

discriminating, directly or indirectly, in the price of fluid milk and milk products of like grade and quality:

1. By selling any of these products to any purchaser in any city or definable market area in which respondents are in competition with another seller at a price which is lower than the price for such products charged any other purchaser at the same level of distribution in that or any other city or definable market area served by the same processing plant, where such lower price undercuts the lowest price offered to that purchaser by any other seller having a substantially smaller annual volume of sales of milk and milk products than respondents' annual volume of sales of those products.

2. By selling any of these products to any purchaser at a price which is lower than the price for products of like grade and quality charged any other purchaser who competes in the resale of such products with the purchaser paying the lower price.

*It is further ordered*, That the hearing examiner's initial decision, as above modified and as modified by the accompanying opinion, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That the respondents, Dean Milk Company and Dean Milk Co., Inc., 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.

Commissioners Elman and Jones dissenting. Commissioner MacIntyre has filed a separate statement.

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IN THE MATTER OF  
SWISS LABORATORY INC., DOING BUSINESS AS  
FEDERAL LEAD COMPANY ET AL.

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

*Docket C-1006. Complaint, Oct. 25, 1965—Decision, Oct. 25, 1965*

Consent order requiring Cleveland, Ohio, distributors of commercial wire solders to jobbers, to cease misrepresenting the nature, quality or composition of any of their solders, by such practice as using the designation "50/50" on labels and price sheets to describe a commercial wire solder which was not a 50/50 solder as known in the trade, as said solder contained less than 50% tin and more than 50% lead by weight.

Complaint

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## 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 Swiss Laboratory Inc., a corporation, doing business as Federal Lead Company and Leon W. Diamond and Myron Levy, 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 Swiss Laboratory Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1515-1531 Hamilton Avenue in the city of Cleveland, State of Ohio. Federal Lead Company is a trade name of Swiss Laboratory Inc.

Respondents Leon W. Diamond and Myron Levy are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of commercial solders including wire solders designated "50/50" and "40/60." Said solders are sold to jobbers who sell to retailers for ultimate resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Ohio 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 commercial wire solders, respondents have engaged in the practice of labeling and describing in price sheets certain of said solders as "50/50" and "40/60."

PAR. 5. By and through the use of the aforesaid manner of labeling and describing said wire solders, the respondents represented:

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## Decision and Order

(1) That their wire solder designated "50/50" is a 50/50 solder which is known in the trade as a solder containing 50% tin and 50% lead by weight.

(2) That their wire solder designed "40/60" is a 40/60 solder which is known in the trade as a solder containing 40% tin and 60% lead by weight.

PAR. 6. In truth and in fact:

(1) Their wire solder designated "50/50" is not a 50/50 solder as known in the trade as it contains less than 50% tin and more than 50% lead by weight.

(2) That their wire solder designed "40/60" is a 40/60 solder as known in the trade as it contains less than 40% tin and more than 60% lead by weight.

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 conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by respondents.

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

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

## DECISION AND ORDER

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

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Swiss Laboratory Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 1515-1531 Hamilton Avenue, in the city of Cleveland, State of Ohio.

Respondents Leon W. Diamond and Myron Levy are officers of the corporate respondent and their address is the same as that of said corporate respondent.

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 Swiss Laboratory Inc., a corporation, doing business as Federal Lead Company or under any other name or names, and its officers, and Leon W. Diamond and Myron Levy, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of solders, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the designation 50/50 to designate, describe or refer to a commercial solder, which does not contain 50% tin by weight: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specifications for Solder Metal as published by the American Society for Testing and Materials.

(2) Using the designation 40/60 to designate, describe or refer to a commercial solder which does not contain 40% tin by weight: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the tin content of a solder is within the permissible variations in composition allowed in the sampling procedures set forth in the then existing Specifications for Solder Metal as published by the American Society for Testing and Materials.

(3) Misrepresenting by any numerical designation or in any other manner the nature, quality or composition of any of their solders.

*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.

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IN THE MATTER OF  
FREEMAN-TOOR CORPORATION

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

*Docket C-1007. Complaint. Oct. 25, 1965—Decision, Oct. 25, 1965*

Consent order requiring a New York City shoe manufacturer and its subsidiaries, to cease entering into agreements with independent retail stores to fix prices, terms and conditions of sale and delivery of its merchandise and attempting to enforce such resale price agreements, and from coercing and intimidating retail dealers for failure to observe and maintain prescribed resale prices.

COMPLAINT

The Federal Trade Commission having reason to believe that Freeman-Toor Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Freeman-Toor Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with executive offices located

at 350 5th Avenue, New York, New York. Respondent Freeman-Toor Corporation is successor to Freeman Shoe Corporation, a Wisconsin corporation, now dissolved, the assets of which having been transferred on June 30, 1965, to respondent Freeman-Toor Corporation. The former business of Freeman Shoe Corporation is now operated by respondent Freeman-Toor Corporation through its division now known as Freeman Shoe division of such respondent corporation. For purposes of this complaint, the hereinafter recited acts and practices of respondent were engaged in by Freeman Shoe Corporation prior to the above-described corporate reorganization. The net annual sales of respondent Freeman-Toor Corporation are approximately \$30,000,000.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the manufacture, sale and distribution of shoes and other related incidental merchandise such as shoe laces, shoe polish, rubbers, house slippers and shoe trees. Said products of respondent are sold by respondent to independent retail shoe stores and other type apparel stores selling shoes to the consuming public. Respondent also sells its products direct to the consuming public through the respondent's own retail subsidiaries. Respondent has approximately 110 such subsidiaries operating approximately 230 retail shoe outlets located in department stores and men's clothing stores throughout the United States.

PAR. 3. The products of respondent are sold by said respondent for use, consumption and resale within the United States and the District of Columbia and respondent causes said products so sold to be shipped and transported from the State or States wherein they are manufactured to the purchasers thereof located in other States. Respondent maintains, and at all times mentioned herein has maintained a course of trade in commerce of said products among and between the various States of the United States and in the District of Columbia.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent is now, and has been, in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, distribution and sale of men's shoes in commerce as that term is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, respondent has, together with its retail subsidiary corporations, entered into agreements, understandings and arrangements with many independent retail stores competing with said subsidiaries in the sale

of men's shoes whereby the prices at which the men's shoes are to be sold have been fixed, established and coordinated.

PAR. 6. In addition to the practices described in Paragraph Five above, it has been the policy and practice of respondent, in the course and conduct of its business, to enter or attempt to enter, into agreements, understandings and arrangements with various independent retail dealers located in areas within which it does business, to fix and maintain resale consumer prices of respondent's products distributed, offered for sale and sold by said independent retail dealers. Respondent employed persuasion, threats and compulsion in prevailing upon independent retail dealers selling its products to maintain resale prices fixed and promulgated by respondent for its products.

PAR. 7. The agreements, understandings, conspiracy, combination, planned common course of action or course of dealings, together with the acts, practices, methods and policies, as hereinabove alleged, are unlawful and against public policy because of their tendency to unduly restrain, hinder, suppress and eliminate competition and restrain and monopolize trade and commerce and they therefore constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having heretofore determined to issue a complaint charging the former Freeman Shoe Corporation with violation of the Federal Trade Commission Act, and respondent herein, Freeman-Toor Corporation, successor to Freeman Shoe Corporation, having been furnished 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

Respondent herein, Freeman-Toor Corporation, 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 complaint now to issue herein against said respondent, 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, now issues its complaint in the form contemplated by

