

Complaint

63 F.T.C.

decision was stayed by the Commission's order of August 19, 1963; and

The Commission now having considered the matter and determined that the initial decision should be modified:

It is ordered, That the initial decision be modified by striking therefrom paragraphs 49 to 53 on pages 1136 and 1137 and substituting therefor the following:

49. The proof in the record is insufficient to sustain the allegations of the complaint.

It is further ordered, That the initial decision as modified be, and it hereby is, adopted as the decision of the Commission.

By the Commission. Commissioner Elman, being of the opinion that the case should not be placed on the Commission's own docket for review, concurs in the result.

IN THE MATTER OF

GADGET-OF-THE-MONTH CLUB, INC., ET AL.

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

Docket 7905. Complaint, May 20, 1960—Decision, Nov. 6, 1963

Order requiring a purported association and its promoters in North Hollywood, Calif., engaged in selling memberships and other ancillary services for members, including the evaluation of inventions (or "submissions") and the preparation of patent applications therefor, to cease—in lectures, through personal appearances on television and radio, promotional articles in newspapers and magazines, form letters and other promotional literature—use of numerous designations as to purported departments, functionaries and offices to create a false impression as to their nature and size and the benefits to be derived from membership; and making a variety of other false representations such as liaison with manufacturers, evaluation of members' submissions by an impartial body of experts, matching of members' cash outlays toward patenting submissions and otherwise underwriting the expense involved, maintenance of their own large patent department including a branch office in Washington, D. C., and their recognition as experts in the field of commercializing inventions by various associations of inventors and manufacturers.

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 Gadget-of-the-

Month Club, Inc., a corporation, and Don L. Davis and Mary Lou Moffitt Davis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gadget-of-the-Month Club, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 11032 Magnolia Boulevard, North Hollywood, California. Respondents Don L. Davis and Mary Lou Moffitt Davis are President and Secretary-Treasurer, respectively, of corporate respondent. These individuals formulate, direct and control the policies, acts and practices of said corporation. The business address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of selling memberships in a purported association or organization owned and controlled by them and designated Gadget-of-the-Month Club, or "GMC", to members of the purchasing public located in various States of the United States and in various foreign countries. In the course and conduct of such business, respondents further offer for sale and sell certain other ancillary services for members of GMC, including the evaluation of members' inventions, hereinafter sometimes referred to as "submissions", and in preparing, or assisting their members in the preparation of, applications and other documents pertaining to the granting of letters patent on such submissions, by the United States Patent Office.

PAR. 3. The annual fee for membership in GMC has varied from time to time and is now \$20. The registration fee for each submission by a member is now \$5. With each submission the member must execute an instrument granting GMC an exclusive option, if it accepts and approves the submission, to represent the member in all matters relating to the invention, and further granting GMC a share of any royalties resulting from the commercial exploitation thereof. Respondents also require that membership be renewed or maintained upon their acceptance and approval of a submission until commercial exploitation has been achieved or, in some instances, until attempts to procure a patent thereon have been abandoned. Respondents also prepare and send without additional charge to their active members, and sell or distribute to non-members, certain publications containing

articles of possible interest to inventors, including, but not necessarily limited to, a publication entitled "Inventor and Gadgeteer Newsletter".

PAR. 4. In the course and conduct of their business, advertising matter, contracts, publications, letters, checks, and other written or printed instruments and communications, including, but not limited to, legal documents prepared for the membership by or through respondents relating to the application and filing for the grant of letters patent by the United States Patent Office, models of inventions and drawings of inventions, and "progress reports" purporting to advise the members from time to time as to the status and prospects of their said applications, are, and have been, sent and received between respondents located in the State of California and members of the public located in various other States of the United States and in foreign countries. As a result of such transmission and receipt of said written or printed instruments, communications and other materials, respondents are, and have been, engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of the aforesaid business conducted by respondents has been, and is, substantial.

PAR. 5. Respondents' method of attracting the attention of the purchasing public to the fact of the existence of GMC, and to the manner in which it purports to be of service to the members thereof, is through the frequent appearance of one of the aforesaid officers of corporate respondent as a guest lecturer or entertainer before varied types of audiences; through personal appearances on television and radio; and through promotional articles in newspapers, magazines or other publications.

When inquiries from the public regarding GMC are received, respondents send various form letters, applications for membership, and pieces of promotional literature which purport to describe and explain the functions and services performed by GMC for the membership and the terms and conditions of membership. Other promotional literature is sent from time to time to the membership to induce them to maintain or renew their membership and to submit their ideas or inventions, together with registration fees, to respondents. On occasion, respondents or their employees have made oral statements to members or to prospective members of GMC, during which reference was made to GMC and its functions.

PAR. 6. Among and typical, but not necessarily limited to, the statements set forth in the form letters and other promotional

1138

Complaint

material sent by respondents to members of the purchasing public, are the following:

(a) (signature) . . Chief, New Products Division; (signature) . . Director, Public Relations; (signature) . . Director, Membership Relations; (signature) . . Manufacturer's Service Division; (signature) . . Correspondence Coordinator; G.M.C. Board of Directors; Patent Department; Licensing Division; Patent Drafting Dept.; Chief of GMC's Washington Bureau; Technical Service Division; Manufacturers Licensing Division; Director of Operations; Executive Vice President.

(b) * * * Because manufacturers * * * are constantly communicating with GMC for new ideas * * * GMC acts as a screening agency for manufacturers * * * GMC works closely with prospective manufacturers * * *

(c) Accordingly GMC has been authorized by its Gadget Jury * * *. The Gadget Jury has recommended * * * Careful review and evaluation of your invention by the Gadget Jury finds that the submission meets GMC requirements. Accordingly, the Jury has voted * * *. Formal Gadget Jury Action * * * A Gadget Jury approval means that the * * * submission has been thoroughly evaluated and tested by the experts and found to be * * * possessing of strong commercial potential * * *

(d) GMC will pay * * * 50% of all patent costs * * *. In return for this, GMC requires that you pay it 10% of all money you receive from your patent. GMC is now offering financial assistance * * * by advancing up to one-half of the cost of the patent * * * GMC has an investment in your invention * * * GMC's participation in underwriting and advancing one-half of all patent preparation costs * * *

(e) * * * the Search Dispatch is then sent to GMC's Washington Bureau * * * and signed for only by the Chief of GMC's Washington Bureau * * * The Washington Search Report is then routed to GMC's patent experts * * * the report of GMC's patent experts is then routed to other major departments of GMC * * *

(f) GMC will pay * * * 100% of all promotion, publicity and exploitation costs * * *. Wherever and whenever possible, publicity through radio, television, newspapers and national magazines will be obtained * * *. Publicity services prepared by experts cost business organizations from \$300 to \$1,000 a month * * *. GMC's publicity service for its members is paid for by GMC * * *

(g) National Network of Manufacturers Representatives have just renewed their two-year agreement with GMC as their exclusive new product screening and evaluation consultants * * * GMC officials huddled with top executives of the National Association of Mail Order Companies * * * By special exclusive reciprocal arrangement, Inventor-Members of GMC are granted Associate Membership in: INVENTION INDUSTRY ASSOCIATION, INTERNATIONAL FEDERATION OF INVENTORS, ACADEMY OF INVENTION ARTS AND SCIENCES, NATIONAL ASSOCIATION OF INVENTORS * * * (the above is a partial list of organizations set forth on the GMC membership card).

PAR. 7. Through the use of the aforesaid statements, and others of the same import and meaning, including statements made orally

Complaint

63 F.T.C.

by respondents, not set forth specifically herein, respondents have represented, directly or by implication:

(a) That their size, volume of business, capabilities, and the nature and extent of the services respondents perform for GMC members are such that the various designated departments and offices are bona fide organizational units or specialized divisions or functionaries of GMC.

(b) That GMC has and maintains such constant and extensive liaison with manufacturers as will assure the commercial exploitation of accepted submissions by such manufacturers, and to the pecuniary benefit of the members.

(c) That submissions by members will be objectively evaluated by an impartial body of experts in such fields as patenting, manufacturing, promoting and marketing and will be approved for acceptance by GMC only if there is a realistic prospect for the commercial exploitation of such submission by a manufacturer and to the pecuniary benefit of the member.

(d) That GMC makes a special and distinct cash outlay to match the contribution of the member toward the direct costs of patenting a submission, exclusive of the official filing fees which are to be borne entirely by the member.

(e) That GMC maintains a large departmentalized patent department, which includes a branch office in Washington, D.C., as a service to its members in getting their submissions patented.

(f) That GMC will underwrite the expense of paid advertising in all necessary forms of media in order to achieve the individual commercial exploitation of an accepted submission.

(g) That various bona fide, distinct organizations or associations of inventors or manufacturers have recognized GMC as expert in its field of commercializing inventions and that such groups and organizations accord privileges and prestige to GMC members or may be instrumental in achieving the commercial exploitation of inventions or ideas of the membership.

PAR. 8. Said statements and representations were and are false, misleading and deceptive. In truth and in fact:

(a) The use of the numerous designations as to purported departments, functionaries and offices of GMC are used by respondents to create a false impression as to the nature and size of GMC and as to the benefits to be derived from membership therein. Furthermore, such are not justified by respondents' size, volume of business, or capabilities; nor by the number or type of respondents'

1138

Complaint

employees; nor by the nature of the work they perform for the members.

(b) Respondents neither have nor maintain any such degree of liaison with manufacturers as will assure the commercial exploitation of accepted submissions but, on the contrary, primarily attempt to interest certain manufacturers into paying a fee to respondents for locating or providing access to patented items with a commercial potential. Furthermore, such contracts as respondents have been able to develop have not resulted in the commercial exploitation, by such manufacturers, of accepted and approved submissions to the member's pecuniary benefit, in any appreciable number of instances, if at all.

(c) In the main, the submissions are approved by one of the officers of respondent corporation, sometimes assisted by one or more of respondents' employees, and not by an impartial body of experts; and whether there is or is not a realistic prospect for its commercial exploitation by a manufacturer. In most, if not all instances, such procedure has merely resulted in the payment to respondents of registration fees by the members with each submission, and is used to deter members from letting their memberships lapse since payment of the annual membership fee is required in order to keep the submission under purported consideration by GMC for commercial exploitation by manufacturers. Few, if any, of the submissions by the members have been commercially exploited by a manufacturer to the member's pecuniary benefit.

(d) Respondents make no special cash outlay for, and do not match, the financial investment of the members in the direct cost of patenting a submission. To the contrary, the member's contribution normally covers the entire estimated direct cost of patenting, whereas respondents merely absorb the indirect costs incidental to preparation of documents for procuring a patent, out of their usual general overhead expenses in the operation of their business, and, furthermore, some of respondents' contracts with members provide for the recouping of amounts out of first royalties, in the event of commercial exploitation, to cover such expenditures by respondents.

(e) Much of the routine work in connection with applying for patents on the submissions of GMC members is performed by one of respondents' employees at their only office, or is done for respondents by outside firms on a contract basis.

Complaint

63 F.T.C.

Patent searches at the U.S. Patent Office are performed for respondents, when necessary, by an outside firm located in Washington, D.C. Respondents have no branch or regional offices.

(f) Respondents' promotional efforts for accepted submissions are frequently limited to prepared releases sent to newspapers in the member's locality, with no assurance of publication and with little realistic prospect that such, if published, would result in the commercial exploitation of such submission by prospective manufacturers. Furthermore, such prepared releases, if published, are designed by respondents to give additional publicity to GMC and to promote additional paid memberships therein.

(g) The various organizations and associations referred to by respondents are not bona fide or distinct groups or associations of inventors or manufacturers but are, to the contrary, the creatures of respondents or are subject to their domination or control. Accordingly, no realistic or valuable privileges or prestige results to GMC members by virtue of any purported recognition of GMC by such groups or associations, nor does the member have any additional opportunity for the commercial exploitation of his submission by virtue of such recognition by such organization or associations.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale of services to inventors, and in the sale and distribution of publications of interest to inventors, of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive 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 a substantial number of memberships in respondents' said Gadget-of-the-Month Club; into the renewal of paid memberships therein; into the payment of a substantial number of registration and other fees to respondents; and into the granting of substantial rights or interests, actual or prospective, and other forms of remuneration to respondents, by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

1138

Findings

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. John J. McNally and *Mr. Dennis D. McFeely* for the Commission.

Mrs. Mary Lou Moffitt Davis, Hollywood, Calif., for herself and the other respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND PROPOSED ORDER*

JULY 31, 1963

The Federal Trade Commission issued its complaint against the above-named respondents on May 20, 1960, charging them with violating Section 5 of the Federal Trade Commission Act by means of a system of form letters and other promotional material distributed through the United States mails. The respondents are alleged to have deceived and misled the recipients of such communications as to Gadget-of-the-Month Club's size and internal organizational structure; its use of an impartial body of experts to objectively evaluate the commercial potential of inventions submitted; and their ability and capacity to achieve commercial success for inventions through contracts and association with manufacturers and others who would pay royalties to obtain the "Club members" discoveries.

In an initial decision filed July 13, 1962, the hearing examiner, although finding that the charges of the complaint had been sustained, ordered the complaint dismissed.

Counsel supporting the complaint filed an appeal from said initial decision and the Commission, after considering said appeal and the entire record, has determined that the appeal should be granted and that the initial decision should be set aside. The Commission now makes these findings as to the facts, conclusions drawn therefrom, and order to cease and desist, which, together with the accompanying opinion, shall be in lieu of the findings, conclusions and order contained in the initial decision.

*Proposed Final Order is omitted in printing since it was adopted as the Final Order of this Commission.

FINDINGS AS TO THE FACTS

1. Respondent Gadget-of-the-Month Club, also known as GMC, is a corporation organized under the laws of the State of California, with its principal office located in Los Angeles, California. The respondent corporation is currently operating and there is nothing contained in the record which indicates that it will be dissolved or that it will not continue to be a functioning entity.

2. Respondent Mary Lou Moffitt Davis is the president and majority stockholder of the respondent corporation and is and has been active in the day-to-day operations and management of the corporate respondent. Respondent, the late, Don L. Davis of whose death subsequent to the rendering of the initial decision we have been informed, was the president and a stockholder of the respondent corporation prior to his death.

3. By means of the use of the United States mails, in the course and conduct of their activities, respondents have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. GMC, according to a membership application it has used, describes itself as "the greatest gadget-gathering organization in the world, whose sole and exclusive business is the discovery, development, licensing, sampling, merchandising and marketing of new products of every nature, kind and description." (Commission Exhibit 4.)

5. GMC did no advertising in the formal sense but came to the attention of those who had dealings with it largely through the activities of Davis. He had made radio and television appearances extolling the vast sums of money waiting for those who could come up with the right gadgets. Several magazine articles had appeared concerning Davis and the Club's activities. He also did professional lecturing while traveling in different states, speaking before social and fraternal organizations. During these appearances no attempt was made to hide his affiliation with GMC. (Transcript 1259.) He was often introduced as its president or founder or chairman of the board; in his lectures, Davis would refer to the Club by way of introducing himself.

6. Persons who already were members were encouraged to bring in new members by the offer of prizes and awards. (Commission Exhibit 145.) In one instance, Davis took part in an inventor's show at which a booth was set up with signs that informed people that a drawing would be held, and all they need do to be eligible to

win was to fill in their name and address on a card and deposit it. In reality, all this was just another means for obtaining more prospects for Club membership. (Commission Exhibit 124.) Persons who had been members under a method of operation employed prior to 1955 were encouraged not to drop their memberships, but to continue under the Club's new method of operation. Davis' preoccupation with the subject of invention and gadgets was such as to cause him to use a business card identifying himself solely as "Mr. Gadgets." (Commission Exhibit 118.)

7. Once the initial contact was made the prospect would write a letter of inquiry to the Club or the Club would follow up on someone who had expressed some interest. There then would begin to flow a series of form letters between GMC and the member.

8. Applications for memberships were invariably accepted, the annual membership fee being \$20. The next step was the submission of an invention or gadget. In making his submission, the member was required to fill out a printed form, which was in effect a contract. (Commission Exhibit 5.) One clause, particularly relevant to the Club's operation, recited:

I * * * hereby give to GMC, Inc. in consideration of its expenditures of professional efforts, time, labor, funds and facilities in behalf of my invention without charges for such specialized services to me at this time, the exclusive option to my invention. If, as and when my product is accepted by GMC, Inc., I hereby give to them the exclusive right to represent me in all matters relating to my invention for the life of the patent or seventeen years, and agree to refer anyone interested in my invention to GMC, Inc.

No submission would be accepted without the completion of this contract form (Commission Exhibit 20) which also stated that, "I understand that my only financial obligation to GMC for its services in connection with the sale or license of my invention is the payment of 10% of the consideration I receive * * *." (Commission Exhibit 5.)

9. Once a submission had been received a form letter labeled a "Progress Report" informed the member that, "It is the majority opinion of the Gadget Jury that your submission has merit, has interesting possibilities, and warrants further consideration by GMC." (Commission Exhibits 65, 66; Respondents' Exhibits 23, 24.) There is testimony in the record that Davis told members that the Gadget Jury was composed of manufacturers, engineers, and other similar impartial experts who would objectively evaluate the merit of their submissions. The Gadget Jury was represented as being completely outside Davis' control in making its determinations. (Transcript

307-308.) However, Davis in his own testimony makes it perfectly clear that the jury never formally met; that he himself as the "foremost expert in the country on new ideas" looked the submission over; at times Mrs. Davis or someone else in the organization would be asked for an opinion, but nobody was ever engaged as an impartial technical consultant and requested to give an expert opinion. (Transcript 1486.) Mrs. Davis admitted that no written record was ever made of the determinations and decisions of this Gadget Jury. (Transcript 448.)

The record shows that the Gadget Jury was no more than Don L. Davis himself, who occasionally might request some special advice from some business contact. (Transcript 427-429.) However, in the sense that it had been represented to and understood by members, the Gadget Jury simply did not exist.

10. The form letter that brought the news that the Gadget Jury was of a favorable attitude also stated that, "This report must of necessity be a preliminary report at this time, because of the need of determining the patentability of your invention * * *. Accordingly, you are hereby requested to have a patent search made immediately * * *. P.S. If you wish to order the patent search thru GMC facilities at the special rate of \$15, please advise * * *. Patent Attorneys generally run from \$60. on up. Thus your GMC affiliation saves you \$45 or more in patent search costs alone." (Respondents' Exhibit 23; see also Respondents' Exhibit 24; Commission Exhibits 67, 68.)

Members took advantage of this "bargain rate" when they were advised by a letter signed "Don L. Davis, Chairman of the Gadget Jury," that, "It is suggested that you authorize a patent search at once to determine the patentability of your submission." (Commission Exhibit 76.) It is relevant in connection with the patent search to point out that the Club in its letters represented that it had a Technical Services Division (Commission Exhibits 98, pp. 28, 31; 108, p. 22; Respondents' Exhibit 25), a Patent Department (Commission Exhibits 29, 79), and a Washington, D.C., bureau or office (Commission Exhibits 28, p. 2; 29; 108, p. 22).

11. Upon receiving authorization and the fee for the search, a form letter was sent to the member advising him:

This is what happens when you authorize a Patent Search on your invention:

1. GMC's New Product Division sends your complete file to GMC's Patent Department for checking.

2. The Patent Dept. checks your file and prepares a special Search Dispatch * * *.

* * * * *

1188

Findings

4. A FINAL CHECK-OUT is made by the Technical Services Division to make certain that the SEARCH DISPATCH is in order and complete.

5. The Search Dispatch is then sent to GMC's Washington Bureau * * *.

6. The Search Dispatch is received and signed for ONLY by the Chief of GMC's Washington Bureau, who personally checks out and studies EACH and every individual search * * *.

7. The Chief of GMC's Washington Bureau then assigns each search to a member of his staff, briefs them on the invention and guides the investigation.

8. Each service is then individually reported on by the staff member to the Chief.

9. The Chief of the Washington Bureau, after carefully studying each report prepares a confidential report to GMC * * *. (Commission Exhibits 29, 150-B.)

All this was designed to create the impression that the Club maintained a full time staff of patent and technical experts. However, the record is clear that the fact was otherwise. Mrs. Davis testified that the patent searches ordered by members were carried out by firms who did such work on a fee basis for the Club, or anyone else who engaged their services. GMC never had a Washington Bureau, a Technical Services Department or a Patent Department. The patent searches were not ordered to be done on an individual basis; GMC waited until it had several authorizations from members; then it would forward them as a group to its contact in Washington, D.C. (Transcript 420-425.)

12. An examination of the many form letters and documents in the record that emanated from the Club leaves no doubt that they were designed to create the impression that GMC was a very large, multi-department organization, each with an individual designation and a sizable staff. (Commission Exhibit 26 "Membership Department"; *Id.* 44 "New Products Division"; *Id.* 45 "Manufacturers Service Division"; *Id.* 94, p. 6 "Public Relations Department"; *Id.* 111, p. 17 "Manufacturers Liaison"; Respondents' Exhibit 17-A "Research and Development Division"; *Id.* 17-B "Director of Client Relations".)

13. In one newsletter members were advised that GMC was comprised of 37 divisions and that they should "look for GMC to open a series of offices in Great Britain, Germany, France and Italy in 1958-59." (Commission Exhibit 156.) The Club's Los Angeles office was constantly referred to as its "world headquarters." (Commission Exhibits 4; 100, p. 21.) GMC's form letters were signed by different names, each purporting to be the head of the particular department from which the letter came. All this was designed to lead members to believe that many persons were serving their interests at GMC.

The record is quite clear as to the actual facts concerning GMC's internal organization and operations. Mrs. Davis testified that since

Findings

63 F.T.C.

January 1, 1955, the Club has had only one to five employees at any given time. (Transcript 42-43.) One member stated that on a visit to Club headquarters he inquired after several of the persons who had signed letters that he had been receiving, only to be told that they were out of town; the only people he saw on his visit were Mr. and Mrs. Davis. (Transcript 681-682.)

Mrs. Davis testified that once a name had been established as being associated with a particular department, that name would continue to appear on all form letters purportedly sent by that department whether or not the name represented a GMC employee and whether or not the name even represented a living person. (Transcript 417-418.) Davis admitted that this method of conducting correspondence was his idea. (Transcript 1353.)

14. The next step in GMC's operation after the patent search was to notify the inventor that the Gadget Jury "has voted to approve the submission and has recommended that GMC elect to pick up its option and continue its efforts in behalf of the invention until it has been successfully commercialized." (Commission Exhibits 37; 39, p. 1; 99, p. 6.)

The Club then recommended that patent protection be applied for by the inventor, if this had not already been done. GMC represented that it would underwrite one-half the costs of preparing the patent applications. (Commission Exhibits 25, 31, 72, 79; Respondents' Exhibits 27, 28-A.) This was one of the things the Club had stressed as a chief advantage of membership in its original letters to prospective members. (Commission Exhibits 1, 2.)

15. To get the benefit of the Club's financial help in preparing the patent application, another form contract had to be executed (Respondents' Exhibits 28-B, 28-C; Commission Exhibit 50 is an earlier version of the same form.) To make clear this phase of the Club's operation some of the provisions of this contract are reproduced here:

[I]t has been deemed advisable that the preparation and filing of a Utility Patent Application is desirable in order to protect my invention and to further the progress of the device towards attempted commercialization.

* * * * *

Progress Reports received from GMC advise me that we have arrived at the point in the processing of my invention where it is necessary to attempt to obtain patent protection. In order to expedite this phase of my invention, I hereby unconditionally agree to the following terms and conditions:

(1) To expedite the preparation, filing and prosecution of my patent application, I hereby assign to GMC all of my rights in my invention with the specific understanding that this shall in no way interfere, alter, change or modify our existing basic agreement which provides for me to receive ninety percent

1138

Findings

of all royalty revenue produced by the patent and GMC to receive ten percent of all royalty revenue produced by the patent.

(2) I agree to pay the sum of only \$— to GMC in connection with the preparation of the initial patent application, * * * I agree that the full amount will be paid before the completed patent application is sent to me for approval and signature. I understand that GMC will pay all costs in excess of \$—, in connection with the preparation of the initial patent application.

(3) I agree to pay to the U. S. Patent Office the official Filing Fee of \$30.00 at the time my patent application is filed. Additionally, if, as and when my patent application is allowed, I agree to pay to the U.S. Patent Office the final filing fee of \$30.00. I understand that these fees are paid directly to the U. S. Patent Office and that GMC will notify me when they are due and payable.

* * * * *

(6) I further agree that for GMC management services, technical and research assistance, and other valuable considerations given to me by GMC in connection with the appraisal, protection, promotion, exploitation and commercialization activities in behalf of my invention, I will pay and do by these present assign to GMC the first \$— payable as royalties when, as and if my invention is licensed, sold or conveyed in any manner whereby royalties and/or revenue are received * * *. Thereafter, GMC shall receive only ten percent of the royalty revenue as per my original submission agreement, unless otherwise mutually agreed upon in writing.

(7) It is mutually agreed that all costs of any nature, kind or description relating to and incurred by GMC for the purpose of the sale, exploitation, licensing or promotion of my invention shall be paid for solely by GMC.

(8) It is mutually agreed that in addition to the specific charges hereinabove detailed, my only obligation to GMC in connection with my invention shall be to remain an Inventor-Client in good standing for the life of this agreement, which shall run concurrently with the life of any and all patents issued on this invention and/or its modifications or improvements." [Respondents' Exhibits 28B, 28C which bear the date 1960 and have the word "Member" eradicated and the word "Client" superimposed over it. The earlier version, Commission Exhibit 50, reads "Inventor-Member." It is noted that complaint issued against the respondents on May 20, 1960.]

The preparation of the patent applications was handled in the same manner as the patent searches already described. Transcript 425.)

The representation that the Club would pay 50 percent of the costs of preparing patent applications was a prime consideration in the minds of those who contemplated membership. GMC fully realized this for it reminded members who did not renew their annual memberships that "GMC regulations require that all members, who have inventions accepted on which GMC has advanced one-half of the patent costs, must be paid-up members in good standing." (Commission Exhibit 25; see also Commission Exhibits 3, 26.) One witness testified that he got the impression that if a membership was allowed to lapse, all inventions that had been submitted would be forfeited. (Transcript 631.)

Findings

63 F.T.C.

17. Respondents submitted, during the course of the investigation of this case, a detailed statement of the amounts expended by the Club in three cases involving preparation of patent applications. (Commission Exhibit 119, pp. 1, 2.) A careful examination of these figures shows that the expenses covered by the Club were no more than clerical, administrative and mailing items that normally would be considered general office expenses.

The Club's alleged 50 percent contribution was arrived at by the respondents calculating their total costs of preparing the patent applications, allowing themselves a profit margin in so doing. This amount was then doubled and the member billed for half of the greater figure, the member being told the Club was absorbing the other half. Paragraph (6) of the contract contained a provision that the member agreed to pay all of his first royalties to the Club up to a certain amount; only thereafter would the Club get 10 percent as its commission. In testifying how the amount inserted in Paragraph (6) was arrived at, Mrs. Davis stated that it would be equal to the figure which was indicated in Paragraph (2) as the Club's contribution. (Transcript 1022.) Thus, the inventor was obligated to repay GMC its contribution, which in fact had never been expended, before he realized a penny by way of royalties. The respondents' representations were that GMC would bear all costs of promotion, publicity and commercial exploitation (Commission Exhibit 1); but Paragraph (6) of the contract recites these considerations as those for which the member assigns all his first royalties; thus what was represented to be free carried a high price tag.

18. In connection with its representations that GMC would assure members financial success by bringing their inventions to the attention of manufacturers, the Club attempted to gain additional revenue from manufacturers while purporting to be operating solely in the interests of its inventor-members. A manufacturer was required to pay a \$50 annual registration fee in order to become an "Associate Manufacturer Client"; this would entitle him to receive periodic reports of inventions members had submitted to GMC. (Commission Exhibit 112, p. 4.) Sometimes the manufacturer was told that "We believe that it is only fair to advise you that our principal business is screening new products of every nature, kind and description for manufacturers. Accordingly, there is a small service charge to cover our costs to compile and forward this information to you. Additionally, if we should be successful in submitting a new product that meets your approval, there is a finder's fee for our efforts. This fee is negotiable depending upon the individual circumstances." (Commission Exhibit 111, p. 10; see also *Id.* 111, p. 6.) Inventors were

never informed that the Club derived additional income from manufacturers. (Transcript 1300.)

The preeminent motivating factor leading an inventor to join GMC was the expectation of commercial success to be brought about by the Club being able to interest manufacturers in the inventions submitted. (See testimony of former Club members, Transcript 544, 594-B, 621, 649.) However, Mrs. Davis testified that it was the Club's position that GMC's total obligation was fulfilled as soon as the completed patent application was delivered to the member ready for filing in the Patent Office. (Transcript 1077, 1079.)

19. One of the Club's form letters that went out to members who had submissions pending stated that "the Manufacturers Licensing Division of GMC has your invention under sustained study and has presented the invention to a number of manufacturers, some of whom have indicated interest." (Commission Exhibit 39, p. 1; see also *Id.* 41, 42.) When members wrote to the Club inquiring as to the status of submissions, a form letter advised:

It is important to point out to you at this time that the task of licensing your submission is an expensive procedure. It requires countless man-hours in presentations, explanations, negotiations, to say nothing of the attendant expenses, which are substantial. It has been estimated that GMC's cost of obtaining a commitment from a manufacturer averages from two to five times the cost of obtaining patent protection. This cost is paid solely by GMC; not by the inventor * * *.

We are working conscientiously on your invention; *we will continue to do so, at our expense, until we succeed!* All we ask of you is patience and to keep your GMC membership on a current basis * * *. (Emphasis added.) (Commission Exhibit 57.)

20. Although GMC frequently advised members that, "As you know, nothing is ever going to happen to your invention unless we make it or cause it to happen." (Respondents' Exhibit 16.) Respondents nevertheless urged members to use their own efforts and contacts to secure manufacturing commitments. (Commission Exhibit 43.) In those cases in which an inventor did succeed in interesting a manufacturer, the Club demanded that it be compensated for the interest claimed in the invention before it would permit any agreement to be negotiated directly between the inventor and the manufacturer. Davis testified that once a submission was made, GMC became partners with the inventor. (Transcript 1311.)

21. The record is clear that GMC was not successful in achieving commercialization of a member's invention. There was only one instance of a licensing agreement signed by a manufacturer and in that case the respondents managed to convince the inventor that they had rendered such an extraordinary effort that the member agreed

Opinion

63 F.T.C.

that the Club's commission should be raised to 20 percent. (Commission Exhibit 107, pp. 20, 24.) Mrs. Davis testified that she was unable to state that any manufacturer had ever licensed an invention, ultimately produced it or paid a royalty. (Transcript 1065.) Davis, himself, admitted that the Club had not been successful in achieving licensing agreements for its members. (Transcript 1825.)

22. GMC informed its members that several allegedly bona fide organizations or associations of inventors or manufacturers bearing names such as "National Association of Mail Order Companies," "International Federation of Inventors" and "National Network of Manufacturers Representatives" recognized the Club as expert in the field of commercialization of inventions and that such groups and organizations accord membership privileges and other favors to GMC members and that they may be instrumental in achieving commercial exploitation of submissions. The record is clear that these groups existed in name only, having been created by Davis who was their head or executive director. They had no independence of Davis and seemed only to further the deception perpetrated by the Club upon its members.

23. The acts and practices of the respondents, as hereinabove set forth, have had and now have the tendency and capacity to mislead and deceive members of the public.

CONCLUSIONS

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents. The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

OPINION OF THE COMMISSION

JULY 31, 1963

By ANDERSON, *Commissioner*:

The complaint in this case charging violations of Section 5 of the Federal Trade Commission Act, 38 Stat. 717 (1914), as amended, 52 Stat. 111 (1938), 15 U.S.C. § 45 (1958), was dismissed by the hearing examiner on the ground that the " * * practices are *de minimis* and respondents' activities in commerce long prior to the complaint have been, and now are, so insubstantial that this proceeding is dismissed for lack of public interest." The matter is now before us for consideration of complaint counsel's appeal from the

hearing examiner's initial decision. Rules of Practice §§ 4.20, 4.21, 4.22; 16 CFR. §§ 4.20, 4.21, 4.22 (Supp. 1963).

Respondent Gadget-of-the-Month Club, also known as GMC, is a California corporation, of which respondents the late Don L. Davis was and Mary Lou Moffitt Davis is a corporate officer and stockholder. GMC, according to a membership application it has used, describes itself as "the greatest gadget-gathering organization in the world, whose sole and exclusive business is the discovery, development, licensing, sampling, merchandising and marketing of new products of every nature, kind and description!"

Prior to 1955, GMC operated under a somewhat different format, but one which was much more literally described by the Club's name, *i.e.*, the selling of gadgets to members on a subscription basis. These activities caused the respondents to run afoul of the Federal Trade Commission Act with the result that a cease and desist order was entered by consent. *Gadget-of-the-Month Club, Inc.*, 52 F.T.C. 225 (1955). Subsequent to this order, GMC's sole declared function was to help inventors capitalize on their ideas.

The represented basic aim of the Club after 1955 was to cause inventors and people who had an idea for a gadget to become members with the ultimate goal being successful commercialization of their creations. In broad outline GMC was supposed to function as follows:

Upon payment of an Inventor-Membership fee of \$20, the member became entitled to submit as many inventions as he wished provided that each such "submission" was accompanied by a \$5 registration fee. The submission was then to be passed upon by the Club's impartial panel of experts, "The Gadget Jury," who were to render an objective opinion as to its commercial potential. If the invention was deemed to be of merit, then the Club was to get manufacturers interested in either using it or producing it for the market. As compensation for bringing inventor and manufacturer together, the Club was to receive 10 percent of the gross royalties received by the member.

The complaint alleges that by means of a system of form letters and other promotional material mailed to members and prospective members, the respondents have violated Section 5 by making representations that deceived and misled those to whom they were directed as to GMC's size and internal organizational structure; its use of an impartial body of experts to objectively evaluate the commercial potential of inventions submitted; and their ability and capacity to achieve commercial success for inventions through contacts and asso-

ciation with manufacturers and others who would pay royalties to obtain the rights to members' discoveries.

It is further alleged that the respondents made these representations to encourage the submission of applications for membership which required payment of the annual fee; and the submission of inventions, with the required registration fee; that members were encouraged to authorize patent searches to be instituted by the Club in connection with their invention submissions, which were conducted in a manner other than as represented; and that the Club falsely stated that they would put up half the cost of procuring patent protection and achieving the successful exploitation of members' inventions.

Counsel supporting the complaint in his brief argues that the hearing examiner erred in dismissing the complaint for lack of public interest, although the initial decision is quite clear that there has been a violation of the Act. Although respondents have not filed a cross-appeal, they have at all stages of these proceedings, including their appeal brief, made a two-pronged attack upon our jurisdiction, which we feel requires some discussion on our part.

Respondents urge first that GMC never engaged in "commerce" as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44 (1958), and additionally that all they ever did was to render "services" to those who engaged them. To convince us of this latter claim, respondents' correspondence forms were changed so that "inventor-members" became "inventor-clients", and "manufacturer-members" became "manufacturer-clients". The good faith of these changes in nomenclature is subject to doubt on our part since, as the hearing examiner points out, they were not instituted until four months after complaint had issued.

Over a half century has now expired since the Supreme Court of the United States first took the position that "[W]e cannot doubt that intercourse or communication between persons in different States, by means of correspondence through the mails, is commerce among the States within the meaning of the Constitution especially where, as here, such intercourse and communication really relates to matters of regular, continuous business and to the making of contracts and the transportation of books, papers, etc., appertaining to such business." *International Textbook Co. v. Pigg*, 217 U.S. 91, 107 (1910). The scope of federal power to regulate interstate commerce will never be such as to make it an easy matter to formulate and expound nice compact definitions into which all cases fit. See *United States v. South-Eastern Underwriters Association*, 322 U.S.

533, 550-551 (1944). In an economy such as ours with businessmen free to follow the dictates of their own ideas it is sure that new commercial practices unlike any that were known before are bound to make their presence felt. It is for just such unknown eventualities that the commerce power must be comprehensive enough to fit any new situation as it arises. *United States v. South-Eastern Underwriters Association*, *supra* at 551; *Wickard v. Filburn*, 317 U.S. 111, 120 (1942).

There is no question but that, "Interstate communication of a business nature, whatever the means of such communication is interstate commerce regulable by Congress under the Constitution." *Associated Press v. NLRB*, 301 U.S. 103, 128 (1937). In any case where, as here, "the mails and the instrumentalities of interstate commerce are vital to the functioning * * *" of a business enterprise, there can be no doubt of our jurisdiction under the Act. *North American Co. v. SEC*, 327 U.S. 686, 694-695 (1946).

In *Progress Tailoring Co. v. Federal Trade Commission*, 153 F. 2d 103 (7th Cir. 1946), circulars were sent by mail falsely representing that free clothing would be given to salesmen who accepted employment with the respondent. Our finding of jurisdiction was sustained, the court holding that the passage of information from one state to another was a transaction in interstate commerce. 153 F. 2d at 105. See also *Federal Trade Commission v. Civil Service Training Bureau*, 79 F. 2d 113, 114 (6th Cir. 1935). *Bernstein v. Federal Trade Commission*, 200 F. 2d 404 (9th Cir. 1952), involved a respondent in the business of seeking out absconding debtors. Solicitors traveled in several States seeking to get creditors to execute a contract assigning past due accounts for collection. These contracts were mailed to the respondent, who then used the mails to locate the defaulting debtors. The court had no trouble in reaching the conclusion that, "* * * The [respondent] regularly uses the channels of interstate communication. His activities, while not trade in the ordinary sense, are a species of commerce and constitute commerce within the meaning of that term as used in the Constitution and in the Federal Trade Commission Act." 200 F. 2d at 405. See *Rothschild v. Federal Trade Commission*, 200 F. 2d 39, 42 (7th Cir. 1952), *cert denied*, 345 U.S. 941 (1953), recognizing our jurisdiction when the mails are used as a conduit for deception.

The argument that all GMC was doing was rendering "services" has been urged upon this Commission many times. We rejected it in the case of physicians who maintained they were engaged only in the practice of medicine, *Frontier Asthma Company, Inc.*, 43 F.T.C. 117, 127 (1946); in the case of a travel agent who booked transporta-

tion, hotel accommodations and provided tourist services, *Century Travel Service, Inc.*, 43 F.T.C. 212 (1946); a cooperative marketing association, *Florida Citrus Mutual*, 53 F.T.C. 973, 1006-1007 (1957); and to complete a selection, which is by no means intended to be all-inclusive, a chain of dancing schools that sold lessons, *Arthur Murray, Inc.*, 57 F.T.C. 306 (1960).

We only find it necessary to say at this time that when the substantive components of a violation of the Federal Trade Commission Act are established before this Commission, respondents will not succeed in exculpating themselves by the simple expedient of attaching some particular label to their activities.

Turning to the initial decision, the complaint was, as we already have noted, dismissed by the hearing examiner. The initial decision is quite clear in its findings that the respondents are in violation of Section 5 and that we have jurisdiction; however, the hearing examiner finds that the respondents' practices are *de minimis* and that there is no present public interest to justify an order against them.

The maxim *De Minimis Non Curat Lex* as developed in the English common law and in our own jurisprudence has come to mean the law does not concern itself with trifles; that an injury is worthy of so little consideration that no action will lie; that an irregularity or infraction is so minor that the law will take no notice of it. Broom's Legal Maxims 100 (Byrne Ed. 1924); 1 Blackstone, Commentaries 1059 (Jones Ed. 1916).

As we have reviewed this record of over 1800 pages of testimony with its documentation of exhibits compiled in hearings held in three states, one cannot fail to get the impression that the activities of Gadget-of-the-Month Club were typified by deception, half-truths, innuendo, and unmistakable misrepresentation. Many of its members were led to believe that they could achieve riches from their inventions if only they would trust to GMC. Many of these people expended substantial amounts of money only to incur disappointment and disillusionment as a reward.

The hearing examiner relies on *Federal Trade Commission v. Klesner*, 280 U.S. 19 (1929), as authority for his finding that there is a lack of public interest. That case involved a controversy between two individuals as to who had the right to use a particular trade name; no greater public interest was involved than the possible confusion that might result from dealing with one firm when the business was intended to be given to the other. Mr. Justice Brandeis saw this as essentially a determination of private rights, commenting, "the mere fact that it is to the interest of the com-

munity that private rights shall be respected is not enough to support a finding of public interest." 280 U.S. at 28. Here we are not concerned with any two individuals, but with the entire public to whom GMC's representations appeal; thus *Klesner* is not controlling. There can be no question that a proceeding is in the public interest where that public may well have had nothing to do with the respondents if only they had not been deceived by their misrepresentations. *E.g.*, *Federal Trade Commission v. Royal Milling Co.*, 288 U.S. 212, 217 (1933). Activities permeated with fraud and deception are exactly those that fall within the ambit of our responsibility. *Consolidated Book Publishers v. Federal Trade Commission*, 53 F. 2d 942, 945 (7th Cir. 1931), *cert. denied*, 286 U.S. 553 (1932); *International Art Co. v. Federal Trade Commission*, 109 F. 2d 393, 397 (7th Cir. 1940), *cert. denied*, 310 U.S. 632 (1940).

As additional indicia of the lack of public interest, the hearing examiner points out that GMC has experienced declining revenues, that the number of its members has fallen off and it cannot be considered a financial success. The Federal Trade Commission Act cannot be administered on a balance sheet bases. The respondent whose illegal activities result in great financial gain is no more in violation of the law than one whose perpetration of deceptive practices does not bring him as lucrative a reward.

What is in the public interest under the Act is in the final analysis for us to determine. *Federal Trade Commission v. Klesner*, 280 U.S. 19, 28 (1929). We cannot agree that the respondents' activities here were *de minimis*. *Cf. Baldwin Bracelet Corp.*, Docket No. 8316, p. 5 (October 2, 1962). To do so in the face of the Club's customer list comprised of well over 200 names and the Club's financial records showing receipts in 1957 and 1958 in the neighborhood of \$20,000, would be to turn a blind eye to the statutory responsibility delegated to us by Congress. *Cf. Exposition Press, Inc. v. Federal Trade Commission*, 295 F. 2d 869, 873 (2d Cir. 1961).

We are informed of the death of the respondent Don L. Davis which occurred subsequent to the date of the handing down of the initial decision but prior to the date that this case was submitted to the Commission. We are not of the opinion that this factor requires us to dismiss this complaint. His death by no means destroys the viability of the corporate respondent. We have no way of knowing whether GMC will continue its operations. Mrs. Davis, subsequent to the death of her husband, filed a brief, as indeed she had every right to do, seeking to sustain the initial decision dismissing the complaint. We cannot characterize this as an empty gesture having no significance because the Club has now ceased to exist.

Dissenting Opinion

63 F.T.C.

Examining the corporate structure of GMC we note that Mrs. Davis owns the controlling shares of stock and always did, her late husband having owned only a minority stock interest. She also testified she worked for GMC on a full-time basis and that she held the office of Secretary of the corporation. However, in signing her brief, Mrs. Davis indicates she is now President of GMC, thus replacing her husband in that capacity.

In the impersonal way the Club functioned by correspondence, it would be an easy matter to keep operating. In fact, if past procedures were followed, the signature of Don L. Davis would continue to appear on those letters which previously carried his signature. To predict Gadget-of-the-Month Club is now out of business in the face of all the indications we have just pointed out to the contrary requires an omniscience of which we are not possessed.

It is unnecessary for us to reach the question of whether GMC was engaged in competition with other organizations. Since the Wheeler-Lea Act, 52 Stat. 111 (1938), amended Section 5 of the Federal Trade Commission Act, whether or not such competition exists is irrelevant. *Wolf v. Federal Trade Commission*, 135 F. 2d 564, 567 (7th Cir. 1943); *Parke, Austin & Lipscomb v. Federal Trade Commission*, 142 F. 2d 437, 441 (2d Cir. 1944), *cert. denied*, 323 U.S. 753 (1944); *Progress Tailoring Co. v. Federal Trade Commission*, 153 F. 2d 103, 105 (7th Cir. 1946).

The hearing examiner, in determining that the allegations of the complaint had been completely established, made findings of fact which are not sufficient in the view that we take of this case. This, of course, is due to his conclusion that the complaint should be dismissed. Therefore, the initial decision will be set aside and we are entering our own findings of fact, conclusions and order to cease and desist in conformity with our opinion.

Commissioner Elman dissents.

DISSENTING OPINION

JULY 31, 1963

By ELMAN, *Commissioner*:

The nub of this case, as I see it, is not whether the respondents are guilty or innocent of the violations charged, or whether a reviewing court would uphold the Commission's determination that issuance of the complaint was in the public interest, as required by Section 5(b) of the Federal Trade Commission Act, or whether the principle *de minimis non curat lex* is controlling here, but, rather, whether any

useful purpose would be served by the entry of an order. The Commission ought not issue orders to cease and desist in cases which have, practically speaking, become moot. On the contrary, the Commission, in its dual role as complainant and adjudicator, can and should terminate a proceeding whenever it appears that an order would only be a paper statistic. See, e.g., *Argus Cameras, Inc.*, 51 F.T.C. 405; *Bell & Howell Co.*, 54 F.T.C. 108.

The only persons active in the management of the Gadget-of-the-Month Club (GMC) have been Don L. Davis and his wife, Mary Lou Moffitt Davis. Mr. Davis' role in GMC was described by the hearing examiner as follows: "His past activities had been manifold, some political, but most of them utterly indispensable to the development and maintenance of the business of GMC. Throughout the history of GMC Davis has always been the driving force of the organization, but it was clearly evident at the hearings that while he still was an ambitious dreamer and planner, he had lost all physical capacity and reserve mental force to carry on his activities, such as extensive travel, public speaking, and conferences with manufacturers and other business people, to say nothing of the strain of dealing with the fixations and other peculiarities usually found in would-be inventors whom he would necessarily have to interview." Elsewhere the hearing examiner noted: "Respondent Don L. Davis, who has at times referred to himself as 'Lucky' Davis or 'Mr. Gadget', has, among many other activities, been the promoter of the corporation and its chief contact with those members of the public who dealt with the corporation as members, clients, or otherwise." Mrs. Davis, to be sure, owned all but one share of the stock of GMC, but her role, in the hearing examiner's view, was "as the clerical and office worker of this husband-and-wife team, keeping the records, conducting the correspondence, and the like."

In short, according to the uncontradicted conclusion of the hearing examiner, Mr. Davis was the indispensable member of the husband-and-wife team constituting GMC—and he had become physically incapacitated. The hearing examiner's prescience regarding Mr. Davis' health was confirmed by the latter's death three months after the initial decision. The possibility that, notwithstanding Mr. Davis' death, GMC remains a viable entity capable of engaging in the practices which gave rise to the complaint in this case, seems to me most remote. In this connection, it is noteworthy that due to Mr. Davis' increasing ill health, membership in GMC dropped between 1956 and 1958 to the "vanishing point", in the words of the hearing examiner, who predicted that Mr. Davis' incapacity would "shortly result in a

Final Order

63 F.T.C.

complete cessation of all activities of GMC." The income of GMC had by 1958 shrunk to the point at which "it could no longer be considered substantial by any standard," and so far as appears GMC presently holds no interests in valuable inventions.

But the question of GMC's present situation need not be left to conjecture. In my opinion, the Commission, rather than entering a final order at this time, should (1) request Mrs. Davis to submit an affidavit describing the extent of GMC's current activities, and her intentions for the future, and (2) if it appears from this affidavit that GMC is now and is likely to remain defunct, direct the Commission's Los Angeles Field Office to verify the facts set out in the affidavit. The course I suggest would not run afoul of the requirement of Section 7(d) of the Administrative Procedure Act that the agency, in making its decision, not go outside the record. The additional information sought pertains not to the adjudication of respondents' alleged violations, but to the proper exercise of the discretion of the Commission, in light of the facts bearing on the public interest, to continue or terminate the proceeding.

FINAL ORDER

NOVEMBER 6, 1963

The Commission, on July 31, 1963, having issued and thereafter served on the respondents its order affording the respondents an opportunity to file objections to a final order proposed by the Commission; and

The respondents, on September 16, 1963, having filed exceptions to the said proposed order; and

The Commission having determined that the exceptions filed by the respondents should be disallowed and that its proposed order should be adopted as the final order of the Commission:

It is ordered, That the following order to cease and desist be adopted as the final order of the Commission:

It is ordered, That respondents, Gadget-of-the-Month Club, Inc., a corporation, and its officers, and Mary Lou Moffitt Davis, individually, and as an officer of said corporation, and said respondents' representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, or the sale of memberships in or subscriptions to any organization or service for inventors; or in soliciting for the sale, or the sale of memberships in or subscriptions to any organization or service for inventors; or in soliciting for the sale of services in connection with the patenting or marketing of inventions, in commerce, as "com-

merce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using fictitious names, job titles, or organizational designations or descriptions in connection with their business; or otherwise misrepresenting, directly or by implication, the nature or size of the corporation and the benefits to be derived from membership therein.

2. Representing, directly or by implication:

a. That they have been successful in achieving commercial exploitation of ideas or inventions submitted by their customers; or that they maintain close relationships or contacts with manufacturers or other prospective licensees of such ideas or inventions.

b. That an impartial or expert individual or group objectively evaluates and approves an idea or invention submitted by a customer before respondents will take steps to get patent protection thereon or to commercialize or market it; or that acceptance or approval will result only where there has been an expert or informed determination that such invention or idea is patentable or possesses a potential for commercial exploitation.

c. That they defray 50 percent, or any other amount not in accord with the facts, of the costs of patenting an idea or invention submitted by a member.

d. That they maintain branches in other cities, a patent department in Washington, D.C., that the corporate respondent corporation has numerous operating departments or divisions or is greater in size and organization than it actually is.

e. That they will pay for the advertising, or bear the costs of promotion, necessary to achieve commercial exploitation of accepted inventions or that publicity and promotional services will be performed to any extent not in accord with the facts.

f. That any group, organization, or association of inventors, manufacturers, or others, has recognized respondents as expert or successful in the field of commercializing inventions, or that any such will accord privileges or prestige to respondents' customers, or may be instrumental in achieving commercial exploitation of inventions or ideas of respondents' customers.

It is further ordered, That the complaint be, and it hereby is, dismissed as to deceased respondent Don L. Davis.

Complaint

63 F.T.C.

It is further ordered, That the initial decision be, and it hereby is, set aside.

It is further ordered, That the respondents, Gadget-of-the-Month-Club, Inc., and Mary Lou Moffitt Davis, shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist as set forth herein.

By the Commission, Commissioner Elman dissenting.

IN THE MATTER OF

CORO, INC., ET AL.

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

Docket 8846. Complaint, Apr. 5, 1961—Decision, Nov. 6, 1963

Order requiring New York City manufacturer and importers of costume jewelry, watches and other products, to cease representing falsely that fictitious and exaggerated price figures—set forth on catalog sheets distributed for insertion in jobbers' and retailers' catalogs and in their own catalogs—were the regular retail prices for their products in the trade areas concerned, and—by statements on the catalog insert sheets and in other advertisements—that their watches were "guaranteed in writing for one full year", when the so-called guarantee provided for payment of a service charge.

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 Coro, Inc., a corporation, and Gerald E. Rosenberger, Royal Marcher and Jerome H. Oppenheimer, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Coro, 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 place of business located at 47 West 34th Street, New York, New York.

Individual respondents Gerald E. Rosenberger, Royal Marcher, and Jerome H. Oppenheimer are officers of said corporate respondent and of its wholly owned subsidiary corporations. They participate