have it is because I don't think you people were using the letters you asked the people for in the manner in which you say you use them.

He replied, "We do use these letters."

I said, "The Better Business Bureau said you didn't."

The witness continued:

* * * I don't think you have sales ladies. I don't think the set retails for $539 (Tr. 4247–48).

* * * * * * *

At the time I was questioning him [Mr. Fishman] about the entire presentation he mentioned he had sanction, of something, in his desk from the

Federal Trade Commission. He said it indicated that the entire sales presentation was sanctioned by them (Tr. 4249).

The sales presentation which Mr. Kendig was taught, which he copied, typed, memorized, and used in the field, reads (CX 460 A–G; Tr. 4244–45):

To further introduce myself, Mr. and Mrs. Jones, I represent the Crowell-Collier-MacMillan Corporation.

Recently my company has been running a series of advertisements on Television, newspapers, and magazines bearing the company name. My job is to find out the effects of this advertising. Does the name Crowell-Collier-MacMillan bring to mind any products you have seen advertised?

To bring you up to date, we have spent the last ten years and several million dollars publishing the only major reference library to be introduced in more than forty years. However, before we can successfully market this library, we must effectively publicize it. This is one of our national ads. (Show ad) Have you possibly seen it?

Now in addition to running national ads, other companies like Procter and Gamble have sent out soap samples and coupons. You have probably received several, right? Well, this creates the best advertising money can buy—word of mouth good will. Colliers want the same thing fo[r] this prod[u]ct so they have set in motion a 4-point co-operative program whereby if you can qualify under our standards we could pay you, not in cash, but in merchandise. Briefly, we could do two things for you if you could do two things for us:

1) We will send you the entire 24-volume set as a premium. This set has a retail value of as much as $539.00. We even pay the postage and you would have full ownership of it.

2) We would further help you keep you[r] set current and up to date. This is done with a yearbook and another special revision service. We do ask that you would maintain our cost on these two services. It runs about the same as your newspaper, a dime a day.

However, in order to get the set as a premium, we do ask two things of you:

1) After you have examined the set and used it we ask that the letter-writer of your family would write a one-page testimonial letter about your set.

2) We must have written permission to use your name in our sales material. You see, experience has taught us that one of the first questions asked of our salesladies is: "Who in the neighborhood owns a set like this? What do they have to say about it?" Well, if our salesladies can truthfully turn to a letter and say "The Joneses over here or the Browns over there have a set," and show a letter of recommendation, I'm sure you can see the psychology behind it.

That's the two minutes I've asked for: I would like to add that Collier's is 100% sincere about this offer. They back up the entire program with a written guarantee. We also realize that you could not say yes or no about endorsing this product until you have seen and examined it. But just on the basis of how I have explained the program to you, how does it sound to you?

If no immediate answer or to any rebuttal say: "Well, I've only been

doing this a short time, but most families say the program sounds too good to be true, or something like that. Does it sound that way to you?

If everything I've said is true, would you have any objections to writing a letter about this set? Fine.

In order to qualify for this program I am required to give you a brief reaction test about the set. It takes about 5 minutes. Could I get you together on the couch?

Reply to any question: "I'm glad you brought that up. The Company insists that I make that crystal clear to you and I'm sure you also want it made crystal clear, right? It would [be] much easier to explain this visually than verbally—takes about 5 minutes—Could we get you together on the couch?

Doing this work is a job to me. The same as your job. My job is not to convince anyone they should accept this offer. My job is merely to explain this program and make it crystal clear. During the course of this, I will have to ask several questions. If you do understand something, just say yes. On the other hand, if there is something you don't understand, please allow me to make it crystal clear. I don't work on a percentage or commission basis, so if you are invited into the program, it will not be because I like you or dislike you, it will be because you actually qualify. If you are invited into the program, I will let you know this evening and leave a company guarantee with you.

I. Stretcher

This will give you a bookcase view of the entire library. A through Z, or 1 through 23, the 24th volume is the bibliography and index.

II. Prospectus

We have taken a few pages from each of the 24 volumes and placed them in here to give you an appreciation of the set. (Talk-less than 5 minutes)

COMMITMENT: Do you like what you've seen?

Do you feel this set would be appreciated and used by your family?

III. Endorsement

When our salesladies come through the community, they will be equip[p]ed with endorsements from "The Library Journal," "The Saturday Review," etc. (Show one or two) These endorsements hold a lot of weight, but you might recall that when you purchased [y]our last major appliance, you weren't as nearly as impressed by an expert's opinion as by what you heard from a friend, neighbor, or relative. That's where your letter comes in—it must be one page in black ink, so that we can make an attractive copy of it. (Show letter)

COMMITMENT: Do you see the psychology behind the letter?

IV. Requalify

In addition to placing the set in your home, as I have mentioned, we would keep your set up to date for you at our cost of a dime a day. For this, you will receive two services:

V. Yearbooks

First, we will add a yearbook to the set each year. (Show stretcher) Something happens almost every day that causes the set to grow out of date. (Cite recent events of importance) Each yearbook has a correlation index which refers back to the set. This means that 2, 5, even 10 years from now, your set would be as up to date as it is now.

COMMITMENT: Do you see why yearbooks are necessary?

VI. Reference Service

COMMITMENT: Do you ever have questions come up that you couldn't find an answer to?

Obviously, all of man's knowledge can't be contained in the 24-volume set. We will send you a booklet of 100 coupons which will enroll your entire family in the Collier Reference Service. (Read top and bottom of brochure) When a question arises simply clip out a coupon and send it in with your question. Within 3–5 days your answer will be returned in report form like this: (Show) (Read off numbers 1,2,3,5,8,10,12.

COMMITMENT: I am certain you will both agree that this would be a wonderful service if it stopped by just answering all the questions that might come up, right?

Well, it goes quite a few steps further:

1. Speeches and reports, number 7
2. Home study, number 4
3. Do-it-yourself projects, number 6
4. Assistance with childrens' school work, number 11
5. Recipes-number 6
6. Scholarships, number 9.

COMMITMENT: Everyone has told me because of its vast scope that this is the most important part of the entire program. Do you see how this will benefit your family?

VII. Price Verification

Allow me to give you an appreciation of this offer in black and white. Our set normally retails for as much as $539.00; I hope I've made it clear that you don't pay that. The yearbook retails at $15.00 per year, plus $4.95 for royalties, postage, and handling. Do you know what royalties are: that's the same thing Bing Crosby gets for a record and what we pay to the contributors of the yearbooks. Everyone, including you, must pay the $4.95 once each year after you receive your yearbook. The reference service retails for $60.00 per year. $60 plus $15 totals how much? $75, right. You don't pay $75 a year to keep your set up to date. All you maintain is our cost, a dime a day. In a whole year this amounts to only $39.95. I'm sure you can see the discount there, RIGHT?

VIII. Ten-Year Regret

We regret that we cannot keep the set up to date at this cost forever. Our manufacturing cost will go up each year. So we had to put a 10-year limit on these services.

COMMITMENT: Do you feel this is a fair amount of time to keep this set up to date?

IX. Verbal Close

If Colliers will place this 24-volume set in your home as a premium, and then further obligate themself to keep it up to date for the next ten years, not only with the yearbook, but also the reference, and guarantee never to bill you more than a dime a day, or $39.95 a year, could you have any possible objection to going along with the program and writing the letter? Sir? Maam? Do you have any questions?

(Show memorandum-costs, etc)

Most families look at this program from an investment standpoint. The

beautiful part of this program is that a family actually has less invested in this program over the entire 10 years, than the set itself costs. Plus, they have the use of the set for the 10 years. Plus, in 1978 your set would be more modern and up to date because it would be a *34*-volume set then. So do you feel that a dime a day or newspaper money would be a good educational investment for your family?

If I commit my company to send you the set on this program, can we definitely count on your letter? This card gives us permission to use your letter—please look this over now. (take back)

Who will be doing the actual letter-writing? Fine. Mr. Jones, can we count on your views being expressed in the letter also? Fine. Will you fill out this card, Mrs. Jones.

X. Conversion

Folks, we have 2 ways to handle the dime a day. I'll explain them both to you and you can take your pick. Under each plan, we send you a coin calendar bank. You can put a dime each day in the bank. At the end of the week, we will have a boy stop by and pick it up. (pause) Some families have asked if they could possibly put a little more in the bank each day and handle the program faster. Others have asked if they could mail it in * * * so we devised an alternate plan. If you want to, you can put a quarter each day in the bank, plus 50¢ extra on weekends. At the end of the month, convert the coins to check or money order and simply mail it. This is strictly an honor system; instead of a collector, we send you a coupon booklet. This might be a real convenience for you, but it's also a money saver for Colliers. By the time you've received the third yearbook, the program would be taken care of; Colliers saves 7 years of bookkeeping and 10 years of collection expenses. Since you're advertising for us, we pass on the savings to you in the form of additional premiums. (Show Classics) (Show bookcase) Which plan do you prefer? A boy to stop by each week, or do you prefer to mail it in under the honor system? Which color bookcase do you prefer?

The witness was shown certain Collier's forms which had been received in evidence and testified that they were the same or similar to those he had used or seen during his period of selling. These included CX 432 A–B, an owner's registration card; CX 433 A–D, a contract form; CX 434 A–B, a salesman's identification card; CX 435, a copy of a page advertisement in Time magazine depicting a set of Collier's Encyclopedias; CX 436 A, a copy of a page advertisement in Life magazine picturing Collier's Encyclopedias and setting forth the price of $539; and CX 423 A–D, a contract form. On cross-examination, he reiterated that he worked for Crowell-Collier and MacMillan, Inc., but, when shown the aforementioned exhibits, he admitted that there was no mention of "Crowell-Collier and MacMillan, as such" (Tr. 4263) and that CX 433 says "I agree to pay P. F. Collier, Inc." (Tr. 4264). Although the witness was told and

he believed that he was employed by the parent company, the record is convincing that he was in the employ of P. F. Collier, Inc. The witness was not questioned on cross-examination with respect to the sales representations nor were any witnesses called by the defense to rebut any of his testimony.

There was received in evidence a certified copy of a stipulation, dated May 25, 1967, entered into by and between P. F. Collier, Inc., and the Attorney General of the State of California for the entry of a permanent injunction and judgment in the matter of *The People of the State of California, Plaintiff* v. *P. F. Collier, Inc., et al.*, in the Superior Court of the State of California for the County of Los Angeles, No. 894,934 (CX 489 A–C). There was also received in evidence a certified copy of the judgment and permanent injunction entered by the Court on May 26, 1967 pursuant to the stipulation (CX 490 A–B) as follows:

A. IT IS ORDERED, ADJUDGED, AND DECREED that:

1. Defendant, P. F. Collier, Inc., its agents, employees, and representatives, and any and all persons acting in concert or in participation with them, or any one of them, are hereby permanently enjoined from directly or indirectly uttering, disseminating, or making or causing to be made, uttered or disseminated, in the State of California, any advertisement or statement, written or oral, which contrary to fact represents that:

(a) Persons coming to the door are with the Promotional Advertising Department of Collier.

(b) Such persons are presenting a program that is not yet on the market, and/or that the offer being made is not generally available.

(c) The books shown are not for sale at this time, and/or that the purpose of the call is not to make a sale.

(d) The books shown, including Collier's Encyclopedia, will be placed in the home at no cost, and/or that Collier will in any way pay for the help or cooperation of the person talked to.

(e) The price of the combination offer to the purchaser is only Collier's actual cost of the revision service.

B. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that: defendant P. F. Collier, Inc., pay to plaintiff the sum of ninety-five thousand dollars ($95,000); and that plaintiff shall not receive any civil penalty under Corporations Code section 6408.

Although it is recited in the stipulation that it was entered into by P. F. Collier, Inc., "without admitting that the allegations of the Complaint on file herein are true" (CX 489 A), it is the opinion of the hearing examiner that the proceedings are a further indication of the continuation by the said subsidiary of some of the acts and practices which are the basis of the Commission's order entered herein.

CONCLUSIONS

It is the opinion of the hearing examiner that the evidence herein clearly established that the parent company, the respondent The Crowell-Collier Publishing Company, now Crowell-Collier and Macmillan, Inc., dominated and controlled the acts of its wholly owned respondent subsidiary, P. F. Collier & Son Corporation, so as to render the said subsidiary a mere tool of the parent company and to compel the conclusion that the corporate identity of the subsidiary was a mere fiction; that the acts and practices of said subsidiary found by the Commission in this proceeding to constitute violations of the Federal Trade Commission Act should be treated as the acts and practices of the parent company and accordingly the latter should be subjected to the cease and desist order issued heretofore in this proceeding.

It is the opinion of the hearing examiner that the evidence herein established that P. F. Collier, Inc., is in fact the successor to respondent P. F. Collier & Son Corporation; and that P. F. Collier in carrying on its business has continued the illegal acts and practices of the respondent subsidiary and accordingly should be subjected to the cease and desist order issued heretofore in this proceeding.

OPINION OF THE COMMISSION

FEBRUARY 4,1969

BY JONES, *Commissioner:*

This matter is before the Commission for the second time. Upon its original consideration of the matter, the Commission entered an order against one of the two respondents, P. F. Collier & Son Corporation [1] (hereinafter sometimes called "respondent subsidiary") and remanded the case to the examiner for the taking of additional evidence on the issue of liability of the other respondent, the Crowell-Collier Publishing Company [1] (hereinafter sometimes called "Crowell-Collier" or "respondent parent"). The Commission's remand also directed the examiner

[1] The correct title of this respondent, as shown by its answer, was The Crowell-Collier Publishing Company. In 1965 the name was changed to Crowell Collier and Macmillan, Inc. R. CX 402B (For clarity, citations to the original transcript and exhibits are indicated throughout this opinion with the abbreviations "O. Tr.," "O. CX" [Complaint counsel exhibit] and "O. RX" [Respondents' exhibit], and citations to remand materials are indicated by the abbreviations "R. Tr.," "R. CX" and "R. RX." Similarly, the initial decisions are cited "O. I.D." and "R. I.D.").

to receive evidence and make findings of fact as to whether a new corporation not named as a party to these proceedings, P. F. Collier, Inc. (hereinafter sometimes called "the new subsidiary"), is the successor corporation to respondent subsidiary and should be subject to an order in these proceedings.

In ordering the remand the Commission expressly reserved its determination as to the responsibility of the respondent parent and the applicability of the cease and desist order to the new subsidiary. Findings as to the facts, conclusions and order to cease and desist were entered with respect to the respondent subsidiary. No conclusions were made with respect to the remand issues "until the hearing examiner certifies the record and his findings in accordance with the remand order * * *" (Comm. Op., 18) [70 F.T.C. 977, 1017].

The matter is now before us on cross appeals from the Initial Decision on Remand, filed January 4, 1968, in which the hearing examiner concluded that both respondent parent and the new subsidiary should be subjected to the Commission order previously entered against the respondent subsidiary.

I

The Original Appeal and Decision

The complaint, issued January 18, 1960, charged that the respondent Crowell-Collier "is a holding company and as such it dominates, controls and dictates the acts, practices and policies of respondent P. F. Collier & Son Corporation, a wholly owned subsidiary * * *" (Complaint, par. 1) and that both parent and subsidiary respondents violated the Federal Trade Commission Act (15 U.S.C. §§ 41 *et seq.*) by the use of false, misleading and deceptive statements and representations in connection with the sales in commerce of respondents' books, including Collier's Encyclopedia (Complaint, pars. 2–7).

Almost eleven months to the day after the complaint issued, respondent parent absorbed respondent subsidiary, by an agreement to merge dated October 14, 1960. On December 22, 1960, the new subsidiary, P. F. Collier, Inc., was created, and the respondent subsidiary was liquidated by merger into respondent parent eight days later (R. CX 247).

The Commission, in its original opinion of September 30, 1966 [70 F.T.C. 977, 1005], held that respondent subsidiary had engaged in "lengthy and blatant use of deception" in the sale

of books, including Collier's Encyclopedia, and other articles to the general public in commerce (Comm. Op., 5) [70 F.T.C. 977,1008]. The Commission further held that it retained jurisdiction over respondent subsidiary, notwithstanding the voluntary dissolution of the company, and that an order against it would be in the public interest (Comm. Op., 5–6) [70 F.T.C. 1008]. Accordingly, an order against respondent subsidiary was issued. The Commission further determined, however, that the case should be remanded for the limited purpose of taking additional evidence on the issues of the responsibility of the respondent parent and the applicability of the order to the new subsidiary (Comm. Op., 7–8, 18) [70 F.T.C. 977, 1009–1010, 1017].[2] Because of the decision to remand, the Commission provided that the order against respondent subsidiary should not become effective until further order (Comm. Findings as to the Facts, Conclusions and Order, p. 23) [70 F.T.C. 977,1033]. It also provided that the new subsidiary should be given notice of the remand and an opportunity to participate in the proceedings (Comm. Op., 8) [70 F.T.C. 977,1010]. Such notice was served on November 2, 1966.

The hearings on remand took place from August to October, 1967. Respondents appeared through their attorneys, who also appeared specially on behalf of the new subsidiary "to object to the receipt of any evidence intended to predicate a cease and desist order against it" (R. Tr. 3715).

The hearing examiner on remand, after making detailed findings of fact encompassing some forty-seven pages, concluded that (1) Crowell-Collier, respondent parent, so dominated and controlled the acts of respondent subsidiary as to compel the conclusion that the corporate identity of the latter should be ignored and the parent should be held liable for the subsidiary's conduct; and (2) the new subsidiary was in fact the successor to respondent subsidiary, and accordingly should also be subjected to the order (R. I.D., 274).

Respondents have appealed from the remand decision arguing that the evidence does not prove that the parent controlled its former subsidiary prior to the dissolution of the latter (Appeal Brief of Respondents ("R. Ap'l. Br.") 6–23), that the second hearing examiner erroneously failed to consider evidence from

[2] The hearing examiner who had presided at the original hearings had died since the conclusion of those proceedings. The Commission stated that in view of the limited nature of the remand, neither party should be prejudiced by reason of the remand being to a different hearing examiner (Comm. Op., 8) [70 F.T.C. 977, 1010].

the original record regarding the two remand issues (*id.*, 34–35), and that the new subsidiary is not a successor, that evidence of its continuation of illegal practices was improperly admitted and that in any event it cannot be subjected to an order because it was never named as a respondent in this proceeding (*id.*, 24–34).

Counsel supporting the complaint has also appealed from the initial decision on remand and argues that while the evidence summarized in the initial decision on remand is sufficient to support the examiner's conclusions, the decision nevertheless failed to give adequate recognition to other specified portions of the remand record which provided further support for the conclusions reached by the examiner (Brief of Counsel Supporting the Complaint ("CSC Ap'l. Br."), 4–5).

The two principal issues before us for decision now, therefore, are whether the respondent parent dominated and controlled the acts and practices of the respondent subsidiary and whether the new subsidiary can be properly subjected to an order in this case. Preliminarily we will consider the issues raised by respondents with respect to the propriety of the remand proceedings.

II

The Scope of the Remand and of the Commission Review

In the present appeal from the Initial Decision on Remand, respondents expressly preserve their contention, urged by them in an interlocutory appeal from the remand examiner's denial of their motion to quash subpoenas, that the remand directive and hearings were illegal because all of the evidence should have been offered during the original hearing and because the issues of the remand had already been tried and determined in respondents' favor by the original hearing examiner. Respondents do not urge this argument again upon the Commission, since the Commission has already decided the point against them and has been sustained in this by the District Court (R. Ap'l. Br., 6).[3] They do, however, urge as a separate argument on this

[3] The Commission denied this appeal on the ground that the discretionary right of an administrative agency to return a matter to a hearing examiner for additional evidence is well settled, that such a procedure does not constitute prejudgment of an issue already tried before the examiner and that it is not necessary to show that such evidence could have been adduced at the original hearing (Comm. Op., March 3, 1967, pp. 3–6) [71 F.T.C. 1648, at 1649–53]. The United States District Court for the District of Columbia denied respondents' motion for a preliminary injunction restraining the remand proceedings (*P. F. Collier, Inc.* v. *Johnson*,

appeal that the nature of the remand order "forced him [the hearing examiner] to violate the Administrative Procedure Act which requires consideration of the whole record" (*id.*, 5).

We find no merit in this contention, which is based on a misconception of applicable law and the respective responsibilities of the hearing examiner and the Commission in these proceedings. By statute, the Commission is charged with the duty to make findings as to the facts and to issue cease and desist orders in appropriate cases (§ 5(b), Federal Trade Commission Act, 15 U.S.C. 45(b)). The Commission in its rules has provided that hearings may be presided over by a duly qualified hearing examiner (Commission's Rules of Practice for Adjudicative Proceedings, § 3.42(a)); the rules further provide that the hearing examiner has the power and duty to take any action in conformance with the provisions of the Administrative Procedure Act (*id.*, § 3.42(c)(10)). The Administrative Procedure Act in turn provides that the presiding officer should initially decide the case or the agency in specific cases may require the officer who presided at the hearing to certify the record to it for initial decision (§ 8(a); 5 U.S.C. 557(a)). Thus, although the Commission may delegate the responsibility to decide the case, it is empowered alternatively to specify more limited duties for the hearing examiner.

The Commission availed itself of this alternate procedure in ordering the present remand, directing the examiner only to receive certain specified evidence and such other evidence as he might consider appropriate on the two remand issues and then expeditiously to certify his findings of fact on these issues to the Commission for final disposition (Comm. Op., 8, 18 [70 F.T.C. 977, 1010, 1017]; Order Reopening Proceedings and Remanding Case to Hearing Examiner) September 30, 1966) [70 F.T.C. 1770]. The Commission thus expressly circumscribed the duties of the hearing examiner and reserved to itself the responsibility to review and consider the full record upon completion of the hearings, in conformity with the law, the rules of the Commission and the Administrative Procedure Act. Respondents' objection to the Commission-imposed limitation upon the hearing examiner's responsibilities is without merit.

It should also be noted that in making this contention, re-

U.S.D.C., D.C. No. 3251–66, May 26, 1967). An appeal to the United States Court of Appeals for the District of Columbia Circuit was dismissed by agreement of the parties on October 30, 1967 (D.C. Ct. App., No. 21,069, October 30, 1967).

spondents are not arguing that in some way their rights to adduce testimony and to cross examine were in any way circumscribed by the examiner or that they were prejudiced in any other manner by the procedure. Nor did respondents ever raise this aspect of the scope of the remand order prior to the hearing.[4] We conclude, therefore, that respondents' rights have not been prejudiced and that the remand proceeding was not illegal.

Both parties assert that the Commission must consider the record of both the original and the remand proceeding in making its findings and conclusions on the issues involved on the remand (R. Ap'l. Br., 34–35, Answering Brief of Counsel Supporting the Complaint ["CSC Ans. Br."], 9). In this, they are clearly correct, *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474 (1951); *NLRB* v. *Pittsburgh S. S. Co.,* 340 U.S. 498 (1951), and we shall do so.

III

Liability of Parent Crowell-Collier

The Crowell-Collier enterprise originated in 1919 when "The Crowell Publishing Company," a New Jersey corporation incorporated in 1906, acquired all of the publications of "P. F. Collier & Son, Inc.," a New York corporation incorporated in 1912. From this acquisition emerged a united Crowell-Collier association which has continued without interruption to the present day.

The principal business of respondent parent, Crowell-Collier, and its respondent subsidiary, P. F. Collier & Son Corporation together with a second Canadian subsidiary not named as a respondent, has been the publication and sale of reference books and magazines, with its main focus after 1950 being on the sale of a new Collier's Encyclopedia which was first introduced to the market in that year (R. CX 409, pp. 3–5, 7; O. Tr. 1549). Its magazine sales were apparently abandoned after 1956.[5] From

[4] Respondents' interlocutory appeal from the remand order sought clarification by the Commission of the remand order, to indicate whether it involved only the issue of respondent parent's control, or the issue of successorship as well. See Respondents' Motion Requesting Certification to Clarify Remand Order. Nov. 15, 1966, and Interlocutory Appeal from Order of Hearing Examiner, Nov. 25, 1966. This appeal was denied on grounds that the order was clear on its face. Comm. Order, Dec. 6, 1966. Their appeal from the order denying their motion to quash subpoenas issued by the examiner asserted that the entire remand was illegal, but here again respondents directed their arguments to the alleged impropriety of admitting any evidence on certain issues; they did not suggest that the examiner's consideration of the relevant issues was improperly curtailed. See *supra,* p. 277.

[5] Remand evidence shows that the respondent parent listed itself as engaged in "printing and publishing of magazines" in its annual reports filed with the State of Delaware from 1949

1950 down to the present, the undisputed evidence shows that this Collier reference book business was carried on alternately by a prior subsidiary, by respondent subsidiary, by the post-complaint new subsidiary and, from 1952–1954, directly by Crowell-Collier, respondent parent, through a division established for that purpose (Findings as to the Facts filed in connection with Comm. Op., FF 2, 4–6 [70 F.T.C. 977, 1018, 1019]; R. RX 68 A–D; R. Tr. 3898–3900 and R. I.D. 252–3).[6]

The various changes in the corporate form of the Crowell-Collier enterprise apparently were designed for purposes quite unrelated to the essential business being performed by the parent and its subsidiaries. For example, the 1952 corporate reorganization was stated by respondents to have taken place primarily in order to eliminate overlap and create greater efficiencies for the enterprise as a whole (R. Tr. 4464–68). Respondents' witness Mr. McCaffrey, an auditor and for 11 years an officer of respondent parent, explained this reorganization in these words:

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through 1956 (R. CX 259–66); thereafter, the reference to magazines was deleted. R. CX 267–275 (1957–65). Moody's Manual of Investments for the period 1950–56 affirms that during those years the company owned and published various magazines and in addition owned and published "Collier's Encyclopedia" and "Collier's" books before respondent subsidiary became operational (R. CX 387–94). Moody's reports that respondent parent has been a holding company and subsequently a "management and holding company" at all times after 1958 (R. CX 395–406). By the time these hearings commenced, respondent parent also owned three subsidiaries which operate radio stations and continued to lease a building in New York, in which it sublet office space to its subsidiaries (O. Tr. 97, 99, R. CX 403B, O. I.D., 14) [70 F.T.C. 977, 994]. Renamed "Crowell Collier and Macmillan, Inc." in 1965 following its 1960 merger with Macmillan Company, respondent parent has continued to expand its holdings both by the creation of other related subsidiaries and through acquisition of unrelated companies. In 1966 the company, with some of its subsidiaries, moved from the premises they had been occupying in the Crowell-Collier Building at 640 Fifth Avenue, New York, to a new location, the Crowell Collier & Macmillan building, at 866 Third Avenue, New York (R. CX 405). In 1959, the sales volume of respondent subsidiary P. F. Collier & Son Corp. was about $32,000,000, the radio stations accounted for about $3,000,000 and the respondent parent's rental income was around $750,000 (O. Tr. 113–14).

[6] Since the start of the Crowell-Collier enterprise, there have been two Crowell parents (1906–1921; 1920–present) which have borne three different but similar names and at least five Collier subsidiaries which have borne 8 different but similar names (R. CX 183, 257; 204–06, 210–13, 217, 236, 240–42, 244–45, 247, 249, 276–77; R. RX 69; R. I.D. 244, 245). These alterations of corporate form have apparently occurred for reasons independent of any changes in the substance of corporate affairs carried on by these various units. For example, respondents asserted that the 1939 dissolution of the Collier subsidiary was for the purpose of avoiding New Jersey taxes, the 1952 merger was designed to effect revision of the sales organization or the accounting policies of the two companies and the 1960 merger was made for financial reasons (Respondents' Answering Brief ["R. Ans. Br."] 4, 6–8; R. Ap'l. Br. 21; R. I.D. 247–250; see also *infra* pp. 292, 293). In all instances the corporate disappearance and re-emergence of the subsidiaries responded to parental decision. For example, the decision to liquidate the respondent subsidiary in 1960 by merging it into the parent was made by the board of directors of the parent (R. RX 69J–L, reprinted R. I.D. 246, 247). A previous Collier subsidiary had been extinguished in the same manner (R. CX 491A–B (1934)); others were ended by means of certificates of voluntary dissolution, but in those cases as well liquidation of the subsidiary was a decision made by the officers of the parent (See R. RX 67 (1939 dissolution); R. RX 68B–D (1952 dissolution)).

His [the new president of respondent parent] thought was that the magazine-selling organization—that is, the organization responsible for the circulation of the magazines—should be completely under the control of the circulation director, and the book-selling organization should be completely under the control of the president of the book company.

However, the way the company was organized, Crowell-Collier Publishing Company [the parent] had a magazine subscription selling organization and P. F. Collier & Son Corporation [the subsidiary which was dissolved in 1952, just prior to the incorporation of the respondent subsidiary] had a combined magazine-selling organization and book-selling organization.

Mr. Stouch, the name of the president [of respondent parent] at that time, considered that it would be better organization if the magazine selling done by the P. F. Collier & Son Corporation [the former subsidiary] were transferred to the circulation director's control [apparently, an employee of the parent], and if a third organization were put into existence to act as a collection agency for the two selling organizations * * * .

* * * So we developed a plan of merger of the two organizations which enabled us to separate the selling of magazines to one sales manager's control, and collection for the two organizations under the control of a collection manager (R. Tr. 4467–68).[7]

Similarly, the 1960 merger and liquidation was designed, according to McCaffrey, to provide financing for the combined companies, to permit the companies to report taxes on an installment basis and to permit organization of "the various components of the corporate group" into functional lines (R. Tr. 4461; see generally R. Tr. 4460–63).

Along with creating and abolishing a series of look-alike subsidiaries, the Crowell-Collier parent shifted various business functions back and forth among itself and its various subsidiaries. For example, at the time of the 1920, 1934, 1952 and 1960 dissolutions, the then-current Collier subsidiaries assigned the copyrights which they held to the current Collier encyclopedia and other reference books to the Crowell parent (R. CX 308–15, 463). The record shows that the parent subsequently assigned the copyrights to the next-formed subsidiaries, in 1934 and 1954 (R. CX 463).[8]

[7] The 1960 merger involved similar manipulation of the component parts of the Crowell-Collier enterprise by the parent in order to fulfill some overall corporate objectives of the parent. On that merger, respondent subsidiary declared a dividend to respondent parent of all of the subsidiary's stock in a third company owned by the subsidiary. That third company, Collier Securities Corporation, in turn owned a controlling interest in a fourth company, The Macmillan Company. Following Crowell-Collier's receipt of the dividend from P. F. Collier, the former merged with Collier Securities which by then had changed its name to The Macmillan Company (R. CX 283–84, 294, R. RX 69, R. I.D. 246, 247).

[8] In 1960, respondent parent did not reassign the copyrights to the new subsidiary but retained even the copyrights covering the subsidiary's publications, which it used as loan security in 1962–63. R. CX 317–18, 463, 464G–H. Supplemental copyrights continued to be registered in the name of respondent parent through 1966 (R. CX 463–64). Significantly, in 1967, during the course of the instant proceedings, neither the Chairman of the Board of the

Another function performed usually but not always by the subsidiary relates to collections. Thus, the respondent subsidiary during its existence used to perform its own billing and collecting on accounts, through its field offices. Following the 1960 dissolution of the respondent subsidiary, however, the respondent parent retained the subsidiary's outstanding accounts receivable. This collection function was subsequently shifted to the new subsidiary, but under a different arrangement pursuant to which the new subsidiary performed the collection service on behalf of its parent, receiving therefor a fee from the parent (R. Tr. 3919–20).

The interrelationship of the respondent parent and its subsidiaries is also reflected by the subsidiary's use, in its representations to the public, of the parent's name and reputation. By identifying itself with the more familiar parent, the subsidiary could avail itself of the public recognition of the parent's name and former products. Accordingly, respondent subsidiary's sales managers were instructed to recite to applicants for sales positions with the subsidiary (O. CX 119 (2)): [9]

> Now to begin with this is the House of Collier. I don't know how many of you fellows know of the company; but for over eighty years, the Collier company was best known as one of the world's largest publishing houses. This is the company that made famous Collier's, American, and Women's Home Companion magazines. However, over two years ago as you probably know, the company discontinued the sale and publication of magazines. Now at that time many people were under the impression that the Company was going out of business. Actually, nothing could be further from the truth because today Collier is one of the fastest growing organizations in the country.

Respondent subsidiary's interview forms also referred to the rising quoted stock value of "the company" (respondent subsidiary was wholly owned by respondent parent and only the parent's stock had a quoted value), stated that "we" own and operate radio stations (respondent subsidiary was not involved with the radio stations) and noted that "we" have a "Crowell-Collier [the parent's name] Record Club" (see O. CX 119, 122, R. CX 395–97, 409, see also *supra* n. 5, pp. 279–80).

The salesmen on their part continued to make the same type of

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new subsidiary, created to continue the business of the respondent subsidiary, nor its president had any firm idea as to who owned these copyrights covering the Collier encyclopedia, the primary source of their business (R. Tr. 3901; 3932).

[9] While the record as to the dates is not wholly clear, it appears that this particular form of group interview was employed during the late 1950's, shortly before the liquidation of respondent subsidiary. See O. Tr. 1251–52, 1262–64, 1266–67, O. CX 122.

identification between the respondent parent and subsidiary in their door-to-door sales presentations. They, too, were instructed to refer to the Collier magazines which the parent had formerly published. As we found when this case was previously before us (Findings of Fact, Conclusion and Order, F. 7) [70 F.T.C. 977, 1020]:

7. The prestige and good standing of the name "Collier" was widely used by P. F. Collier & Son Corporation in its sale and distribution of Collier's encyclopedias (CX 10, 38–A and 113–C). Many consumer witnesses testified that the salesmen, in approaching them, used a reference to Collier's magazine to establish an association. As an example, Mrs. Robert Garoutte testified in part:

"Then he asked us if Collier meant anything to us and my husband said, 'Yes, magazines'. I said, 'Encyclopedias.' " (Tr. 44)

Another instance of this is in the testimony of Robert W. Harper, who stated in part:

"I remember he asked me if I had ever heard of Collier's Magazine and I told him I had; and he wanted to know what I thought of it." (Tr. 650.)

Similarly, the order blanks employed during the early 1950's expressly referred to the long publishing record of "the parent company, The Crowell-Collier Publishing Company" (R. CX 411–13, R. I.D. 258–259). Respondent subsidiary's order blanks dated September 1965, omitted the explicit reference to the parent but continued to refer to a long history of publishing reference books "plus * * * such outstanding magazines as Colliers, The Woman's Home Companion and The American Magazine"—magazines which were published by the parent and never by respondent subsidiary (R. CX 417D; R. CX 249–56; compare R. CX 417D (September 1955) with R. CX 418D (November 1958); R. CX 387–94).

Over the decades the Crowell parent has interchanged personnel with its Collier subsidiaries, whatever their current corporate name or structure, and has generally maintained common or overlapping officers and directors.[10] For example, in the 1950–53 period, Ralph G. Smith was at once a director of the parent and a director and president first of the then existing subsidiary, until its dissolution in 1952, and thereafter president of the Collier division which the parent then established (R. CX 243 B–C; 259C, 261C, 262C, R. RX 68C). In this same period, also at the time of the 1952 dissolution, Clarence F. Norsworthy was

[10] In the original initial decision it is stated that the corporations shared but a single officer, the secretary O. I.D., 14 [70 F.T.C. 977, 993–994]. The evidence clearly indicates that this statement was erroneous. The hearing examiner on remand took note of the further overlapping of personnel between subsidiary and parent. R. I.D., 245–6.

treasurer both of the parent and of the dissolving subsidiary (R. CX 243C, 261C). He became the first treasurer of the respondent subsidiary when it was established in 1952, and he maintained that position and also became president and a member of the board of directors when the new company commenced operations two years later (R. CX 250A, R. RX 68C).

This overlapping of personnel has been a continuing phenomenon over the years from 1955 through 1966 (*e.g.*, compare R. CX 251 with R. CX 265 (1955) and CX 275 with CX 282 (1966), and see R. I.D., 245–6). When the present complaint was filed, this overlapping of the officers of the respondent parent and respondent subsidiary was as illustrated in the following table: (R. CX 256, 270).

Officer	Positions held, 1960	
	Crowell-Collier (Resp. parent)	P. F. Collier, Inc. (Resp. subsidiary, 1960)
John Boe	Vice president	President, Board of Directors.
Norman Bennett	do	Vice President, Board of Directors.
E. J. McCaffrey	Treasurer	do.
J. M. MacDonald	Secretary	Secretary.
Wm. J. Sief	Controller	Treasurer, Controller, Board of Directors.
Raymond C. Hagel	President, Board of Directors.	(Chairman) Board of Directors.
W. D. Cole	(Chairman) Board of Directors.	Board of Directors (member).
Sumner Blossom	Board of Directors (Vice Chairman).	do.

In addition to maintaining constantly overlapping personnel, the parent has always exercised active supervision over the operations of its subsidiaries, including the respondent subsidiary. Wilton Cole, Chairman of the Board of Directors of respondent parent and a director of respondent subsidiary, acknowledged that the parent maintained weekly and sometimes daily contacts with respondent subsidiary's president:

Q. Does Mr. Hagel make a report to you and/or to Mr. Blossom at specified intervals relative to his operations of P. F. Collier & Son Corporation?

A. We get the regular monthly reports, and any major matter that he thinks should be called to our attention, but he has no regular or periodic reports that he makes to us.

Q. Do you see him frequently there in the same building? He is in the same building, is he not?

A. That's right.

Q. Does he frequently see you and vice versa?

A. Yes. I see him frequently. But in addition to being president of P. F. Collier & Son Corporation, Mr. Hagel is also executive vice president of the parent company. In that capacity, he is a member of the planning committee. We call it the management committee, comprising Mr. Hagel, Mr. Blossom and myself. In this area, why, I am in constant—not constant, but I have repeated meetings with him in this area.

Q. Do you see him daily, except Sunday, perhaps, when you are in the office?

A. Well, when we are both in New York, I would see him certainly several times a week. We have a regular meeting on Fridays, at which we discuss the long-range planning, the three of us [Hagel, Blossom and Cole] (O. Tr. 125–26).

The maintenance of such informal contacts provided Crowell-Collier with one opportunity, of which it consistently availed itself, to remain intimately familiar with its subsidiary's overall present and future movements and outlook. However, respondent parent employed several additional channels for communication with, and supervision and control over, its subsidiary. One of the most important of these devices was a joint management group — which at one point was formalized into a regular committee — that the Crowell-Collier parent maintained with its P. F. Collier subsidiaries during the late 1950's and in the early 1960's. This informal group consisted of officers of both the parent and the subsidiary (see generally, R. I.D. 253–256). One function of the group, as Sumner Blossom, president and subsequently vice chairman of respondent parent's Board of Directors, expressed it, was to discuss "company affairs" (R. Tr. 4418). The company affairs discussed were those of the respondent subsidiary (R. Tr. 4037–38; R. CX 254). Another of its purposes was, in Mr. Blossom's words:

* * * [T]o keep the officers of the parent company advised as to the intent of the subsidiary company and its estimates of budgets and its future operational practices. That is to say its financial—of their estimate of sales and such things as that (R. Tr. 4420–21; reprinted R. I.D. 255).

Cole also testified as to the work of the informal committee and stated that it was to consider overall long-range planning and objectives, including consideration from time to time of the competence of the head of each of the subsidiaries (O. Tr. 99–100; 124–25; and see *infra,* pp. 286–7).

In 1960, further to assure unity among the separate corporations, respondent parent apparently attempted to convert this "informal group" into a formal operating committee (Tr. 4419–20). Established by the president of the parent corporation, the

functions of this committee were described in the 1960 annual report of Crowell-Collier as follows:

To coordinate the activities of the subsidiaries and to establish uniform policies. Crowell-Collier last year established a 14-man operating committee composed of the principal officers of each subsidiary as well as those of the parent organization (R. CX 409, p. 5).

Blossom testified, with respect to the formal committee:

Its purpose was to exchange ideas and to coordinate the activities of the several subsidiaries and the parent company. Its general purpose was to keep from duplicating expenditures, to keep the officers of the subsidiaries abreast of the salaries paid, and similar financial items; and also to consult with and exchange opinions with the officers of the parent company who are members of the committee (R. Tr. 4420; reprinted R. I.D. 255).

When respondent's counsel asked Blossom whether the formal committee was intended or used to dictate the acts and practices of any subsidiary, the witness replied:

A. No, quite the contrary. It was to let the subsidiaries know that they had behind them a parent who was willing and able to help them if required or requested. It was also to give—have the officers of the subsidiaries give information to the officers of the parent company as to their financial status and budgets and similar things (R. Tr. 4420).

However, this formal coordinating committee apparently failed to take hold. Blossom explained that it accomplished nothing and "rather petered out" (R. Tr. 4430). This committee, however shortlived, is another example of respondent parent's supervision and control over its subsidiaries.

Still other practices were developed to enable respondent parent to control and override the operations of respondent subsidiary. Cole testified that the plans of each subsidiary in the Crowell-Collier organization, after being formulated by the management of that subsidiary, were submitted to the management of respondent parent for review and reformulation and ultimately to the parent's board of directors for approval (O. Tr. 126–27). Assuring financial supervision by respondent parent over respondent subsidiary, a single 50 to 60 person accounting department was maintained by the parent (O. Tr. 110–11). This single department served all of the companies in the Crowell-Collier group, providing the parent ready access to the subsidiary's figures and relieving the subsidiary of the need—or the power—to maintain an accounting staff of its own.

All in all, the respondent parent obviously maintained such interest in and kept such close watch over the potential and actual results of its subsidiary's operations that whether or not it chose to direct these daily operations, it remained poised and

ready actively to dominate, dictate and control the subsidiary's business in whatever areas appeared to require its attention.

What is more, the record shows that respondent parent did not hesitate to exercise its available power as it believed necessary. Thus, in 1959 the parent fired and replaced John G. Ryan, president of the subsidiary (R. Tr. 4038–40, 4430–33; see R. I.D. 253, 256). Ryan testified that the news of his termination was delivered to him by Cole, acting in his capacity as chairman of the parent's board of directors. Complaint counsel asked Ryan whether Crowell-Collier's chairman Cole had given him any reason for the termination. The witness replied:

A. I suspect he was not satisfied with the progress of the P. F. Collier Company.

Q. Did they tell you that?

A. Yes.

Q. Did Mr. Cole tell you that?

A. Yes. Mr. Cole fired me (R. Tr. 4039–40).

Respondents do not challenge but rather confirm this testimony. Indeed, their witness, Crowell-Collier president Blossom, explained that the management of the parent corporation terminated Ryan's employment:

* * * [B]ecause of the lack of results and because of Mr. Ryan's belief that the sale of encyclopedias, in this country at least, had reached the saturation point, and that we were on the sales plateau from which he could see no promise. * * * (R. Tr. 4431).

After firing Mr. Ryan, the parent respondent placed Cole, its own chairman of the board, in charge of the subsidiary. Cole remained in this position of command until the parent selected a new president for the subsidiary (O. Tr. 120–24). Cole testified that he did not, as the subsidiary's chief executive, involve himself in the daily operations of that company. He instead charged two of the subsidiary's key personnel with running the business, concerning himself with respondent subsidiary's "final figures" and "long-range planning," such as the five-to-fifteen-year outlook, possible acquisitions and long-range projects (O. Tr. 120–21).

Respondents vigorously deny that these facts evidence any of the elements of control which the courts have required must be shown in order to support holding parents liable for the activities of their subsidiaries.

They contend that "the adjudicated cases require far more than some overlap of officers and directors, the same mailing address, and officing in the same building" in order to conclude

that the parent should be held responsible for the acts of its subsidiary by reason of dominance, dictation and control (R. Ap'l. Br., 22).

In determining liability for misrepresentations and other false and deceptive practices engaged in during the course of a business conducted by interrelated corporations, the courts are clear that the "pattern and framework of the whole enterprise must be taken into consideration," *Art National Mfgrs. Distr. Co.* v. *F.T.C.*, 298 F. 2d 476, 477 (2d Cir. 1962), *cert. denied*, 370 U.S. 939 (1962) and the pattern and framework revealed by the record here is replete with evidence of the control and domination by the respondent parent Crowell-Collier over the practices of its subsidiary.

The basic test was laid down by the Supreme Court in *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minneapolis Civic & Commerce Assn.*, 247 U.S. 490 (1918). There, the Court noted that considerations of formal corporate structure will be disregarded where a subsidiary company is being used "as a mere agency or instrumentality of the owning company or companies" (247 U.S. at 501). The Court stated that:

> In such a case the courts will not permit themselves to be blinded or deceived by mere forms or [sic] law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require (*Ibid.*).

The test, whether employed for purposes of determining personal or interstate commerce jurisdiction or for purposes of determining whether a seller-purchaser relationship exists, is whether there is such substantial identity between the entities as to render the activities of one the activities of the other. *Bowater S. S. Co.* v. *Patterson*, 303 F. 2d 369, 372–73 (2d Cir. 1962), *cert. denied*, 371 U.S. 860 (1962); *United States* v. *Watchmakers of Switzerland Information Center, Inc.*, 133 F. Supp. 40, 45 (S.D.N.Y. 1955). In making this determination, the courts have stated that it is the reality of the business enterprise as it was conducted by the companies, not the invocation of mechanical word formulas based on corporate structure, which must govern. *Bowater S. S. Co.* v. *Patterson*, *supra*. The courts have also pointed out that in addition to considering the overall corporate pattern and framework, account must be taken of the policy underlying the statute involved in the case in order to determine the significance of the corporate relationships in terms of the objective intended to be reached by the statute. *Delaware Watch Co.* v.

F.T.C., 332 F. 2d 745, 746 (2d Cir. 1964); *Bowater S. S. Co.* v. *Patterson, supra*; *Reines Distr., Inc.* v. *Admiral Corp.*, 256 F. Supp. 581, 585–86 (S.D.N.Y. 1966).

We believe that the record clearly demonstrates that the various parts of the Crowell-Collier enterprise have never dealt with each other as independent commercial enterprises. Rather, it indicates that respondents have interchanged business functions as the circumstances seemed to warrant in a manner wholly inconsistent with any purported corporate separation between the respondent parent and respondent subsidiary. Therefore, far more is present here than the mere personnel overlapping and common headquartering urged by respondents—important as these features may be in illustrating the overall relationship between parent and subsidiary.

Respondents also contend that the formal and informal group management committees by which representatives from the parent and subsidiary met and conferred do not show that Crowell-Collier dominated its subsidiary or dictated or controlled its sales practices, because the parent's interest was shown to be limitied to the long-range plans of the subsidiary. While they concede respondent parent's watch over these long-range policies, they strongly deny that the parent checked on or interfered with its day-to-day operations. We do not view the record in such a narrow way, nor do we believe the test depends on the precise form and scope of the supervision maintained over the subsidiary's activities.

We have carefully considered the testimony of the officers or respondent parent and subsidiary, given both during the original proceedings and during the remand proceeding. We have no doubt that much of this testimony evidences the existence of an honest desire on the part of the respondent parent's management to vest the respondent subsidiary's management with responsibility for overseeing the minutia of the encyclopedia sales operations. However, while this testimony shows no desire to take over the management details of the respondent subsidiary, it also shows no absence of power to do so. Ultimate control was clearly lodged in respondent parent's chief executive officer, Mr. Cole; delegation of any portion of the commercial responsibilities in no way altered that basic power. Nothing in Cole's testimony rebuts the clear inference that the parent company, acting through Cole, could have reprimanded or replaced any personnel of the sub-

sidiary whenever the subsidiary's actions failed to conform with the parent's wishes.

Moreover, the Courts are primarily concerned with the extent to which the elements in the corporate enterprise are either wholly independent or strongly interdependent on each other, viewed against the realities of their relationships. In a slightly different but analogous context involving the question of whether a parent-subsidiary enterprise should be looked at as separate or as a part of the larger whole, the Supreme Court has held that the lack of active intervention on the part of a parent in the operational policies of the subsidiary was "not decisive." *North American Co.* v. *SEC*, 327 U.S. 686 at 692–93 (1946). As the Supreme Court there pointed out, this lack of active intervention "appears to have resulted in large part from North American's satisfaction with the local managements of the subsidiaries and from the fact that the local managements have often included men selected by or historically related to North American." In that same case the Supreme Court also noted that:

Historical ties and associations, combined with strategic holdings of stock, can on occasion serve as a potent substitute for the more obvious modes of control. (Citing cases.) (*Id.* at 693.)

Upon consideration of the entire record in the present case, we find ample cogent evidence to support the remand hearing examiner's conclusion that respondent parent, Crowell-Collier, dominated and controlled its subsidiary, respondent P. F. Collier & Son Corp., and that for all intents and purposes the respondent parent and respondent subsidiary—and later the new subsidiary—were an integral part of a single common enterprise. The preponderance of the evidence, in our judgment, clearly demonstrates that respondent parent was a pervasive presence throughout the subsidiary's existence. The parent wholly owned the respondent subsidiary as well as the subsidiary's predecessors going back for a period of almost 40 years; during that time many officers and directors of the subsidiary were associated with or were selected by the parent. The companies were in intimate contact, contact begat cooperation, and plans carried out by the total operation were for the parent to announce and the subsidiary to follow. The subsidiary employed the prestige of its parent's name in conducting its sales program; the parent was significantly involved in the corporate organization and the scope of commercial activities of the subsidiary; Crowell-Collier kept close

supervision over the results of respondent subsidiary's operations by means of an on-going active, informal committee, a short-lived formal intercorporate committee and a single shared accounting staff; and when the parent saw fit, it dictated changes in the subsidiary's executive personnel and even effected dissolutions, mergers and new incorporations of its Collier subsidiaries, including respondent subsidiary.

Possessing the demonstrated power to compel fundamental changes, Crowell-Collier cannot continue to avoid responsibility for the practices by retreating behind the screen of nominally separate identities. It would be a vain act indeed, in light of the facts in this case, to issue an order solely against respondent subsidiary, leaving respondent parent, the dominant force in this enterprise, without any comparable obligations. The enterprise is clearly a unitary one, regardless of the particular corporate structure adopted at any given time through which to carry out the Crowell-Collier business. The public interest in preventing false and deceptive sales practices requires that an effective remedy be found, and "we cannot think Congress would have meant this to be defeated by the fragmentation of an integrated business into a congeries of corporate entities, however much these might be properly respected for other purposes." *Bowater S. S. Co.* v. *Patterson, supra,* 303 F. 2d 369, 373 (2d Cir. 1962), *cert. denied,* 371 U.S. 860 (1962).

We find the argument of nonliability by reason of separate entities particularly unpersuasive where, as here, the parent has from time to time revised the existence of the subsidiary and even operated it as a division of the parent (*General Electric Co.* v. *Masters Mail Order Co. of Washington, D.C.,* 145 F. Supp. 57, 64 (S.D.N.Y. 1956), *rev'd on other grounds,* 244 F. 2d 681 (2d Cir. 1957), *cert. denied,* 355 U.S. 824 (1957); *Reines Dist., Inc.* v. *Admiral Corp., supra,* 256 F. Supp. 581, 586 (S.D.N.Y. 1956). We will not, for our order, unwind these convoluted respondents.

An examination of the original initial decision of the hearing examiner indicates that no detailed findings of fact were made by the examiner bearing on the issue of the liability of the respondent parent, although the facts which are recited there are not inconsistent with the findings of fact on remand. The conclusions and inferences which the original examiner drew from the facts which he did find, however, are contrary to the conclusions which we have reached on the basis of our considera-

tion of the whole record including the remand record. The examiner failed to take any note of the use of the parent's name and reputation in the sales promotion activities of the subsidiary, nor did he attribute any significance to the two corporate committees and their role in the supervision and control of the subsidiary.[11]

The evidence on remand furnished a much fuller picture of the relationship of the two respondents. The original and remand records together form an overall consistent picture of these relationships which in our judgment support the conclusions of the hearing examiner on remand that the respondent parent must be held liable with its subsidiary for the misrepresentations and deceptive acts and practices found to have been engaged in by the respondent subsidiary. We, therefore, vacate and overrule the conclusions of the original hearing examiner on the issue of the liability of the parent under the complaint and enter our own findings, conclusions and order, and we hold that the order previously entered in this case against respondent P.F. Collier & Son Corporation must be enforced as well against respondent The Crowell-Collier Publishing Company (now Crowell Collier & Macmillan, Inc.).

IV

Applicability of Order to New Subsidiary

The second issue which the Commission required the hearing examiner on remand to consider was "whether P. F. Collier, Inc. [the new subsidiary], is the successor to [respondent subsidiary] P. F. Collier & Son Corporation" (Comm. Op., 8) [70 F.T.C. 977, 1010]. After the remand proceeding, the examiner concluded that the evidence established that the new subsidiary is in fact

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[11] The evidence in the original record showing the extent to which the subsidiary's sales effort was organized in cooperation with the parent was sparse, and the examiner evidently failed to consider the significance of the portion of the sales presentation which employed a suggestion of identity between parent and subsidiary. He appears not to have focused upon the two corporate committees and the opportunity for supervision and control which they provided. He erroneously understood the two respondents to share but a single officer. There was no opportunity for the original examiner to appraise the significance of some of the facts which had been testified to at the first hearing, such as Cole's delegation of operating authority to subsidiary personnel, in the light of the overall situation as it was more fully developed on remand. In short, the conclusions in the original initial decision were not, nor indeed could they have been, based upon a full appraisal of all of the now-developed facts showing the relationship between the respondent parent and its subsidiary, the commonality of the entire enterprise and the parent's usually latent but always real opportunity for domination and control of its subsidiary.

the successor of respondent subsidiary and that it has continued the illegal acts and practices of the respondent and should be subjected to the cease and desist order which the Commission has entered (R. I.D. 274).

In our view, the evidence overwhelmingly demonstrates that the new subsidiary, P. F. Collier, Inc., is the successor to respondent subsidiary and as such must be bound by the order so as to ensure the cessation of the deceptions and misrepresentations found to have been engaged in, in the sale of respondents' encyclopedia and other reference books.

P. F. Collier, Inc., the new subsidiary, is the current form under which the promotion and sale of the Collier encyclopedia and other reference books—the basic business of the respondent parent—is now being conducted. It is the identical business which was formerly carried on by the respondent subsidiary.

The new subsidiary was incorporated during the pendency of these proceedings—eleven months after the complaint was filed. The dissolution of the respondent subsidiary and the establishment of the new subsidiary were decided upon by the respondent parent and effectuated as a single item of business at the parent's board of directors' meeting (R. RX 69J–L, reprinted R. I.D. 246, 247). Indeed, counsel representing respondent parent and respondent subsidiary, and who also appeared specially for the new subsidiary, offered testimony to show that the only purpose of the change in the corporate structure of the respondent subsidiary was to effect certain changes in its accounting methods, which apparently could be accomplished more easily by formally dissolving the old subsidiary and establishing the new one (R. Tr. 4460–66; R. Ap'l. Br. 24–25).

The last annual report which respondent subsidiary filed with the Secretary of State of the State of Delaware on December 30, 1960 (CX 256), and the first annual report which the new subsidiary filed at the same office one year later, on January 18, 1962 (CX 278), showed that the officers and directors of the respondent subsidiary immediately prior to its dissolution were identical to the officers and directors of the new subsidiary just following its incorporation. The managerial and sales personnel of the new subsidiary, with normal turnover, also were identical to those of the respondent subsidiary (R. Tr. 3896–98). The new subsidiary occupied the same quarters, had virtually the same name and, like the respondent subsidiary, was wholly-owned by the

respondent parent (R. CX 247A, 256, 276D, 278; R. RX 69K–L; O. I.D. 18[70 F.T.C. 977, 997–998]; R. I.D. 245, 246).[12]

Like respondent subsidiary, the new subsidiary's existence was an integral part of the respondent parent's business. This is aptly illustrated by the motion adopted by the respondent parent's board of directors to merge respondent subsidiary into respondent parent and to create the new subsidiary. The board there expressly provided that the new subsidiary would purchase from the respondent parent the Collier publications which it sold, it would act as collection agent for the accounts receivable which the parent acquired from respondent subsidiary and it would have the right to use the parent's mailing lists and keep them up to date (R. RX 69, R. I.D. 247).

The new subsidiary utilizes the same sales methods as were used by the respondent subsidiary in its sales of the Collier Encyclopedia and other reference books. The new subsidiary's methods, just as the respondent subsidiary's, relied upon door-to-door sales and upon sales presentations which included the solicitation of testimonials, the offer to place the basic volumes in a home as an advertising premium and the request for a 10-year commitment by the purchaser to keep the set up to date by purchasing Collier yearbooks at a nominal cost per day (R. Tr. 4066, 4070–75, 4230–40; R. CX 419–24, 427–30, 433; R. I.D. 262, 272); compare Comm. Op., F.F. 11–16 [70 F.T.C. 1021–1025] and op., pp. 10–11 [70 F.T.C. 1011–1012], R. CX 417–18). Testimony at the remand hearing indicated that the salesmen of the new subsidiary were taught to use the same oral sales presentation that was used by the respondent subsidiary. They, too, used the parent's name—even going so far as to include references to the newly established connection with the prestigious Macmillan Company—and its national advertising to assist them in the sale of the Collier encyclopedia (see R. I.D. 264, 267, 269 and portions of record cited therein; compare Comm. Op. F.F. 7[70 F.T.C. 977, 1020] and portions of record cited therein).

The hearing examiner on remand made detailed findings on the identity of the business operations of the respondent subsidiary and the new subsidiary and also on the identity of the business practices followed by the new subsidiary (R. I.D. 261, 272). He concluded that the new subsidiary was not only carrying on the same business but was also engaging in the same misrepre-

[12] More recently, the subsidiary, together with the respondent parent, have moved into the new Crowell Collier and Macmillan building. See fn. [illegible], *supra*, pp. 279, 280.

sentations which the respondent subsidiary was found to have employed (*id.*, Conclusion, 274).

Respondents vigorously protested the admissibility of this evidence and press the objection on this appeal, on the ground that the Commission's opinion expressly limited the remand to the issues of corporate liability and therefore no misrepresentation evidence should have been received.

For purposes of this opinion it is immaterial whether the business activities of the respondent subsidiary which the remand evidence demonstrates were continued by the new subsidiary were those which gave rise to the finding of a Section 5 violation. Evidence as to the business carried on by the new subsidiary was offered by counsel supporting the complaint to show a continuation of sales methods, " * * * whether the record from that point would show misrepresentations or not, * * * " (R. Tr. 4064), and it was received by the hearing examiner "for such consideration as the Commission may wish to give to it" (R. Tr. 4065). In our opinion, the evidence was properly admitted not to show continuation of illegal activity but to show the objective identity of the business operation and practices engaged in by the two subsidiaries. Whether this evidence also demonstrated that unlawful misrepresentations were carried on by the new subsidiary we do not consider. Accordingly, we reject respondent's contention that these findings of the hearing examiner were improperly received, and we specifically incorporate them as relevant to the issue of successorship, as supplemented with the additional references to the record contained in this opinion.

Upon careful review of the entire record, we hold that the new subsidiary, P. F. Collier, Inc., is the successor to respondent subsidiary, P. F. Collier & Son Corporation. The respondent subsidiary was liquidated and the new subsidiary established to carry on its work as a single item of the business of respondent parent. The record shows their names, addresses, personnel and practices to be largely identical and the basic function of them both to be the sale of Collier's Encyclopedia and other reference books. In short, the two subsidiaries, first respondent and then the new, have occupied the identical niche in the Crowell-Collier organization, and the conclusion is inescapable that the latter is successor to the former. *NLRB* v. *Weirton Steel Co.*, 135 F. 2d 494, 498–99 (3d Cir. 1943); *Kobe, Inc.* v. *Dempsey Pump Co.*, 198 F. 2d 416, 423 (10th Cir. 1952), *cert. denied*, 344 U.S. 837 (1952); *Regal Knitwear Co.* v. *NLRB*, 324 U.S. 9, 14–15 (1945).

The question which must be next determined is whether the order against the respondent subsidiary should be enforced against its successor.

The Supreme Court has affirmed many times that injunctions can be enforced against persons "to whom the business may have been transferred whether as a means of evading the judgment or for other reasons." *Regal Knitwear Co.* v. *NLRB*, 324 U.S. 9, 14–15 (1945); *Walling* v. *James V. Reuter Inc.*, 321 U.S. 671, 674 (1944); *Southport Petroleum Co.* v. *NLRB*, 315 U.S. 100, 106 (1942). In determining whether a successor corporation should be bound by an outstanding order, the courts have been concerned essentially with whether application of the order's prohibitions to the successor corporation is fair and necessary. Thus, courts have evinced some reluctance to bind successor corporations which were strangers to the predecessor's business where there was neither evidence of a compelling need to do so nor evidence of a continuation of the challenged activities giving rise to the previous order. See, *e.g.*, *McComb* v. *Row River Lumber Co.*, 177 F. 2d 129, 130 (9th Cir. 1949). On the other hand, courts have caused successor corporations to be bound by orders previously entered against their predecessors where the same business was being carried on, the same stockholders controlled both predecessor and successor companies and, in sum, the advent of the successor was primarily a change in form and not in substance. *Southport Petroleum Co.* v. *NLRB, supra; Kobe, Inc.* v. *Dempsey Pump Co., supra; NLRB* v. *Weirton Steel Co., supra; General Electric Co.* v. *Masters Mail Order Co. of Washington, D.C., supra*, 145 F. Supp. 57, 63–64 (S.D.N.Y. 1956).

Our responsibility under the statute is to fashion a remedy which will prevent future deception and close all roads to the prohibited goal. *F.T.C.* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952); *Jacob Siegel* v. *F.T.C.*, 327 U.S. 608, 611 (1946); *Waltham Precision Instrument Co.* v. *F.T.C.*, 327 F. 2d 427, 431 (1964), *cert. denied*, 377 U.S. 992 (1964). In the instant case, we have already found that respondent subsidiary pursued a course of lengthy and blatant deception. We have found that its successor is engaged in the identical business formerly conducted by respondent subsidiary. In no sense is the new subsidiary an independent stranger newly embarking in the field formerly occupied by the respondent subsidiary. Rather, although in 1961 the corporate form was freshly recast, in fact the business operations and the men directing them had been carried over without a break from

those that prevailed at respondent subsidiary at the time it was liquidated. In these circumstances the order must be carried forward along with the essential structure and operation.

Nor is this conclusion impeded by any issue of due process or of lack of opportunity to defend. The new subsidiary has been in existence since December, 1960, during almost the entire period when the original hearings which named the respondent parent and the new subsidiary's predecessor were being conducted.[13] The same counsel represented both respondent parent and respondent subsidiary. Although this counsel entered his appearance formally as counsel only for respondent subsidiary, he was careful to advise the hearing examiner of the dissolution of that subsidiary and of the establishment of the new one (see R. Tr. 4519–20). On the remand of this matter, the Commission expressly directed that the new subsidiary was to have the opportunity to submit evidence in rebuttal to that which might be submitted by complaint counsel (Comm. Op., 7–8) [70 F.T.C. 977, 1009–1010]. As already noted (*supra,* p. 276), counsel for respondent subsidiary and for respondent parent actually entered a formal special appearance on behalf of the new subsidiary, to object to the receipt of evidence against it. Thus the same counsel representing the respondent parent and subsidiary was present at both hearings and vigorously defended on all issues respecting the liability of these respondents as well as on the issues involved in the remand proceeding.

The crux of this case, indeed, rests on the basic identity which we have found to exist among the component parts of the Crowell-Collier enterprise—the parent and its operating branches, whether they be a division of the parent or a wholly owned subsidiary. In the context of this basic commonality and in the light of the evidence showing the identity of interest and of business operations—both between the respondent subsidiary and its parent and between the respondent subsidiary and its successor—it is essential to look through paper form to commercial substance. The whole record compels us to conclude that the order heretofore entered against the respondent subsidiary must now be made applicable to the new, successor subsidiary. Manifestly, the entity which we have found is the successor of the respondent subsidiary and is carrying on the business which gave rise to the deceptions in this case must be bound by the

[13] The original hearings commenced in August 1960, about five months before the new subsidiary was incorporated, but were not completed until June 23, 1965.

terms of the order entered against the respondent subsidiary, its predecessor. *NLRB* v. *Weirton Steel Co.*, 135 F. 2d 494, 498–99 (3rd Cir. 1943). Any other conclusion would work a grave injustice against the public interest and the essential purposes of the Federal Trade Commission Act.

Having drawn our own conclusions as to the significance of the evidence contained in the entire record, we reject the form of the conclusion reached by the remand examiner. We vacate all findings and conclusions in both the original and remand record which are inconsistent with this opinion.[14]

V

Conclusion and Order

Respondent subsidiary, P. F. Collier & Son Corporation, was, at the time complaint herein issued, a corporation engaged in interstate commerce and subject to the jurisdiction of the Federal Trade Commission (Findings of Fact in connection with Comm. Op., F. 8) [70 F.T.C. 977, 1020]. In its prior consideration of this matter, the Commission concluded that this respondent had engaged in unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act; an appropriate order was entered against it, not to become effective, however, until further order of the Commission.

Consistently with our determination that the respondent parent Crowell-Collier Publishing Company (now Crowell Collier & Macmillan Inc.) bears responsibility for the unlawful conduct of respondent subsidiary, P. F. Collier & Son Corporation, and that the new subsidiary, P. F. Collier Inc., is the successor to respondent subsidiary and should have the order applied to it, we are providing that the order previously entered and now made effective against P. F. Collier & Son Corporation be enforced as well against Crowell Collier & Macmillan Inc., P. F. Collier, Inc., and their successors and assigns.

With respect to that order, respondent urges that paragraph 1(f) is not supported by the record because the only evidence is that the yearbook did regularly sell for $10 when sold alone, as represented (R. Ap'l. Br., 35–36). This contention is fully an-

[14] On the issue of successorship, the first hearing examiner's initial decision makes it clear that he regarded the evidence before him on this issue as incomplete. See O. I.D., 18 [70 F.T.C. 977, 997–998]. Since that evidence was supplemented on remand, this view of the original proceedings is now irrelevant.

swered by Finding 22 [70 F.T.C. 977, 1029] of our September 30, 1966 Findings of Fact. There, we observed that it was a reasonable inference from the evidence that few, if any, of the books were sold outside of the combination offer, and we found that the combination offer price of $3.95 therefore constituted the usual and regular selling price. Accordingly, the Commission's order properly requires respondents to cease and desist from representing that the book regularly sells for an amount in excess of its actual regular price.

Respondent also argues that the affirmative disclosure requirement of Paragraph 3 of the 1966 order is discriminatory because the Commission has not imposed a similar requirement in its orders against competing encyclopedia companies (*id.*, 36). It is, of course, well settled that the Commission has wide discretion in framing its remedies to cope with the unlawful practices before it, see *F.T.C.* v. *Ruberoid Co., supra,* 343 U.S. 470, 473 (1952); *Jacob Siegel Co.* v. *F.T.C., supra,* 327 U.S. 608, 611 (1946), and that its discretion encompasses the decision whether to proceed equally against all participants in an industry. *F.T.C.* v. *Universal-Rundle Corp.*, 387 U.S. 244, 251–52 (1967); *Moog Industries* v. *F.T.C.*, 355 U.S. 411 (1958); *In re L. G. Balfour Co.*, Dkt. 8435, July 29, 1968, 43–45 [74 F.T.C. 345, at 522–3]. The Commission should not, of course, enter orders which would unreasonably single out and hamstring one among various competitors, but neither will it refrain from entering and enforcing an order properly designed to bring an end to proven unlawful, anticompetitive practices. When the present case was previously before us, we found that a principal component of the unlawful sales methods employed by salesmen for respondent subsidiary involved misrepresenting the purpose of the salesman's call and deceptively failing to disclose that the caller was simply attempting to sell respondent's encyclopedias (Findings of Fact 11, 14, 19–20, 27) [70 F.T.C. 977, 1021, 1025, 1026–1029, 1031]. It was therefore fully appropriate for the Commission to include in its 1966 order a provision requiring affirmative disclosure of this information at the time admission is sought to the premises of the prospective purchaser. We will not at present modify that order, which, of course, is only now being put into effect.

Because our earlier decision reserved determination as to the responsibility of the parent respondent and the applicability of the order to cease and desist to the new subsidiary, it also

reserved findings as to the facts and conclusions in respect to those issues (Comm. Op., 18) [70 F.T.C. 977, 1017]. We believe that the great preponderance of the evidence presented to and received by the two hearing examiners during the full course of these proceedings and reviewed by us in connection with our former and the instant opinion clearly supports our decision and order entered against respondent parent, respondent subsidiary and the new subsidiary.

Complaint counsel urges that we should modify the remand examiner's initial decision in order to make additional findings on the two issues considered on the remand. We believe that the remand decision is fully supported by the facts found by the remand examiner and see no reason to supplement those findings as complaint counsel suggests. Accordingly, we deny complaint counsel's appeal on this point.

Except as to the specific areas noted in our opinion, we adopt the findings of the remand examiner which together with this opinion and the findings adopted by us in our original opinion constitute our findings of fact in this case. To the extent that they are inconsistent with the findings expressed in the original initial decision, that decision and conclusions are set aside and vacated. The initial decision on remand is adopted except as noted in the present opinion and as supplemented by the citations in the present opinion to additional evidence from both the original and the remand records.

FINAL ORDER

This matter having been heard by the Commission upon cross appeals of respondents and complaint counsel from the hearing examiner's initial decision and upon briefs in support of and in opposition to said appeals; and

The Commission having determined for the reasons stated in the accompanying opinion that the appeal of counsel supporting the complaint should be granted in part and denied in part and that respondents' appeal should be denied; that the Initial Decision on Remand should be adopted to the extent stated in the opinion being issued herewith; and that the order to cease and desist issued on September 30, 1966 [70 F.T.C. 977], by the Commission in these proceedings should now be made effective against both respondents and against their successors and assigns, specifically including, as one such successor of P. F. Collier & Son Corporation, P. F. Collier, Inc.

It is ordered, That the order issued September 30, 1966, be, and it hereby is, effective this date.

It is further ordered, That said order be, and it hereby is, effective against respondent The Crowell-Collier Publishing Company, under this or any other name, its successors or assigns.

It is further ordered, That P. F. Collier & Son Corporation or any successor or assign of the business thereof which may now be in existence, and The Crowell-Collier Publishing Company shall both, within sixty (60) days after the effective date of this order, file with the Commission, a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

ZWERDLING-GOLD, 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-1491. Complaint, Feb. 5, 1969—Decision, Feb. 5, 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 Zwerdling-Gold, Inc., a corporation, and Leo Zwerdling and Harry Gold, 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 Zwerdling-Gold, Inc., is a corporation organized, existing and doing business under by virtue of the laws of the State of New York.

Respondents Leo Zwerdling and Harry Gold 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 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 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 Prdoucts 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 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 Zwerdling-Gold, 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 307 Seventh Avenue, New York, New York.

Respondents Leo Zwerdling and Harry Gold 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 Zwerdling-Gold, Inc., a corporation, and its officers and Leo Zwerdling and Harry Gold, 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 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 Zwerdling-Gold, Inc., a corporation, and its officers, and Leo Zwerdling and Harry Gold, 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 quaranty 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

CONNELL RICE & SUGAR CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SECS. 2(a), 2(c) AND 2(f) OF THE CLAYTON ACT

*Docket 8736. Amended Complaint, Apr. 8, 1968—Decisions, Feb. 20, 1969**

Consent orders requiring two of the Nation's largest dealers in corn products, syrups and sweeteners to refrain from a common course of action involving certain full-requirements purchase agreements, accepting illegal brokerage payments, and knowingly inducing or receiving discriminatory prices.

*Commission's order of Mar. 29, 1971, dismissed complaint as to respondent Standard Brands Incorporated.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45) and the Clayton Act, as amended (U.S.C., Title 15, Sec. 13), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and hereinafter more particularly described and referred to as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act and Section 2 of the amended Clayton Act, as hereinafter more particularly described, 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 respect thereto as follows:

PARAGRAPH 1. Respondent Connell Rice & Sugar Co., Inc., sometimes hereinafter referred to as "Connell," is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 187 Elm Street, Westfield, New Jersey. Connell maintains branch offices at Houston, Texas; San Francisco, California; and Crowley, Louisiana.

Connell is now and for the past several years has been engaged primarily in the business of purchasing and reselling commodities such as rice and sugar for its own account. Said respondent also is now, and for the past several years has been engaged in business as a broker for transactions in refined sugar, corn products and other commodities.

Said respondent's activities, for several years last past and continuing to the present time, have included the preparation of studies designed to forecast prices and market conditions for various commodities, including those which it purchases and resells as principal and those concerning which it acts as broker or agent. Such studies, sometimes hereinafter referred to as "econometric" reports are and have been prepared and furnished by Connell pursuant to agreement with various industrial organizations, and others, in return for which the recipients of such reports agreed to pay and have paid Connell a fee or other valuable consideration. Fees received for said reports varied, ranging from $300 to $1000 monthly.

Connell's total annual revenue is in excess of $60,000,000.

PAR. 2. Respondent Foremost-McKesson, Inc., a corporation,

(formerly Foremost Dairies, Inc., a corporation), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 111 Pine Street, San Francisco, California. It maintains branch offices in various cities throughout the United States.

Foremost Foods Company, a division of Foremost-McKesson, Inc., sometimes hereinafter referred to as "Foremost," is now performing those business functions formerly performed by Foremost Dairies, Inc., which for many years last past was engaged in the production and processing, sale and distribution of fluid milk and other dairy food products and frozen products, such as ice cream, ice milk, sherberts and water ices, throughout the United States. In connection with its manufacturing processes, Foremost uses substantial quantities of refined sugar and corn products. It maintains plants and facilities in various sections of the United States and its annual overall sales have been in excess of $400,000,000.

PAR. 3. Respondent Standard Brands Incorporated, sometimes hereinafter referred to as "Standard," 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 625 Madison Avenue, New York, New York.

Through its various divisions and subsidiaries said respondent maintains branch offices in various cities throughout the United States. Its total annual sales are now and have been in excess of $600,000,000.

Standard is now, and for the past several years has been, engaged through its various subsidiaries and divisions, including the Clinton Corn Processing Co. at Clinton, Iowa, in the business of manufacturing, selling and distributing various food products and commodities throughout the United States.

Through its Clinton division, Standard has been and is now engaged in the production, sale and distribution on a nationwide basis of corn products, including corn syrup and sweetener and other products to various customers including respondent Foremost. Respondent Standard, through its Clinton division, has committed the acts and practices alleged herein to be unlawful, and all references hereinafter to respondent Standard are confined and restricted to its conduct through its Clinton division.

PAR. 4. Respondents Connell, Foremost and Standard, in the

course and conduct of each of their said businesses for the past several years, have been and are now engaged in "commerce" as that term is defined in the Federal Trade Commission Act, and in the Clayton Act, as amended, in that they buy and sell and ship, or cause to be shipped, products manufactured or handled by them, including refined sugar and corn products, from the several places of production or purchase, to purchasers thereof located in States other than the States of production or origin of shipment, and there has been at all times mentioned herein, a continuous current and course of trade and commerce in such products, between and among the several States of the United States and in the District of Columbia. Each of the said respondents is therefore subject to the jurisdiction of the Federal Trade Commission.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45) by all respondents:

PAR. 5. Respondent Foremost, in connection with its production of food products, including ice cream and related products, and their sale in commerce as heretofore alleged, uses or consumes substantial quantities of various commodities including refined sugar and corn syrup and sweeteners. Prior to about the year 1961, said respondent purchased sugar from various sources in the United States, including refiners, processors and distributors. Also prior to about the year 1961 Foremost was under contract to purchase and did purchase a substantial part of its requirements of corn syrup and sweeteners from the American Maize Products Corporation, a company engaged in the production, sale and distribution of corn products throughout the United States. Directly or indirectly Foremost caused the said commodities so purchased to be shipped and transported in commerce as described in Paragraph Four.

For several years prior to 1961, Foremost's wholly owned subsidiary, International Dairy Engineering Co., acted as broker and received brokerage payments on all sales of corn products by American Maize to Foremost. During the year ending June 30, 1960, such sales amounted to approximately 7,500,000 pounds of corn products. During this same period Standard also was selling substantial amounts of corn products annually to Foremost and on such sales was paying brokerage to Foremost's wholly owned and controlled subsidiary.

PAR. 6. During 1961, representatives of respondents Connell and Foremost met to discuss ways and means of centralizing Foremost's purchases of various commodities. As a result of said meetings, it was agreed that Connell would be Foremost's exclusive agent and broker for its purchases of sugar and corn products; that Foremost would instruct its suppliers to pay brokerage fees to Connell on the sale of said commodities; and that Connell, in return, would furnish Foremost "econometric" reports and other valuable marketing services.

Foremost directed and authorized Connell to deal only with sellers who were not only capable of serving all of Foremost's requirements in the United States but who were willing to grant Foremost the lowest price.

PAR. 7. Pursuant to the aforesaid understanding, agreement, combination, conspiracy or common course of action, Foremost notified all suppliers of sugar and corn products, including American Sugar Company, hereinafter American, and Standard, of Connell's appointment as Foremost's exclusive agent and further notified said suppliers that, as a condition of doing business with Foremost, suppliers would be obliged to pay Connell a brokerage fee on all sales to Foremost.

Thereafter, Connell conducted preliminary negotiations culminating in contracts for the sale and shipment of sugar by American and corn products by Standard, to Foremost's plants, located in States other than the State of origin of such shipments, and Connell received brokerage fees from the suppliers on all such sales.

PAR. 8. Further, on or about December 1, 1961, a formal agreement was reached, among the three respondents, whereby in return for supplying all of Foremost's national requirements of corn syrup and sweetener, Standard not only agreed to pay Connell brokerage fees but also to grant Foremost a secret rebate of 50¢ per cwt. on all such sales.

The rebate, after negotiations among respondents, was effectuated under the guise of a series of agreements between Standard and Foremost, whereby Standard purported to lease storage and pumping facilities located at seven of Foremost's plants.

The three respondents also agreed that, in connection with the purchase by Foremost of blends of refined sugar and corn syrup, the sugar refiner producing the blends was required to use Standard's corn syrup and sweetener exclusively.

PAR. 9. Pursuant to the aforesaid understandings, agreements, combinations, conspiracies or common courses of action, and in furtherance thereof, respondents Connell and Foremost have acted in concert and in cooperation with each other and with respondent Standard and others to do, among other things, the following:

1) Induce and participate in acts and practices violative of Section 2(c) of the Clayton Act, as amended;

2) Induce the negotiation of full requirements contracts or understandings in return for secret rebates, and other discriminatory conditions violative of the Clayton Act as amended;

3) Induce sugar refiners, including American, to use only Standard's corn syrup and sweeteners, in blends purchased by Foremost.

PAR. 10. The acts and practices of said respondents as herein alleged are to the prejudice of the public, have a tendency to hinder, suppress, lessen or eliminate competition in the purchase, sale and distribution of various commodities, including sugar and corn products, have a tendency to foster and further monopoly in the sale of sugar and corn products to the exclusion of all competition, and have a tendency to effectuate a monopoly in Connell in the brokerage business in connection with the sale of such commodities and constitute unfair methods of competition or unfair or deceptive acts or practices in commerce, within the meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of subsection (c) of Section 2, of the Clayton Act, as amended (U.S.C., Title 15, Section 13), by each respondent.

PAR. 11. Each of the respondents is and has been engaged in commerce as heretofore alleged and each engaged in the acts and practices hereinafter described in the course of such commerce.

PAR. 12. In 1961 respondent Foremost entered into agreements with respondent Connell whereby respondent Connell was appointed Foremost's exclusive broker and agent to negotiate for the purchase, by Foremost, of all of its national needs of refined sugar, corn syrup and corn sweetener. As part of said agreements Connell agreed to furnish, and until about February 1964, has furnished without fee, "econometric" reports, as here-

tofore described in Paragraph One, and other valuable services to respondent Foremost.

Pursuant to these agreements, Foremost, during the fall of 1961 and early months of 1962, notified suppliers of refined sugar, corn syrup and sweetener, including American Sugar Company and respondent Standard, that respondent Connell had been appointed as its exclusive broker and agent for Foremost's entire operations in the purchase of such commodities and that commissions or brokerage fees were to be paid to Connell on all sales by such suppliers to Foremost.

PAR. 13. In the fall of 1961 and early months of 1962 respondent Standard entered into an agreement with respondents Connell and Foremost whereby Standard agreed, among other things, to sell Foremost all its national requirements of corn syrup and sweetener and to pay respondent Connell commissions or brokerage on all such sales. Pursuant to said agreement Foremost has continuously purchased all of its national requirements of said commodities from Standard who on all such sales has continuously paid Foremost's agent, Connell, commissions or brokerage fees which Connell has continuously received and accepted.

PAR. 14. Also during the fall of 1961 and early 1962, respondent Connell negotiated with the American Sugar Company to obtain a contract on behalf of Foremost, to supply all of Foremost's requirements of refined sugar.

Pursuant to such negotiations, an agreement was reached in about 1962 whereby American has made substantial sales of refined sugar to Foremost and on such sales has paid brokerage fees or commissions to Connell, the agent of Foremost.

Since 1964 respondent Foremost has obtained supplies of refined sugar from sugar refiners who have agreed to pay and are now paying brokerage to Connell on purchases of such product by Foremost.

PAR. 15. The acts and practices of respondent Connell, in receiving and accepting brokerage or a commission, or an allowance or discount in lieu thereof, on purchases of refined sugar, corn syrup, corn sweetener, and other commodities by its principal Foremost, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13).

The acts and practices of respondent Foremost, in directing that payments of brokerage by suppliers, including American

and respondent Standard, be made to Foremost's agent, Connell, and in accepting the periodic "econometric" reports and other valuable services from Connell, as part of the consideration for the brokerage or commission received by respondent Connell, on purchases of refined sugar, corn syrup and sweetener, and other products, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13).

The acts and practices of respondent Standard, in paying, granting or allowing brokerage or a commission, to Connell, the broker and agent of Foremost, on sales of corn syrup and corn sweetener to respondent Foremost, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13).

COUNT III

Alleging violation of subsections (a), by Standard, and (f) of Section 2, of the Clayton Act, as amended, (U.S.C., Title 15, Sec. 13) by respondents Connell and Foremost.

PAR. 16. Respondent Standard, through its Clinton Division, as heretofore described in Paragraph Three, is engaged in the production and sale of corn products, including syrup and sweeteners, and their subsequent shipment, in commerce, as heretofore described in Paragraph Four.

Respondent Connell as agent of Foremost, and respondent Foremost, in the course and conduct of their business in commerce and while so engaged, as aforesaid, have purchased corn syrup and sweeteners from Standard and caused said commodities to be shipped and transported from the place or places of manufacture to Foremost's plants located in a State or States other than those from which said shipments originated. The commodities were purchased and shipped, or caused to be shipped by Foremost for its use or consumption in the production and processing of various dairy and frozen food products sold and distributed within the United States, its territories and the District of Columbia.

Other buyers who have purchased and are now purchasing said commodities of like grade and quality at or about the same time from Standard, similarly used or consumed the commodities so purchased in the manufacture, sale and distribution, in commerce, of dairy and frozen food products and were and are in competition with Foremost in the sale of said products.

PAR. 17. In connection with the sales and shipments of corn

products by Standard to Foremost and other purchasers, as described in Paragraph Sixteen and pursuant to and in implementation of their agreement to obtain the lowest price for Foremost's full requirements of corn syrup as heretofore described in Paragraph Six Connell and Foremost have induced Standard to discriminate in price in favor of Foremost.

The discriminatory prices which respondents Connell and Foremost knew, or should have known, were not granted to competing purchasers, were effected and granted by Standard, principally by means of the subterfuge of lease agreements heretofore described in Paragraph Eight.

PAR. 18. The effect of said discriminations in price granted by Standard and knowingly induced and received or knowingly received or accepted by respondents Connell and Foremost as herein alleged, may be substantially to lessen competition or tend to create a monopoly in each of said respondents in the lines of commerce in which they are engaged.

PAR. 19. The foregoing alleged acts and practices of respondent Standard in granting the discriminations in price as set forth herein and the foregoing alleged acts and practices of respondents Connell and Foremost in knowingly inducing and receiving, receiving or accepting the said price discriminations constitute violations of subsections (a) and (f) respectively, of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER IN DISPOSITION OF THIS PROCEEDING AS TO RESPONDENT CONNELL RICE & SUGAR CO., INC.

The Commission having issued complaint in this proceeding on May 8, 1967, charging the respondents named therein with violations of Section 5 of the Federal Trade Commission Act and Section 2 of the Clayton Act, as amended, and the respondents having been served with a copy of that complaint; and

The respondents having filed request pursuant to § 2.34(d) of the Commission's Rules to have the matter withdrawn from adjudication, and the Commission having granted that request by its order of October 10, 1967; and

Respondent Connell Rice & Sugar Co., Inc., and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent of all the jurisdictional facts set forth in the copy of the draft of amended complaint attached to the agreement, a statement that the signing of the agreement is for settlement purposes only

and does not constitute an admission by said respondent that the law has been violated as alleged in such draft of amended complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having then determined that the complaint should be amended in the manner proposed in such agreement, and having thereupon accepted the consent agreement and placed such agreement together with the draft of amended complaint proposed thereby on the public record for a period of thirty (30) days, without objections thereto being received;

Now, therefore, the Commission hereby makes the following jurisdictional findings, and enters the following order in disposition of the proceeding as to respondent Connell Rice & Sugar Co., Inc.:

1. Respondent Connell Rice & Sugar Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 187 Elm Street, Westfield, New Jersey.

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 Connell Rice & Sugar Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of corn products, sugar or any other commodity in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any agreement, understanding, combination, conspiracy or planned common course of action, between or among any of said respondents named in the caption hereof or between said respondent and others not parties hereto to do or perform any of the following acts or things:

1. Directly or indirectly negotiating as a buyer's agent for the purchase of the buyer's entire requirements of any commodity for unreasonably long periods of time or when based upon the respondent's receipt for itself or receipt by the buyer respondent represents, of direct or indirect price

discriminations prohibited by Section 2 of the Clayton Act, as amended;

2. Requiring a seller, as a condition precedent to doing business with a buyer for whom respondent is an agent, to patronize sources of supply specified by respondent, or the buyer respondent represents, for commodities to be used in the manufacture or production of goods, wares or merchandise to be sold to said buyer unless such specification of source is based upon factors other than direct or indirect price discriminations prohibited by Section 2 of the Clayton Act, as amended;

3. To violate any of the remaining provisions of this order.

It is further ordered, That respondent Connell Rice & Sugar Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of corn products, sugar or any other commodity, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of said commodities where respondent is the agent, representative, or other intermediary acting for, or in behalf of, or is subject to, the direct or indirect control of, any buyer.

It is further ordered, That respondent Connell Rice & Sugar Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase by any third party buyer of corn products, or any other commodity in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Knowingly inducing any discrimination in price for commodities, by directly or indirectly inducing from any seller, a net price which respondent knows or should know is lower than the net price at which commodities of like grade and quality are being sold by such seller to other purchasers who are in competition with said buyer, where respondent is the agent, representative or other intermediary acting for, or in behalf of, or is subject to the direct or indirect control of, said buyer.

For the purpose of determining "net price" there shall be taken into account all discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are affected.

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.

Commissioner Elman not concurring.

DECISION AND ORDER IN DISPOSITION OF THIS PROCEEDING AS TO RESPONDENT FOREMOST-MCKESSON, INC.

The Commission having issued complaint in this proceeding on May 8, 1967, charging the respondents named therein with violations of Section 5 of the Federal Trade Commission Act and Section 2 of the Clayton Act, as amended, and the respondents having been served with a copy of that complaint; and

The respondents having filed request pursuant to § 2.34(d) of the Commission's Rules to have the matter withdrawn from adjudication, and the Commission having granted that request by its order of October 10, 1967; and

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

The Commission having considered the matter and having then determined that the complaint should be amended in the manner proposed in such agreement, and having thereupon accepted the consent agreement and placed such agreement together with the draft of amended complaint proposed thereby on the public record for a period of thirty (30) days, without objections thereto being received;

Now, therefore, the Commission hereby makes the following jurisdictional findings, and enters the following order, in disposition of the proceeding as to respondent Foremost-McKesson, Inc.:

1. Respondent Foremost-McKesson, Inc. (formerly Foremost Dairies, Inc., a corporation) is a corporation organized, existing and doing business udner and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 111 Pine Street, San Francisco, California.

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 Foremost-McKesson, Inc., a corporation (formerly Foremost Dairies, Inc., a corporation), and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of commodities as defined herein, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any agreement, understanding, combination, conspiracy or planned common course of action, between or among any of said respondents named in the caption hereof or between said respondent and others not parties hereto to do or perform any of the following acts or things:

1. Directly or indirectly negotiating for the purchase of respondent's entire requirements of any commodity for unreasonably long periods of time or when based upon the receipt by respondent, or its agent, of direct or indirect price discriminations prohibited by Section 2 of the Clayton Act, as amended;

2. Requiring a seller, as a condition precedent to doing business with respondent, to patronize sources of supply specified by respondent for commodities to be used in the manufacture or production of goods, wares or merchandise to be sold to respondent unless such specification of source is based upon factors other than direct or indirect price discriminations prohibited by Section 2 of the Clayton Act, as amended;

3. To violate any of the remaining provisions of this order.

It is further ordered, That respondent Foremost-McKesson, Inc., a corporation (formerly Foremost Dairies, Inc., a corporation), and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection

with the offering to purchase or purchase of commodities as defined herein, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of commodities as defined herein for respondent's own account.

It is further ordered, That respondent Foremost-McKesson, Inc., a corporation (formerly Foremost Dairies, Inc., a corporation), and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchase of commodities as defined herein, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Knowingly inducing and receiving or knowingly receiving or accepting any discrimination in price for commodities, by directly or indirectly inducing and receiving or receiving or accepting, from any seller, a net price which respondent knows or should know, is lower than the net price at which commodities of like grade and quality are being sold by such seller to other purchasers who are in competition with respondent.

For the purpose of determining "net price" there shall be taken into account all discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are affected.

"Commodities" as defined herein includes tires and all commodities purchased by respondent for resale, with or without further processing, in the form of frozen food products, ice cream or other dairy products, including all components and packaging materials.

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.

Commissioner Elman not concurring.

IN THE MATTER OF

THE WEATHERHEAD COMPANY

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

Docket C-1492. Complaint, Feb. 20, 1969—Decision, Feb. 20, 1969

Consent order requiring a Cleveland, Ohio, manufacturer of industrial fittings and regulators of fluid power products to cease discriminating in price between competing resellers and distributors of certain of its products.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Weatherhead Company, a corporation sometimes hereinafter referred to as respondent, has violated and is now violating Section 2(a) of the Clayton Act (U.S.C.A., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Weatherhead Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with office and principal place of business located at 300 East 131st Street, Cleveland, Ohio.

PAR. 2. Respondent corporation is now and for many years has been engaged in the business of producing, manufacturing, offering for sale, selling and distributing a complete line of industrial fittings, and related products such as valves, hose ends hose assemblies, and regulators used in the transmission and control of fluid power products.

The respondent is one of the largest producers and distributors of these products in the United States, and its current annual sales of these products are in excess of $90,000,000.

PAR. 3. Respondent sells these products directly to large users known as Original Equipment Manufacturers (hereinafter "O.E.M's") in the automotive industry, the automotive replacement industry, the aviation industry, the gas and petroleum industry, the air conditioning industry, the mobile home industry, and other large industries. Said products are sold by respondent to these "O.E.M's" primarily for use as component

units in products manufactured by "O.E.M's" for resale to the general public.

Respondent also sells these products through its Industrial Division to approximately two hundred and thirty Industrial Distributors located in twenty-seven sales territories throughout the United States who purchase said products for resale to "O.E.M's," Government Agencies, and trade outlets for resale. Such of respondent's products as are resold by Industrial Distributors to "O.E.M's" are used by said "O.E.M's" primarily for repair and replacement purposes rather than as component units in products manufactured for resale to the general public.

PAR. 4. Respondent manufactures its products at factories located at various points within the States of Ohio, Indiana, and Georgia, from which points the products are shipped to respondent's field warehouses located in various cities and States of the United States. Said products are then either picked up by, or delivered direct to, respondent's Industrial Distributors located in the sales territories serviced by respondent's field warehouses. In some cases, respondent's products are drop shipped by respondent directly to customers of respondent's Industrial Distributors.

Respondent, therefore, is now and for many years has been selling and distributing its products to customers and purchasers thereof located in States other than the States wherein said products are manufactured, and there is now, and has been for many years, a constant current of trade in commerce, as "commerce" is defined in the Clayton Act, in the sale of said products between and among the various States of the United States and the District of Columbia. Said products are sold and distributed for use, consumption and resale within the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business in commerce as aforesaid, respondent is now and for many years last past has been discriminating in price between different purchasers of its products of like grade and quality by selling said products at higher prices to some purchasers than it sells said products to other purchasers, many of whom have been and now are competitively engaged one with the other and with the purchasers paying the higher prices in the resale and distribution of respondent's products within the United States.

PAR. 6. Included among, but not limited to, the aforesaid

discriminations in price as alleged in Paragraph Five above, are the following:

Respondent is now and for several years last past has been selling brass and steel fittings to Industrial Distributors at list prices published in its Industrial Warehouse Price Schedules. Respondent allows some Industrial Distributors volume quantity discounts from these list prices. These volume quantity discounts are unpublished, and they are available only on the single purchase of a specified number of items within a designated product line. Volume quantity discounts available on the purchase of brass fittings and steel fittings during the period of October 26, 1964, through April 30, 1967, were as follows:

Quantity	Brass fittings	Steel fittings
0–2,499 pieces in a single order.	No discount	No discount.
2,500–4,999 pieces in a single order.	5 percent volume discount.	10/10 or 19 percent volume discount.
5,000 pieces or more in a single order.	10 percent volume discount.	Same as above.
10,000 pieces or more in a single order.	Same as above	10/10/5 or 23 percent volume discount.

Volume quantity discounts effective May 1, 1967, are as follows:

Quantity	Brass fittings	Steel fittings
0–4,999 pieces in a single order.	No discount	No discount.
5,000–9,999 pieces in a single order.	5 percent volume discount.	10/10 or 19 percent volume discount.
10,000 pieces or more in a single order.	10 percent volume discount.	10/10/5 or 23 percent volume discount.

Many of respondent's Industrial Distributors competing in the resale and distribution of respondent's products with Industrial Distributors who receive the volume discounts set forth above do not receive such discounts either for the reason that they are unaware that such discounts are available or for the reason that they are unable to purchase sufficient quantities of respondent's fittings in a single order to earn such discounts.

PAR. 7. Also included among, but not limited to, the discriminations in price alleged in Paragraph Five above, were the following specific discriminations in price:

(1) For several years last past respondent has allowed some Industrial Distributors who receive the volume quantity discounts described in Paragraph Six above to add subsequent orders for fittings not themselves eligible for volume quantity discounts to an initial order for fittings so as to qualify the series of orders for volume quantity discounts. Other Industrial Distributors competing in the resale of respondent's fittings with the Industrial Distributors so favored have not been allowed to accumulate orders in the fashion described above.

(2) Respondent for several years last past has allowed some Industrial Distributors who receive the volume quantity discounts described in Paragraph Six above to purchase fittings at discounts without requiring them to purchase fittings in the quantities set forth in the volume quantity discount programs described in Paragraph Six above. Other Industrial Distributors competing in the resale and distribution of respondent's fittings with the Industrial Distributors so favored were required to purchase fittings in the quantities specified in order to receive volume quantity discounts.

(3) Respondent for several years last past has granted some Industrial Distributors discounts which were not provided for in the volume quantity discount programs described in Paragraph Six above. Other Industrial Distributors competing in the resale and distribution of respondent's fittings with the Industrial Distributors so favored have received no discounts or only those volume quantity discounts set forth in the programs described in Paragraph Six above.

(4) For several years last past respondent has allowed "special payment" terms to its Industrial Distributor in the Seattle, Washington area. These "special payment" terms call for payment to be made on the twenty-fifth of each month for shipments which were billed and invoiced two months previously. Other Industrial Distributors competing in the resale and distribution of respondent's fittings with the Industrial Distributor so favored were required to purchase in accordance with respondent's regularly published terms of sale which are "1%—10th prox./net 30 days."

(5) Commencing in 1966 respondent granted its Industrial Distributor in the Portland, Oregon area discounts which were normally available only to Original Equipment Manufacturers or "O.E.M's" purchasing respondent's fittings for use as component units in products manufactured by them for resale to the

general public. Other Industrial Distributors competing in the resale and distribution of respondent's fittings with the Industrial Distributor so favored either receive no discounts or only those discounts provided for in respondent's volume quantity discount programs described in Paragraph Six above.

PAR. 8. The effect of respondent's discriminations in price as generally alleged in Paragraphs Five and Six herein, and as more specifically alleged in Paragraph Seven herein, has been or may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent's Industrial Distributors are engaged, or to injure, destroy or prevent competition with those Industrial Distributors who receive the benefit of such discriminations in their purchases from respondent.

PAR. 9. The foregoing alleged discriminations in price made by respondent, The Weatherhead Company, are in violation of Section 2(a) of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (a) of Section 2 of the Clayton Act, as amended, 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 The Weatherhead Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 300 East 131st Street, in the city of Cleveland, State of Ohio.

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

ORDER

It is ordered, That the respondent, The Weatherhead Company, a corporation, and its officers, representatives, agents and employees, directly or though any corporate or other device, in or in connection with the sale and distribution of brass Inverted, Compression, S.A.E., Mini-Barb, Pipe, Self-Align, Knurl-On, Sermeto and Air Brake Fittings; Auto and Industrial valves; steel and stainless steel Ermeto, J.I.C. and Pipe fittings, Reusable Hose Ends, Swivel Adapters, Swage Ends, Bulk Hose and other industrial fittings or products having the same or similar application or use, in commerce, as "commerce" is defined in the amended Clayton Act do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to some purchasers at net prices higher than net prices charged any other purchaser who, in fact, competes in the resale and distribution of such products with the purchasers paying the higher net prices: *Provided, however,* That nothing herein shall be construed to prohibit the respondent from selling to industrial distributors on uniform terms and conditions of sale disclosed and made available to all such distributors, who in fact compete in the resale and distribution thereof, products not regularly maintained by such distributors in inventory if such products are custom made, custom fabricated or custom assembled from components to substantially conform to the specifications or requirements of the user-purchaser.

It is further ordered, That if respondent at any time after the effective date of this Order utilizes a discount program in connection with its sale of industrial fittings or products having the same or similar application or use it shall affirmatively notify all purchasers engaged in the resale and distribution of those products in writing of the details, including available discounts, of any such discount program.

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

FEDERAL CONSTRUCTION COMPANY, INC., ET AL.

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

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

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

COMPLAINT

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

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

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