

Complaint

48 F. T. C.

IN THE MATTER OF

RICHMOND GARMENT COMPANY, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5858. Complaint, Mar. 12, 1951—Decision, Dec. 24, 1951

Where a corporation and its president, engaged in the introduction into commerce and in the offer, sale, and distribution therein of wool products—

- (a) Misbranded certain of said products within the intent and meaning of the Wool Products Labeling Act and the rules and regulations promulgated thereunder in that, labeled "100% wool," they contained no "wool" as there defined, but were composed, exclusive of ornamentation not exceeding 5 percent of their total fiber weight, of "reprocessed wool";
- (b) Misbranded said products, thus labeled, in that their constituent fibers and the percentages thereof were not shown on the tags or labels as required by said Act and rules, etc.;
- (c) Misbranded certain of said products in that there was not shown on the labels attached thereto the legal name of the manufacturer, or of a person authorized by said Act to affix stamps, tags, labels, etc.;
- (d) Misbranded certain of said products in that the constituent fibers of their interlinings and the percentages thereof were not separately set forth and segregated upon tags or labels attached thereto, as required by said Act;
- (e) Misbranded certain of said products under said Act in that there were not set forth and segregated upon the labels or tags attached to the linings, which purported to contain wool, reused wool, or reprocessed wool, the constituent fibers and their percentages, exclusive of ornamentation not exceeding 5 percent of their total fiber weight; and,
- (f) With intent to violate the provisions of said Act, caused and participated in the removal or mutilation of stamps, tags, labels, and other means of identification which had been affixed to said wool products and purported to contain the information required by said Act;

With the result that said products, when offered and sold by them at their place of business, did not have affixed thereto the stamps, etc., containing the information required by said Act and rules and regulations:

Held, That such acts and practices, under the circumstances set out, were all to the prejudice of the public and in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Shure & Bruder, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the

authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Richmond Garment Company, Inc., a corporation, and Sol Rosenbloom, individually and as an officer of said corporation, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the 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 Richmond Garment Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business at 11 North Seventh Street in the City of Richmond, Virginia. Respondent Sol Rosenbloom is the President of said corporation, and in such capacity he formulates and executes its policies and practices. His business address is the same as that of said corporation.

PAR. 2. Subsequent to January 1, 1945, respondents have introduced into commerce, and offered for sale, sold, and distributed in commerce, as "commerce" is defined in Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of the said Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the fibers and the percentages thereof of which they were composed, exclusive of ornamentation not exceeding five percentum of their total fiber weight, as "100% wool," whereas in truth and in fact said products contained no "wool" as the term is defined in said Act, but were composed, exclusive of ornamentation not exceeding five percentum of their total fiber weight, of "reprocessed wool" as the term is defined in said Act. The said wool products so labeled were further misbranded in that their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said Act, in the manner and form required by the said Rules and Regulations, since in truth and in fact said products were composed, exclusive of ornamentation, wholly of "reprocessed wool" as that term is defined in said Act.

Certain of the said wool products were misbranded in that the legal name of the manufacturer thereof or a person required or authorized by said Act to affix stamps, tags, labels, or other means of identification thereto, was not shown on the labels attached thereto as required by said Act and in the manner and form required by said Rules and Regulations, nor was there so shown in lieu thereof a registered identification number as permitted by said Rules and Regulations.

Certain of said wool products were misbranded in that the constituent fibers of their interlinings and the percentages thereof were not separately set forth and segregated as required by said Act, and in the manner and form required by said Rules and Regulations, upon the tags or labels attached thereto.

Certain of said wool products were misbranded in that there were not set forth and segregated upon the labels or tags attached thereto the constituent fibers and their percentages, exclusive of ornamentation not exceeding five percentum of their total fiber weight, of the linings, purporting to contain wool, reused wool, or reprocessed wool, of said products, as required by said Act and in the manner and form required by the rules and regulations promulgated thereunder.

PAR. 4. Certain wool products, when received by respondents at their place of business, had affixed thereto stamps, tags, labels, or other means of identification purporting to contain the information required by the Wool Products Labeling Act of 1939. After said wool products were delivered to the respondents at their said place of business as aforesaid, and before they were offered for sale or sold by respondents to the public, said respondents caused and participated in the removal of some and the mutilation of others of the said stamps, tags, labels, and other means of identification with intent to violate the provisions of the Wool Products Labeling Act of 1939. As a result of respondent's said acts and practices in removing and mutilating said stamps, tags, labels, and other means of identification affixed to said wool products, said wool products, when offered for sale and sold by respondent to the public at their place of business, did not have affixed thereto stamps, tags, labels, or other means of identification containing the information required by said Act and Rules and Regulations.

PAR. 5. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of Sections 3, 4, and 5 of the Wool Products Labeling Act of 1939 and Rules 2, 3, 13, and 24 of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated December 24, 1951, the initial decision in the instant matter of Hearing Examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by those Acts, the Federal Trade Commission on March 12, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those Acts. Thereafter, respondents filed an answer in which they admitted all of the material allegations of fact in the complaint and waived all intervening procedure and further hearings as to such facts. Subsequently, the proceeding regularly came on for final consideration by the above named hearing examiner, theretofore duly designated by the Commission, upon the complaint and answer, and the hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Richmond Garment Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business at 11 North Seventh Street in the city of Richmond, Virginia. Respondent Sol Rosenbloom is President of the corporation, and in such capacity, formulates and executes its policies and practices.

PAR. 2. Subsequent to January 1, 1945, respondents have introduced into commerce, and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 3. Certain of such wool products were misbranded within the intent and meaning of said Act and the Rules and Regulations promulgated thereunder, in that they were labeled "100% wool," whereas actually such products contained no "wool" as the term is defined in said Act, but were composed, exclusive of ornamentation not exceeding five percentum of their total fiber weight, of "reprocessed wool" as the term is defined in said Act.

The wool products so labeled were further misbranded in that their constituent fibers and the percentages thereof were not shown on the tags or labels on such products as required by said Act, in the manner and form required by said Rules and Regulations, since, as stated,

Conclusion

48 F. T. C.

such products were composed, exclusive of ornamentation, wholly of "reprocessed wool."

Certain of such wool products were misbranded in that the legal name of the manufacturer thereof, or of a person required or authorized by said Act to affix stamps, tags, labels or other means of identification to such products, was not shown on the labels attached thereto as required by said Act and in the manner and form required by said Rules and Regulations, nor was there so shown in lieu thereof a registered identification number as permitted by said Rules and Regulations.

Certain of such wool products were misbranded in that the constituent fibers of their interlinings and the percentages thereof were not separately set forth and segregated as required by said Act, and in the manner and form required by said Rules and Regulations, upon the tags or labels attached to such products.

Certain of such wool products were misbranded in that there were not set forth and segregated upon the labels or tags attached thereto the constituent fibers and their percentages, exclusive of ornamentation not exceeding five percentum of their total fiber weight, of the linings of such products, which linings purported to contain wool, reused wool or reprocessed wool, as required by said Act and in the manner and form required by said Rules and Regulations.

PAR. 4. Certain wool products, when received by respondents at their place of business, had affixed thereto stamps, tags, labels, or other means of identification purporting to contain the information required by the Wool Products Labeling Act of 1939. However, before such products were offered for sale and sold by respondents to the public, respondents caused and participated in the removal of some and the mutilation of others of said stamps, tags, labels, and other means of identification, with intent to violate the provisions of said Act. As a result of respondents' acts, such products, when offered for sale and sold to the public by respondents at their place of business, did not have affixed thereto stamps, tags, labels, or other means of identification containing the information required by said Act and Rules and Regulations.

CONCLUSION

The acts and practices of respondents, as hereinabove set out, are all to the prejudice of the public and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

630

Order

ORDER

It is ordered, That the respondents, Richmond Garment Company, Inc., a corporation, and its officers, and Sol Rosenbloom, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the aforesaid Acts, of wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products:

1. By using the unqualified word "wool" to designate or describe the constituent fibers of any product, when such fibers are not in fact wool as defined in the Wool Products Labeling Act of 1939.

2. By failing to affix securely to or place on such products a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

(c) The name or the registered identification number of the manufacturer of such wool product, or of one or more persons engaged in introducing such wool product into commerce or in the offering for sale, sale, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

(d) The constituent fibers of interlining of such wool products, separately set forth on said identifying marks or labels attached thereto.

(e) The constituent fibers, with percentages thereof, of the linings of such wool products, separately set forth on such identifying marks or labels attached to such wool products, where such linings purport to contain wool, reused wool, or reprocessed wool.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a)

Order

48 F. T. C.

and (b) of section 3 of the Wool Products Labeling Act of 1939; *and provided further*, that nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

It is further ordered, That said respondents and their officers, representatives, agents, and employees, as aforesaid, directly or through any corporate or other device, in connection with the purchase, offering for sale, sale, or distribution of "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from causing or participating in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to any such "wool product" pursuant to the Wool Products Labeling Act of 1939, with intent to violate the provisions of said Act, and which stamp, tag, label, or other means of identification purports to contain all or any part of the information required by said Act.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of December 24, 1951].

Complaint

IN THE MATTER OF

LLOYDS SPORTSWEAR COMPANY, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5862. Complaint, Mar. 26, 1951—Decision, Dec. 29, 1951

Where a corporation and its two officers, engaged in the manufacture, and sale and distribution in commerce, of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain ladies' skirts within the intent and meaning of said Act and the Rules and Regulations promulgated thereunder in that, tagged or labeled as "50% wool 50% rayon" the aggregate of the woolen fibers constituted less than 50 percent of said skirts, and they contained more than 50 percent of rayon; and
- (b) Misbranded said products further in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5 percent of the total fiber weight:

Held, That such acts and practices, under the circumstances set forth, were in violation of Sections 3 and 4 of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices.

In said proceeding while the hearing examiner, in arriving at the foregoing conclusion, gave full consideration to the protestations and explanations of respondents concerning their reputation and standing in the trade as manufacturers of clothing in large volume: that for upwards of twenty years they and their predecessors in interest had enjoyed an enviable record for honesty and integrity; and that the respondents could have made no material gain by substituting one fabric for the other; such matters, nevertheless, were not of sufficient cogency to warrant action other than the cease and desist order included in the decision.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Russell T. Porter for the Commission.

Mr. David Leavenworth, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Lloyds Sportswear Company, Inc., a corporation, and Isaac N. Hazan and Max Orlinsky, individually and as officers of Lloyds Sportswear Company, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts

and Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Lloyds Sportswear Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of New York State, with its office and principal place of business located at 224 West 35th Street, New York, N. Y.

PAR. 2. Subsequent to February 1, 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce and sold and distributed in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121," purchased from Strand Woolen Co.

PAR. 3. Upon the labels affixed to the said skirts appeared the following:

Lloyds Sportswear Co.
Style 835
WPL-6007
50% Wool
50% Rayon
Size 24.

PAR. 4. The said skirts were misbranded within the intent and meaning of the said Act and the Rules and Regulations thereunder, in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. In truth and in fact, the said skirts were not 50% wool as "wool" is defined in the said Act. The aggregate of the woolen fibers therein constituted less than 50% of the said skirts and they contained more than 50% rayon. The said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than five percentum of the total fiber weight.

PAR. 5. The person by whom the piece goods, from which said skirts were made by respondents, were manufactured for introduction into commerce affixed thereto labels and tags as required by said Act containing information with respect to its fiber content as follows:

20% Wool
30% Reprocessed Wool
50% Rayon.

Respondents have further violated the provisions of the Wool Products Labeling Act of 1939 by substituting for said tags and affixing

to the said skirts tags and labels containing information set forth in Paragraph Three herein with respect to the content thereof which was not identical with the information with respect to such content upon the tags and labels as affixed to the wool product from which said skirts were made by the person by whom it was manufactured for introduction into commerce.

PAR. 6. The aforesaid acts and practices of respondents as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated December 29, 1951, the initial decision in the instant matter of Hearing Examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on March 26, 1951, issued and subsequently served its complaint in this proceeding upon the respondents, Lloyds Sportswear Company, Inc., a corporation, and Isaac N. Hazen and Max Orlinsky, individually and as officers of the Lloyds Sportswear Company, Inc., charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of said Acts. On April 6, 1951, respondents filed their joint answer denying certain charges of the complaint and pleading insufficient knowledge or information to form a belief as to the truth or falsity of the other charges of the complaint.

No hearings have been held for the reception of testimony or evidence.

Under date of May 11, 1951, respondents through their counsel, and the attorney in support of the complaint, entered into a "Stipulation as to the Facts," stating that respondents are desirous of expediting this proceeding and avoiding the expense incident to the taking of testimony; also that the facts set forth in the stipulation may be taken as the facts in this proceeding in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that

the Hearing Examiner may proceed thereon with the making of his Initial Decision stating his findings as to the facts, inferences which he may draw therefrom, his conclusion based thereon and enter his order disposing of the proceeding.

Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner theretofore duly designated by the Commission upon said complaint and the aforesaid "Stipulation as to the Facts"; and said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lloyd Sportswear Company, Inc., (erroneously designated in the complaint as "Lloyds Sportswear Company, 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 No. 224 West 35th Street, New York, New York; that respondents Isaac N. Hazan and Max Orlinsky are respectively, President and Secretary of Lloyd Sportswear Company, Inc., and as such are in control of its operation; that said corporation is, in fact, the instrumentality through which respondents Hazan and Orlinsky conduct their business.

PAR. 2. Subsequent to February 1, 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce and sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121" purchased from Strand Woolen Co.

PAR. 3. Upon the tags or labels affixed to the said skirts the following information or declaration as to fiber content of said skirts appeared:

50% wool
50% rayon

PAR. 4. The said skirts were misbranded within the intent and meaning of said Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. In truth and in fact the said skirts were not 50% wool, as "wool" is defined in said Act; the aggregate of the

637

Order

woolen fibers therein constituted less than 50% of the said skirts and they contained more than 50% of rayon. Said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than five percentum of the total fiber weight.

CONCLUSIONS

The aforesaid acts and practices and methods of respondents as found were and are in violation of Sections 3 and 4 of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

In arriving at the foregoing conclusion the Hearing Examiner has given full consideration to the protestations and explanations of respondents concerning their reputation and standing in the trade as manufacturers of clothing in large volume; that for upwards of twenty years they and their predecessors in interest have enjoyed an enviable record for honesty and integrity and that the respondents "could have (made) no material gain by substituting one fabric for the other." Giving all possible weight to the foregoing the fact remains that none are of sufficient cogency to warrant action other than issuance of the following:

ORDER

It is ordered, That the respondents Lloyd Sportswear Company, Inc., a corporation, and Isaac N. Hazan and Max Orlinsky as officers of said Lloyd Sportswear Company, Inc., and also in their individual capacities, their respective 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, transportation or distribution in commerce, as "commerce" is defined in the aforesaid Acts, of ladies' skirts or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products:

1. By falsely and deceptively stamping, tagging, labeling or otherwise identifying such products;
2. By failing to securely affix to or place on such products a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

Order

48 F. T. C.

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and, (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool products of any nonfibrous loading, filling, or adulterating matter.

(c) The name or the registered identification number of the manufacturer of such wool products or of one or more persons engaged in introducing such wool products into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and provided further, that nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of December 29, 1951].

Syllabus

IN THE MATTER OF

REGAL COLLECTION SERVICE, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5919. Complaint, Aug. 20, 1951—Decision, Dec. 31, 1951

Where a corporation and two officers thereof, engaged in collecting account for others and in the interstate sale and distribution of reply post cards for obtaining information concerning delinquent debtors; in carrying on their said business under a plan whereby said cards, addressed to a debtor or his acquaintance, were sent by them, for mailing and return of replies to their agent at Washington, D. C.—

- (a) Falsely represented that they were engaged in conducting an employment agency or office or in compiling business or labor statistics and that the information requested was for such purposes, through use of the name "Employers Clearing House" on such cards, together with a Washington address and a request that the recipient answer and return the attached questionnaire, in which provision was made for supplying the current address of debtors and the names and addresses of their employers, and upon one side of which there was printed a box of figures similar to the arrangement on cards used for statistical purposes;
- (b) Falsely represented or implied, through mailing said cards from Washington and provision of a return address in said city, that the so-called "Employers Clearing House" was in some manner connected with the United States Government; and,
- (c) Placed in the hands of others, through supplying such cards and forms, the means of misrepresenting that they or their customers were engaged in operating an employment agency, or compiling labor or business statistics, and that the information was sought by or on behalf of some Government agency;

The facts being that such representations and their implications were false and misleading; and their business and sole purpose in sending such cards was to gain information by subterfuge in connection with the collection of accounts;

With tendency and capacity to mislead and deceive many persons to whom such cards were sent, into the erroneous belief that said representations were true, and to induce them to give information which they otherwise would not supply; and with the effect of placing in the hands of purchasers thereof a means for obtaining information concerning their debtors by subterfuge:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Complaint

48 F. T. C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Regal Collection Service, Inc., a corporation, and Sidney Cross and Irving S. Raider, 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 Regal Collection Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its office and principal place of business located at Room 313, Calvin Theater Building, 22148 Michigan Avenue, Detroit, Michigan. Respondent Sidney Cross is president and treasurer and respondent Irving S. Raider is vice president and secretary of respondent corporation. All of the respondents have their principal place of business at the above address.

The individual respondents Sidney Cross and Irving S. Raider dominate, control and direct the policies of the said corporate respondent, and all of said respondents cooperate and act together in the performance of the acts and practices hereinafter set out.

PAR. 2. Respondents are now and have been for more than two years last past engaged in conducting a collection agency and in collecting accounts owed to others. This business is carried on in the name of Employers Clearing House.

Respondents are also and have been for more than two years last past engaged in the business of selling and distributing post cards designed and intended to be used by creditors, collection agencies and others in obtaining information concerning delinquent debtors. This business is carried on in the name of Skip Clearing House.

PAR. 3. Respondents, in the conduct of their collection agency business, engage in and have engaged in substantial commercial intercourse and communication in commerce with their agent, their clients and their clients' debtors located in various States of the United States and in the District of Columbia. In the conduct of their business in selling said post cards, respondents cause said post cards to be transported from their place of business in the various States of the United States and maintain, and have maintained at all times mentioned herein, a substantial course of trade in said post cards in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business as a collection agency, respondents frequently desire to ascertain the current address

643

Complaint

of persons from whom they are endeavoring to collect monies due their clients, and the names and addresses of employers of such persons, and have used the post cards of the type commonly referred to as double post cards. These cards are mailed in bulk by the respondents to their agent in Washington, D. C., and are in turn mailed by said agent to the addressees located in various States of the United States. One part of the card is addressed to and contains a message for the debtor or some acquaintance of the debtor. The message is as follows:

Will you please be kind enough to fill out the attached questionnaire as it is very important to the party whom we are enquiring about.

You may answer these questions or give this card to the subject mentioned, who no doubt will answer same, as we are bringing him up to date on employment questions for his future benefit.

Just detach after being filled out and return promptly.

THIS IS VERY IMPORTANT.

The card bears the name and return address, "Employers Clearing House, 410 Bond Building, Washington 5, D. C.," and also the following phraseology:

EMPLOYERS CLEARING HOUSE
 Management Labor
 Cooperation
 Copyright 1950
 By Employers Clearing House
 Research Statistics

The reply part of the card is intended to be detached, filled out and mailed by the addressee. The following is a copy:

Type or Print	REGISTRATION
REPLY CARD	Area -----
	Classification No. -----
Subject -----	
Last Known	Do Not Write in Space Below
Address -----	For Office Only
Above named is now residing at -----	
Street	Day
Town ----- State ----- Zone or RFD -----	Year
Present Employment -----	Month
Address ----- Dept. Badge -----	1 11 21 1949 1
Kind of Work -----	2 12 22 1950 2
Single -----, If Married, Wife's name -----	3 13 23 1951 3
Is She Employed? and Where -----	4 14 24 1952 4
How Many Children -----	5 15 25 1953 5
Does Subject Own Home? Yes ----- No -----	6 16 26 1954 6
Above information is required in order to bring	7 17 27 1955 7
subjects employment record up to date for	8 18 28 1956 8
future reference.	9 19 29 1957 9
	10 20 30 1958 10
	DATE REPORT REC'D 11
	CHECKED BY 12

Thank you for your immediate reply.
 PLEASE SIGN HERE -----

Along the right side of the card a box of figures similar to the arrangement appearing on cards commonly used for statistical purposes is printed. Such cards as are filled in and mailed to the Washington, D. C., address are forwarded from Washington, D. C., by respondents' agents to respondents in the State of Michigan.

PAR. 5. The cards sold by respondents to others for use in obtaining information concerning debtors are the same as that illustrated above. When such cards are sold to others, the purchaser fills in the name of the debtors and addresses and forwards them in bulk to respondents at their place of business in Dearborn, Michigan. Respondents then forward said cards in bulk to their agent at Washington, D. C., and they are mailed at said place. Such of the reply cards as are filled out and mailed are received by said agent at Washington, D. C., and are then forwarded in bulk to respondents at Dearborn, Michigan. These cards are then forwarded to the original purchasers whom respondents are able to identify by a serial number which is placed upon the cards prior to their transmission to the purchasers.

PAR. 6. Through the use of the name Employers Clearing House and through the phraseology on and form of the cards, respondents represent that they are engaged in conducting an employment agency or employment bureau or office or in compiling business or labor statistics and that the information requested is for such purposes. The mailing of said cards from Washington, D. C., and providing a return address at said city has the tendency and capacity to lead the recipients to believe that the so-called Employers Clearing House is in some manner connected with the United States Government.

PAR. 7. The aforesaid representations and the implications therefrom are false and misleading. In truth and in fact, respondents are not conducting, and are in no way connected with, any employment bureau, business or labor statistical office and are not in any manner connected with the United States Government. Their business and the sole purpose in sending the said cards is to obtain information by subterfuge in connection with the collection of accounts and to provide a means and method by which such information may be obtained by those to whom they sell their said cards. By supplying said cards to purchasers they place in the hands of said purchasers a means and instrumentality by and through which they are able to obtain information concerning their debtors by subterfuge.

PAR. 8. The use as hereinabove set forth of the post cards upon which are printed the foregoing false and misleading statements and representations by respondents and their customers has had the tendency and capacity to mislead and deceive many persons to whom the said cards are sent into the erroneous and mistaken belief that said

statements and representations appearing on said cards were true and to induce such persons to give information which they would not otherwise supply.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated December 31, 1951, the initial decision in the instant matter of Hearing Examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 20, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. Thereafter, respondents filed their answer in which they admitted all of the material allegations of fact in the complaint and waived all intervening procedure and further hearing as to such facts. Subsequently, the proceeding regularly came on for final consideration by the above named hearing examiner, theretofore duly designated by the Commission, upon the complaint and answer, and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Regal Collection Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at Room 313, Calvin Theater Building, 22148 Michigan Avenue, Dearborn, Michigan. Respondent Sidney Cross is president and treasurer and respondent Irving S. Raider is vice president and secretary of respondent corporation. All of the respondents have their principal place of business at the above address.

The individual respondents Sidney Cross and Irving S. Raider dominate, control and direct the policies of the corporate respondent, and all of the respondents cooperate and act together in the performance of the acts and practices herinafter set out.

PAR. 2. Respondents are now and have been for more than two years last past engaged in conducting a collection agency and in collecting accounts owed to others. This business is carried on in the name of Employers Clearing House.

Respondents are also and have been for more than two years last past engaged in the business of selling and distributing post cards designed and intended to be used by creditors, collection agencies and others in obtaining information concerning delinquent debtors. This business is carried on in the name of Skip Clearing House.

PAR. 3. Respondents, in the conduct of their collection agency business, engage in and have engaged in substantial commercial intercourse and communication in commerce with their agent, their clients and their clients' debtors located in various States of the United States and in the District of Columbia. In the conduct of their business in selling such post cards, respondents cause such cards to be transported from their place of business to purchasers in the various States of the United States and maintain, and have maintained at all times mentioned herein, a substantial course of trade in such post cards in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business as a collection agency, respondents frequently desire to ascertain the current address of persons from whom they are endeavoring to collect monies due their clients, and the names and addresses of employers of such persons, and have used post cards of the type commonly referred to as double post cards. These cards are mailed in bulk by the respondents to their agent in Washington, D. C., and are in turn mailed by such agent to the addressees located in various States of the United States. One part of the card is addressed to and contains a message for the debtor or some acquaintance of the debtor. The message is as follows:

Will you please be kind enough to fill out the attached questionnaire as it is very important to the party whom we are enquiring about.

You may answer these questions or give this card to the subject mentioned, who no doubt will answer same, as we are bringing him up to date on employment questions for his future benefit.

Just detach after being filled out and return promptly.

THIS IS VERY IMPORTANT.

The card bears the name and return address, "Employers Clearing House, 410 Bond Building, Washington 5, D. C.," and also the following phraseology:

643

Findings

EMPLOYERS CLEARING HOUSE
 Management Labor
 Cooperation
 Copyright 1950
 By Employers Clearing House
 Research Statistics

The reply part of the card is intended to be detached, filled out and mailed by the addressee. The following is a copy:

	Type or Print		REGISTRATION
REPLY CARD		Area -----	*Classification No. -----
Subject -----			
Last Known Address -----			Do Not Write in Space Below
Above named is now residing at -----			For Office Only
			Day Year Month
Street		1 11 21	1949 1
Town ----- State ----- Zone or RFD -----		2 12 22	1950 2
Present Employment -----		3 13 23	1951 3
Address ----- Dept. Badge -----		4 14 24	1952 4
Kind of Work -----		5 15 25	1953 5
Single -----, If Married, Wife's name -----		6 16 26	1954 6
Is She Employed? and Where -----		7 17 27	1955 7
How Many Children -----		8 18 28	1956 8
Does Subject Own Home Yes ----- No -----		9 19 29	1957 9
Above information is required in order to bring subjects employment record up to date for future reference.		10 20 30	1958 10
			DATE REPORT REC'D 11
			CHECKED BY 12

Thank you for your immediate reply.
 PLEASE SIGN HERE -----

Along the right side of the card a box of figures similar to the arrangement appearing on cards commonly used for statistical purposes is printed. Such cards as are filled in and mailed to the Washington, D. C., address are forwarded from Washington, D. C., by respondents' agent to respondents in the State of Michigan.

PAR. 5. The cards sold by respondents to others for use in obtaining information concerning debtors are the same as that illustrated above. When such cards are sold to others, the purchaser fills in the names of the debtors and addresses and forwards the cards in bulk to respondents at their place of business in Dearborn, Michigan. Respondents then forward the cards in bulk to their agent at Washington, D. C., where they are mailed. Such of the reply cards as are filled out and mailed are received by respondents' agent at Washington, D. C., and are then forwarded in bulk to respondents at Dearborn, Michigan. These cards are then forwarded to the original purchasers, whom respondents are able to identify by a serial number which is placed upon the cards prior to their transmission to the purchasers.

Order

48 F. T. C.

PAR. 6. Through the use of the name Employers Clearing House and through the phraseology on and the form of the cards, respondents represent that they are engaged in conducting an employment agency or employment bureau or office or in compiling business or labor statistics and that the information requested is for such purposes. The mailing of the cards from Washington, D. C., and providing a return address in that city has the tendency and capacity to lead the recipients to believe that the so-called Employers Clearing House is in some manner connected with the United States Government.

PAR. 7. These representations and the implications thereof are false and misleading. In truth and in fact, respondents are not conducting, and are in no way connected with, any employment bureau, business or labor statistical office and are not in any manner connected with the United States Government. Their business and the sole purpose in sending such cards is to obtain information by subterfuge in connection with the collection of accounts and to provide a means and method by which such information may be obtained by those to whom they sell their cards. By supplying the cards to purchasers they place in the hands of such purchasers a means and instrumentality by and through which the purchasers are able to obtain information concerning their debtors by subterfuge.

PAR. 8. The use as hereinabove set forth of the post cards upon which are printed the foregoing false and misleading statements and representations by respondents and their customers has the tendency and capacity to mislead and deceive many persons to whom such cards are sent into the erroneous and mistaken belief that the statements and representations appearing on such cards are true, and to induce such persons to give information which they would not otherwise supply.

CONCLUSION

The acts and practices of the respondents as hereinabove set out are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Regal Collection Service, Inc., a corporation, and its officers, and Sidney Cross and Irving S. Raider, 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 in commerce or the use in commerce, as "commerce" is

643

Order

defined in the Federal Trade Commission Act, of mailing cards, letters, or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

(1) Using the name, "Employers Clearing House," or any other word or words of similar import, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are conducting an employment bureau or employment agency or are engaged in compiling business or labor statistics.

(2) Using, or supplying to others for use, mailing cards or other printed forms or material which represent, directly or by implication, that respondents or their customers are engaged in operating or conducting an employment bureau or employment agency or that they are compiling labor or business statistics.

(3) Using, or supplying to others for use, mailing cards or other material which represents, directly or by implication, that respondents' business is other than the collection of debts, or other than that of obtaining information for use in the collection of debts, or that the information sought through the use of such mailing cards or other material is for other than use in the collection of debts.

(4) Representing or placing in the hands of others the means of representing, directly or by implication, that information sought concerning debtors or other persons is sought by or on behalf of any Government agency.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of December 31, 1951].

IN THE MATTER OF
WESTERN UNIVERSITY, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5914. Complaint, Aug. 9, 1951—Decision, Jan. 3, 1952

A university, as that term is understood by the public and in the educational field, is an educational institution of higher learning, including subjects in the arts, sciences, and professions, with adequate equipment in the form of buildings, laboratories, libraries, and dormitories for resident students, and sufficient resources to operate and maintain such institution, and with a faculty of learned persons qualified and trained to teach the respective subjects offered and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and which are so recognized and accredited by standard accrediting organizations, and such degree conveys to the ordinary mind the idea of some collegiate, university, or scholastic distinction.

Academic degrees, as thus understood, are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed scholastic attainments by students of such institutions, and unless so earned and conferred they do not constitute degrees in the accepted meaning of the term and are of no meaning and effect whatever.

Where a corporation, in the name of which was included the word "university," and its president, engaged in the interstate sale and distribution of a correspondence course of study and instruction in drugless healing and related subjects, through advertisements in newspapers and periodicals of national circulation, circulars, and other advertising material—

- (a) Represented and implied that said corporation offered a home study course in "Drugless Therapy, Psychology, and Philosophy," leading to degrees, and that it was a university as generally understood by the public and in educational circles;
- (b) Represented that there was a faculty of qualified professional persons, carefully selected and competent to teach the subjects in their respective fields, and that adequate classrooms, buildings, and libraries were maintained;
- (c) Represented that they recognized credits from accepted and recognized schools, and that in turn its credits were accepted and recognized by such schools, and that said corporation's general educational standards were high and comparable to those of recognized institutions of higher learning;
- (d) Represented that the business of the school was operated by administrative officers and a board of directors, the members of which devoted part or all of their time to the work of the school;
- (e) Represented that the school had authority to award academic degrees and that degrees might be obtained by payment of One Hundred Dollars "for office expenditures," the submission of a 3,000-word thesis, submission of

652

Complaint

diplomas from other schools or an affidavit pertaining to studies and practical work done by the applicant, and the passing of an examination with a minimum grade of seventy-five percent; and

- (f) Represented that there was no charge for degrees but that they were awarded, that their course in Chiro-Deo-Therapy was scientific, suggestive, practical, and therapeutic, that graduates thereof received the degree of Doctor of Chiro-Deo-Therapy and were in great demand as technicians, and that resident classes were conducted by members of the faculty who were franchised to qualify students;

The facts being that their so-called university was conducted in a massage parlor operated by the individual respondent, with no laboratories, libraries, or other educational equipment, no administrative officers, and no board of directors; theses submitted were not examined and graded, nor were examinations given; no one connected with said school had an authentic academic degree and said individual had no educational qualification to teach any subject of higher education; their so-called "degree" was unknown in the educational and professional fields and was of no validity; and in many instances they sold diplomas and such so-called "degrees" upon the payment of One Hundred Dollars and the submission of a thesis;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and of thereby inducing its purchase of their course of study and degrees; and with the result of placing in the hands of others, through issuance of such degrees, a means of deceiving the public into the belief that they were issued by a reputable university or institution of higher learning and were recognized and valid:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. John Morris Brady, of Portland, Oreg., for respondents.

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 Western University, Inc., a corporation, and Glennie Corinthia W. Gay, individually and as president 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 Western University, Inc., is a corporation organized, existing, and doing business under the laws of the State of California. Respondent Glennie Corinthia W. Gay is the president of said corporation and as such formulates, controls, and directs all

of the policies and activities of said corporation. The principal office and place of business of both respondents is located at 3693 Fifth Avenue, San Diego, California.

PAR. 2. Respondents are now, and have been for more than five years last past, engaged in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction in drugless healing and related subjects which is pursued by correspondence through the medium of the United States mails. Respondents cause said course of instruction, lesson material, and other documents to be transported from their said place of business in California to the purchasers thereof located in various States of the United States other than the State of California.

PAR. 3. There is now, and has been at all times hereinafter mentioned, a course of trade in said course of study so sold and distributed by the respondents in commerce between the various States of the United States.

PAR. 4. A university as that term is understood by the public and in the educational field is an educational institution of higher learning, including subjects in the arts, sciences, and professions with adequate equipment in the form of buildings, laboratories, libraries, and dormitories for resident students and sufficient financial resources to operate and maintain such institution, and with a faculty of learned persons qualified and trained to teach the respective subjects offered by such institutions and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and which are so recognized and accredited by standard accrediting organizations, and which degree conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents, by means of advertisements placed in newspapers and magazines having a national circulation, and circulars and other advertising material mailed to purchasers and prospective purchasers of their said course of study, have made and are making many false, exaggerated, misleading, and deceptive statements and representations with respect to said school and the acceptance and recognition of its credits and the degrees awarded by them. Typical of such representations, but not all inclusive, are the following:

From the magazine "American Weekly" of February 4, 1951:

Home Study, Drugless Therapy, Psychology, Philosophy Degs. Western University, San Diego, Cal.

From circulars disseminated by respondents:

WESTERN UNIVERSITY, INC.

Chartered Under the Laws of California, 1922.

DEAR FRIEND: In answer to your inquiry in regard to the awarding of Certificates, Diplomas, and Degrees to students and graduates of other schools, colleges, and universities, WESTERN UNIVERSITY is authorized to accept the hours of students from any educational institution, and if the hours or credits are sufficient to meet with requirements of the Board of Directors of WESTERN UNIVERSITY, said certificate, diploma, or degree may be awarded. You may apply for a certificate, diploma, or degree by complying with the following:

Send us copies of your diplomas from other schools, or a notarized affidavit of your studies and practical work, write a 3,000-word thesis on the subject in which you want a diploma, and pass the written examinations with a rate of at least 75 percent.

After your hours, thesis, and examinations have been accepted by the Board of Directors of WESTERN UNIVERSITY, we shall award you a diploma signed by the President and Secretary of WESTERN UNIVERSITY, and place the WESTERN UNIVERSITY, INC., STATE SEAL on it.

The cost for the WESTERN UNIVERSITY'S office expenditures is \$100.00. If you do not meet said requirements your money will be returned.

There is NO charge for diplomas—they are awarded.

Chiro-Deo-Therapy

A Course in Drugless Healing
 Spiritually, Mentally, Physically!
 Scientific Practical
 Suggestive Therapeutic

In regard to your recent inquiry about Chiro-Deo-Therapy training, we are asking you to consider the prospects and opportunities for technicians who are well-trained in this profession. There is a great demand for graduate technicians; consequently, we are making available correspondence courses in order to train more technicians to meet this demand.

After satisfactory completion of this course, you will be awarded your university Diploma, Doctor of Chiro-Deo-Therapy, and the Western University Membership Card.

Western University will grant such honors as are usually granted by any college or university or other institutions of learning in the United States and in testimony thereof give suitable diplomas under the corporate seal and signature of the President and Secretary of Western University, Inc.

All resident classes and instructions are conducted by authorized faculty members, with franchise contracts to qualify students.

PAR. 6. By means of the foregoing representations and others of similar import not herein set out specifically, respondents represent and imply: that respondent Western University, Inc., offers a home study course in Drugless Therapy, Psychology, and Philosophy, leading to degrees; that the corporate respondent is a university, as said term is generally understood by the public and in educational circles and as defined in Paragraph Four hereof; that there is a faculty of qualified professional persons carefully selected and competent to

teach the subjects in their respective fields; that adequate classrooms, buildings, and libraries are maintained; that it recognizes credits from accepted and recognized schools and that, in turn, its credits are so accepted and recognized by such schools; that said corporate respondent's general educational standards are high and comparable to the standards of recognized institutions of higher learning; that the business of said school is operated by administrative officers and a Board of Directors, the members of which devote part or all of their time to the work of said school; that it has authority to award academic degrees and that degrees may be obtained by payment of One Hundred Dollars "for office expenditures," the submission of a 3,000-word thesis, submission of diplomas from other schools, or an affidavit pertaining to studies and practical work done by the applicant, and the passing of an examination with a minimum grade of seventy-five percent; that there is no charge for degrees but that they are awarded; that said course in Chiro-Deo-Therapy is scientific, "suggestive," practical, and therapeutic; that graduates thereof receive the degree of Doctor of Chiro-Deo-Therapy and are in great demand as technicians and that resident classes are conducted by members of the faculty who are franchised to qualify students.

PAR. 7. All of the foregoing statements, representations, and implications are grossly deceptive, exaggerated, false, and misleading. In truth and in fact, the business operated by respondents is not a university nor an institution of higher learning, as said term is generally understood by members of the public and the educational world.

Respondents have none of the facilities, equipment and faculty described in Paragraph Four hereof. Their so-called school or university is conducted in a massage parlor, operated by said individual respondent. There are no laboratories, libraries or other equipment necessary or adequate for the study of the subjects for which said degree is offered.

There are no administrative officers or Board of Directors functioning to administer the affairs of an educational institution, said corporate respondent being operated, managed, and controlled solely by said individual respondent.

Theses submitted by persons desiring degrees are not examined and graded before acceptance by any faculty or Board of Directors and no examinations are given and papers graded by any examining body or Board.

Neither the individual respondent nor anyone connected with said school has been awarded an academic degree by an accepted and recognized institution of higher learning.

In truth and in fact respondents' educational standards are not sufficient to satisfy the minimum requirements of any accepted university or college. The so-called "degree" of "Doctor of Chiro-Deo-Therapy" is unknown in the educational and professional fields, is not recognized by any reputable institution of higher learning and of no validity whatever. There are no faculty members, either at respondents' place of business or elsewhere, conducting resident classes and qualifying students. Said individual respondent has no educational qualifications to teach any subject of higher education.

In truth and in fact in many instances respondents sell diplomas and said so-called "degrees" upon payment of the sum of One Hundred Dollars and the submission of a thesis.

PAR. 8. Academic degrees, as defined in Paragraph Four hereof, are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed scholastic attainments by students of said institutions and unless so earned and conferred they do not constitute degrees in the accepted meaning of said term and are of no meaning and effect whatever.

PAR. 9. Each and all of the false, deceptive, exaggerated and misleading statements and representations made by the respondents, as hereinabove set forth, are calculated to, and do, have a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations of respondents are true; and as a direct consequence of such erroneous and mistaken beliefs, induced by the aforesaid actions and representations of respondents, a substantial number of the public has purchased respondents' course of study and degrees.

Through the issuance of said degrees, as aforesaid, respondents place in the hands of other individuals the instrumentality and means of deceiving members of the public into the belief that said degrees are in fact degrees issued by a reputable, recognized and accredited university or institution of higher learning and are recognized and valid degrees as said term has been defined in Paragraphs Four and Eight hereof.

PAR. 10. The aforesaid acts and practices of respondents are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission

and Order to File Report of Compliance," dated January 3, 1952, the initial decision in the instant matter of trial examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 9, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. Thereafter, respondents filed their answer in which they admitted all of the material allegations of fact in the complaint and waived all intervening procedure and further hearing as to such facts. Subsequently, the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and answer, and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Western University, Inc., is a corporation organized, existing, and doing business under the laws of the State of California. Respondent Glennie Corinthia W. Gay is president of the corporation and as such formulates, controls, and directs all of its policies and activities. The principal office and place of business of both respondents is located at 3693 Fifth Avenue, San Diego, California.

PAR. 2. Respondents are now, and have been for more than five years last past, engaged in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction in drugless healing and related subjects which is pursued by correspondence through the medium of the United States mails. Respondents cause their course of instruction, lesson material, and other documents to be transported from their place of business in California to purchasers thereof located in various States of the United States other than the State of California. There is now, and has been at all times hereinafter mentioned, a course of trade in such course of study so sold and distributed by respondents in commerce between the various States of the United States.

PAR. 3. A university as that term is understood by the public and in the educational field is an educational institution of higher learning, including subjects in the arts, sciences and professions, with adequate equipment in the form of buildings, laboratories, libraries and dormitories for resident students and sufficient financial resources to operate and maintain such institution, and with a faculty of learned persons qualified and trained to teach the respective subjects offered by such institutions and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and which are so recognized and accredited by standard accrediting organizations, and which degree conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

PAR. 4. In the course and conduct of their business, respondents, by means of advertisements placed in newspapers and magazines having a national circulation, and circulars and other advertising material mailed to purchasers and prospective purchasers of their course of study, have made and are making many false, exaggerated, misleading and deceptive statements and representations with respect to their school and the acceptance and recognition of its credits and the degrees awarded by them. Typical of such representations, but not all-inclusive, are the following:

From the magazine "American Weekly" of February 4, 1951:

Home Study, Drugless Therapy, Psychology, Psychology Degs. Western University, San Diego, Cal.

From circulars disseminated by respondents:

WESTERN UNIVERSITY, INC.

Chartered Under the Laws of California, 1922.

DEAR FRIEND: In answer to your inquiry in regard to the awarding of Certificates, Diplomas and Degrees to students and graduates of other schools, colleges and universities, WESTERN UNIVERSITY is authorized to accept the hours of students from any educational institution, and if the hours or credits are sufficient to meet with requirements of the Board of Directors of WESTERN UNIVERSITY, said certificate, diploma or degree may be awarded. You may apply for a certificate, diploma or degree by complying with the following:

Send us copies of your diplomas from other schools, or a notarized affidavit of your studies and practical work, write a 3,000-word thesis on the subject in which you want a diploma, and pass the written examinations with a rate of at least 75 percent.

After your hours, thesis, and examinations have been accepted by the Board of Directors of WESTERN UNIVERSITY, we shall award you a diploma signed by the President and Secretary of WESTERN UNIVERSITY, and place the WESTERN UNIVERSITY, INC., STATE SEAL on it.

Findings

48 F. T. C.

The cost of the WESTERN UNIVERSITY'S office expenditures is \$100.00. If you do not meet said requirements your money will be returned. There is NO charge for diplomas—they are awarded.

Chiro-Deo-Therapy

A Course in Drugless Healing
 Spiritually, Mentally, Physically!
 Scientific Practical
 Suggestive Therapeutic

In regard to your recent inquiry about Chiro-Deo-Therapy training, we are asking you to consider the prospects and opportunities for technicians who are well-trained in this profession. There is a great demand for graduate technicians, consequently, we are making available correspondence courses in order to train more technicians to meet this demand.

After satisfactory completion of this course, you will be awarded your university Diploma, Doctor of Chiro-Deo-Therapy, and the Western University Membership Card.

Western University will grant such honors as are usually granted by any college or university or other institutions of learning in the United States and in testimony thereof give suitable diplomas under the corporate seal and signature of the President and Secretary of Western University, Inc.

All resident classes and instructions are conducted by authorized faculty members, with franchise contracts to qualify students.

PAR. 5. By means of the foregoing representations and others of similar import not herein set out specifically, respondents represent and imply: that respondent Western University, Inc., offers a home study course in Drugless Therapy, Psychology, and Philosophy, leading to degrees; that the corporate respondent is a university, as that term is generally understood by the public and in educational circles and as defined in Paragraph Three hereof; that there is a faculty of qualified professional persons carefully selected and competent to teach the subjects in their respective fields; that adequate classrooms, buildings and libraries are maintained; that it recognizes credits from accepted and recognized schools and that, in turn, its credits are so accepted and recognized by such schools; that the corporate respondent's general educational standards are high and comparable to the standards of recognized institutions of higher learning; that the business of the school is operated by administrative officers and a Board of Directors, the members of which devote part or all of their time to the work of the school; that the school has authority to award academic degrees and that degrees may be obtained by payment of One Hundred Dollars "for office expenditures," the submission of a 3,000-word thesis, submission of diplomas from other schools or an affidavit pertaining to studies and practical work done by the applicant, and the passing of an examination with a minimum grade of seventy-five percent; that there is no charge for degrees but that they are awarded; that respondents' course in Chiro-Deo-Therapy

is scientific, "suggestive," practical and therapeutic; that graduates thereof receive the degree of Doctor of Chiro-Deo-Therapy and are in great demand as technicians, and that resident classes are conducted by members of the faculty who are franchised to qualify students.

PAR. 6. All of these statements, representations and implications are deceptive, exaggerated, false, and misleading. In truth and in fact, the business operated by respondents is not a university nor an institution of higher learning, as that term is generally understood by members of the public and the educational world.

Respondents have none of the facilities, equipment and faculty described in Paragraph Three hereof. Their so-called school or university is conducted in a massage parlor, operated by the individual respondent. There are no laboratories, libraries or other equipment necessary or adequate for the study of the subjects for which said degree is offered.

There are no administrative officers or Board of Directors functioning to administer the affairs of an educational institution, the corporate respondent being operated, managed, and controlled solely by the individual respondent.

Theses submitted by persons desiring degrees are not examined and graded before acceptance by any faculty or Board of Directors and no examinations are given and papers graded by any examining body or Board.

Neither the individual respondent nor anyone connected with respondents' school has been awarded an academic degree by an accepted and recognized institution of higher learning.

In truth and in fact, respondents' educational standards are not sufficient to satisfy the minimum requirements of any accepted university or college. The so-called "degree" of "Doctor of Chiro-Deo-Therapy" is unknown in the educational and professional fields, is not recognized by any reputable institution of higher learning, and is of no validity whatever. There are no faculty members, either at respondents' place of business or elsewhere conducting resident classes and qualifying students. The individual respondent has no educational qualifications to teach any subject of higher education.

In many instances respondents sell diplomas and such so-called "degrees" upon payment of the sum of One Hundred Dollars and the submission of a thesis.

PAR. 7. Academic degrees, as defined in Paragraph Three hereof, are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed scholastic attainments by students of such institutions, and

Order

48 F. T. C.

unless so earned and conferred they do not constitute degrees in the accepted meaning of the term and are of no meaning and effect whatever.

PAR. 8. The false, deceptive, exaggerated and misleading statements and representations made by respondents, as hereinabove set forth, are calculated to, and do, have a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true; and as a direct consequence of such erroneous and mistaken belief, induced by such actions and representations of respondents, a substantial number of the public have purchased respondents' course of study and degrees.

Through the issuance of such degrees, respondents also place in the hands of other individuals an instrumentality and means of deceiving members of the public into the belief that such degrees are in fact degrees issued by a reputable, recognized and accredited university or institution of higher learning and are recognized and valid degrees as that term has been defined herein.

CONCLUSION

The acts and practices of the respondents as hereinabove set out are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Western University, Inc., a corporation, and its officers, and respondent Glennie Corinthia W. Gay, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of courses of study and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Issuing degrees or diplomas where the sole or primary basis for such action is the payment by the recipient of a monetary consideration.

2. Representing, by offering to grant or confer or through granting or conferring upon purchasers of respondents' course of home study and instruction through correspondence any so-called academic degrees, or by any other means, that corporate respondent is an accredited and standard institution of higher learning, or that its course

652

Order

of instruction when pursued by correspondence is comparable to those used in recognized, standard and accredited resident institutions of higher learning.

3. Using the word "university" or any abbreviation or simulation thereof, to designate, describe or refer to respondents' school; or otherwise representing, directly or by implication, that the business conducted by respondents is a university or an educational institution of higher learning.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of January 3, 1952].

Complaint

48 F. T. C.

IN THE MATTER OF
HOFFMAN & DENGROVE, INC., ET AL

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5684. Complaint, July 20, 1949—Decision, Jan. 10, 1952

Where a corporate wholesale distributor of woolen piece goods and an individual, engaged in the offer, sale and distribution in commerce of wool products as defined in the Wool Products Labeling Act, including certain bolts of piece goods which, composed of about 50 percent wool and 50 percent viscose rayon, represented, invoiced and ticketed, as all wool, were the subject of sale in a number of transactions—

Misbranded said bolts of piece goods in that when sold and transported in commerce as aforesaid, they did not have affixed thereto a stamp, tag, label, or other means of identification showing their constituent fibers and percentages thereof and the name or registration number of the manufacturer or a subsequent seller, as provided in said Act and Rules and Regulations promulgated thereunder:

Held, That such acts and practices, under the circumstances set forth, were in violation of the provisions of said Act and Rules and constituted unfair and deceptive acts and practices in commerce.

In said proceeding, while the Commission denied respondent's appeal from the hearing examiner's initial decision, the Commission was of the opinion that said decision was deficient in that the order therein (1) was incorrectly limited to products containing or represented as containing "wool" and did not relate to products containing "reprocessed wool" or "reused wool", and (2) did not contain any requirement that the stamp, tag, label or other means of identification affixed to a wool product contain the name or registration number of the manufacturer or a subsequent seller as provided in the Act and Rules; and made findings, conclusion drawn therefrom and order in lieu of such initial decision.

Before *Mr. Randolph Preston* and *Mr. Clyde M. Hadley*, hearing examiners.

Mr. Jesse D. Kash for the Commission.

Guzik & Engel, of New York City, for Hoffman & Dengrove, Inc.

Mr. Harvey L. Gardner, of New York City, for Leon Levy.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Hoffman & Dengrove, Inc., a corporation,

and Leon Levy, an individual, hereinafter referred to as respondents, have violated the provision of said Acts and Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Hoffman & Dengrove, 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 352 Fourth Avenue, New York, New York. Said respondent is now and for more than a year last past has been engaged in the wholesale distribution of piece goods in bolts.

Respondent Leon Levy is an individual with his office and principal place of business located at 3720 Gwynn Oak Avenue, Baltimore, Maryland. Said respondent is now and for more than one year last past has been engaged in the sale of piece goods in bolts, some of which are sold and have been sold to the aforesaid respondent, Hoffman & Dengrove, Inc.

PAR. 2. Respondents' said wool products are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said Act and the Rules and Regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said Act and said Rules and Regulations in the manufacture for introduction, and in the introduction into commerce and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said Act and said Rules and Regulations.

PAR. 3. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported and distributed in commerce by respondents are piece goods in bolts. Exemplifying respondents' practice of violating said Act and the Rules and Regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said Act and the said Rules and Regulations by failing to affix to said wool products a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said Act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentum by weight of such fiber was five percentum or more, and (5) the aggregate of all other

fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the Rules and Regulations promulgated under such Act, or the name of one or more persons subject to section 3 of said Act with respect to such wool product.

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

PAR. 4. The aforesaid acts, practices and methods of the respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, on July 20, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those Acts. After the filing of respondents' answers, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent Leon Levy, on motion duly granted by the hearing examiner, then withdrew his original answer and filed a substitute answer in lieu thereof admitting all material allegations of fact set forth in said complaint and waiving all intervening procedure and hearings as to said facts. Thereafter, on January 12, 1951, a substitute hearing examiner, duly designated by the Commission, filed his initial decision herein (the original hearing examiner having retired and, therefore, being unavailable).

Within the time permitted by the Commission's rules of practice, counsel for respondent Hoffman & Dengrove, Inc., filed with the Com-

mission an appeal from said initial decision. Thereafter this proceeding regularly came on for final hearing by the Commission upon the record herein, including the briefs in support of and in opposition to the appeal and oral argument of counsel, and the Commission issued its order denying said appeal.

The Commission is of the opinion, however, that the hearing examiner's initial decision is deficient in certain respects, including (1) that the order therein is incorrectly limited to products containing or represented as containing "wool" and does not relate to products containing "reprocessed wool" or "reused wool," and (2) that the order therein does not contain any requirement that the stamp, tag, label, or other means of identification affixed to a wool product contain the name or registration number of the manufacturer or a subsequent seller of such product, as provided in the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. Therefore, the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Hoffman & Dengrove, 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 254 Fourth Avenue, New York, New York.

Respondent Leon Levy is an individual, with his office and principal place of business located at 3720 Gwyn Oak Avenue, Baltimore, Maryland.

PAR. 2. Respondent Hoffman & Dengrove, Inc., is now and since 1922 has been a wholesale distributor of woolen piece goods. Respondent Leon Levy in 1948 was engaged in the sale of woolen piece goods in bolts, some of which he sold to respondent Hoffman & Dengrove, Inc. Respondent Hoffman & Dengrove, Inc., is now and since 1922 has been, and respondent Leon Levy in 1948 was, engaged in the offering for sale, sale, transportation and distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, of wool products composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939. Such products are subject to the provisions of said Act and the Rules and Regulations promulgated thereunder.

Order

48 F. T. C.

PAR. 3. Among the wool products sold, transported, distributed and introduced into commerce by respondents were four bolts of piece goods composed of approximately 50 percent wool and 50 percent viscose rayon. These four bolts of piece goods, represented and invoiced as being all wool, were sold to respondent Hoffman & Dengrove, Inc., through an independent broker, by respondent Leon Levy, who caused them to be transported from Baltimore, Maryland, to the place of business of respondent Hoffman & Dengrove, Inc., in New York, New York. Respondent Hoffman & Dengrove, Inc., ticketed these four bolts as 100 percent wool and resold them as all wool to Rosenthal, a Philadelphia concern, and caused them to be transported from New York to Philadelphia, Pennsylvania. This purchaser, upon discovery that these goods were seconds as to quality, returned them to respondent Hoffman & Dengrove, Inc., who resold them ticketed as 100 percent wool and represented as being all wool, but of second quality, to the Mayflower Manufacturing Company, of Scranton, Pennsylvania, and caused them to be transported from New York to Scranton, Pennsylvania. Upon being informed by the Mayflower Manufacturing Company that these four bolts of piece goods had been tested by the Commission and found to be composed of approximately 50 percent wool and 50 percent viscose rayon, respondent Hoffman & Dengrove, Inc., accepted the return of these goods, refunded the purchase price, and after unsuccessfully attempting to return them to respondent Leon Levy, resold them, correctly labeled.

Said four bolts of piece goods, when sold and transported in commerce as aforesaid, were misbranded in that they did not have affixed to them a stamp, tag, label or other means of identification showing the constituent fibers, and percentages thereof, of such products, and other information required by the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Hoffman & Dengrove, Inc., a corporation, and its officers, and respondent Leon Levy, an individual, and their respective 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 offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the aforesaid Acts, of bolts of piece goods or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such bolts of piece goods or other products by failing to affix securely to or place on such products a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling or adulterating matter.

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *and provided further*, that nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

It is further ordered, That the respondents 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
FOLEY & COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5515. Complaint, Nov. 20, 1947—Decision, Jan. 16, 1952

As respects a contention that an order recommended by a substitute hearing examiner would be improper and illegal in view of the fact that it was based solely upon the reading of the record by the hearing examiner who was not present at the taking of the testimony: the final responsibility for the disposition of all cases coming before the Commission, including the form of its orders to cease and desist, rests upon the Commission itself, and it has not only the right, but the duty, under the law, to reach its own conclusions on the evidence regardless of those reached by the hearing examiner, even the examiner who presided at the reception of evidence.

While the Administrative Procedure Act requires that the hearing examiner who presided at the reception of evidence must ordinarily prepare the recommended decision, an exception is made where such hearing examiner has become unavailable, as in the instant matter, in which he had retired, and in which the procedure followed by the Commission, after its due designation of a substitute hearing examiner, was in compliance with the statutory requirements.

Where a corporation engaged in the interstate sale and distribution of its "Foley's Honey & Tar Compound." through advertisements in newspapers and radio announcements—

(a) Represented that the use of said preparation as directed was a remedy or competent or effective treatment for coughs due to colds, and would check them or shorten their duration;

The facts being there is no known medication which will cure or shorten the duration of a cold or the underlying causes of a cough due thereto; and sole value of its said preparation, limited to its demulcent and mild expectorant properties, was that it might lessen the occurrence and severity of coughing spells due to a cold for not more than one-half hour from the time of taking;

(b) Represented that its use as directed supplied a therapeutic dose of terpins; when in fact the terpin hydrate content was too small to have any beneficial effect; and

(c) Falsely represented that the therapeutic value of said preparation had been proven clinically by a test made in a hospital;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true and thereby induce its purchase of said preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

As respects respondents' further contention that the substitute hearing examiner was unable to take into consideration their proposed findings of fact which

670

Complaint

had been given orally to the original hearing examiner at an unreported conference rather than in writing as required by the Commission's rules of practice covering the matter, it appeared that respondents in their brief and oral argument had had full opportunity to present directly to the Commission any exceptions they had to the recommended decision and to make any relevant argument on any phase of the matter; and the Commission, under the circumstances, was of the opinion that its decision in the instant matter was proper and legal and had been reached in accordance with due process of law.

As regards the charge in the complaint that respondents represented that the use of their said preparation as directed was a remedy or a competent or effective treatment for colds and sore throats due thereto: the evidence of record was not sufficient to support such allegations.

Before *Mr. Randolph Preston* and *Mr. Clyde M. Hadley*, hearing examiners.

Mr. Joseph Callaway for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

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 Foley & Company, a corporation, and A. M. Salomon, an individual, 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 Foley & Company is a corporation chartered and doing business under the laws of the State of Illinois, with its office and principal place of business at 945-47 George Street, Chicago, Illinois.

PAR. 2. Respondent A. M. Salomon is an individual operating and trading under the name of Lauesen and Salomon, with his office located at 520 North Michigan Avenue, Chicago, Illinois. This respondent is the advertising agent of the respondent Foley & Company and in the course and conduct of his business prepares advertising matter for said company, and in conjunction and cooperation with said company disseminates or causes the dissemination of advertising matter with respect to the medicinal preparation hereinafter referred to, including the advertising matter set out herein.

PAR. 3. Respondent Foley & Company is now and has been for several years last past engaged in the business of selling and distributing a certain drug preparation, as "drug" is defined in the Federal Trade

Complaint

48 F. T. C.

Commission Act. The designation used by said respondent for its preparation and formula and directions for its use are as follows:

Designation: Foley's Honey & Tar Compound.

Formula: Prior to March 1944:

90 lbs. Carbonate Magnesium
 17 lbs. Bicarbonate of Soda
 12 Gals. Pine Tar
 81 lbs. Gum Arabic
 5 lbs. Mobenate
 2,100 lbs. Brown Sugar
 679 lbs. Corn Syrup
 45 Gals. Honey
 4 Gals. Sugar Color
 6 Pts. Oil of Peppermint
 8½ Pts. Oil of Anise
 8 Pts. Tincture of Capsicum
 17½ Lbs. Terpin Hydrate
 35½ Gals. Pure Grain Alcohol
 Water to make 443½ Gals. finished product.

Subsequent to March 1944:

Each fluid ounce contains:

Terpin Hydrate.....	3.9 gr.
Pine Tar.....	12.9 m.
Sodium Monobenzyl succinate (Mobenate).....	0.6 gr.
Gum Arabic (acacia).....	10 gr.
Light Amber Honey.....	48.7 m.
Brown Sugar.....	263.4 gr.
Corn Syrup.....	78.3 gr.
Oil of Peppermint.....	0.8 m.
Oil of Anise.....	1.1 m.
Light Magnesium Carbonate.....	11.1 gr.
Sodium Bicarbonate.....	3.1 gr.
Sugar Color.....	5.4 m.
Propylene Glycol.....	38.5 m.
Water q. s. ad.....	1 fld. oz.

Directions for use:

For adults, 1 teaspoonful. Children of school age, ½ teaspoonful; children 2 to 4 years, 10 to 20 drops; infants 1 year old, 5 to 10 drops. Repeat doses as directed every 1, 2 or 3 hours as needed.

Said respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States located in the United States and the District of Columbia.

PAR. 4. In the course and conduct of their businesses, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said preparation by means of United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, includ-

ing but not limited to advertisements appearing in the March 13, 1946, issue of The Chicago News, Chicago, Illinois, the April 3, 1946, issue of the Cleveland Plain Dealer, Cleveland, Ohio, and the January 26, 1947, issue of the Pittsburgh Press, Pittsburgh, Pennsylvania, and by means of radio continuities including but not limited to broadcasts over Stations WLS, Chicago, Illinois, on July 26, 1943, WMT, Cedar Rapids, Iowa, on August 20, 1943, WMBD, Peoria, Illinois, on June 26, 1943, and KQV, Pittsburgh, Pennsylvania, on December 20 and 27, 1945; and respondents have disseminated and have caused the dissemination of advertisements concerning said preparation, including but not limited to the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among the statements and representations contained in said advertisements disseminated as aforesaid are the following:

Newspapers Advertisements:

News about coughs. To give sufferers from coughs due to colds benefit of important medical development, N. Y. doctor adds just one ingredient to already speedy Foley's Honey & Tar and creates a cough syrup better and faster. Tests in N. Y. hospital demonstrate that this new, improved Foley's benefited 41% with coughs from colds in 15 minutes, 35% more in 2 hours, balance in 24 hours. Get over your cough quicker by getting the new Foley's Honey & Tar Compound from your druggist, 30 & 60¢

Coughers find answer to \$64 question: "How can I get rid of my cough from a cold quicker?" The answer is, take plenty of terpins! They definitely help break up, throw off cough quicker. That's why so many doctors prescribe them—why the new Foley's Honey & Tar has been specially terpin-enriched. This improvement insures you more terpins than ever before to help you get well quicker. As heretofore, Foley's soothes throat, checks coughing, but now it also gives you plenty of terpins. * * *

Get well quicker from your cough due to a cold. Foley's Honey & Tar Cough Compound.

Radio Continuities:

If you take Foley's Honey & Tar you may be pleasantly surprised at how much sooner you would get over such a cough. Speed-up recovery is a special feature of Foley's Honey & Tar. As the result of making cough syrup for over 67 years, the Foley people know that cough sufferers want a cough syrup that does a whole lot more than soothe the throat and check coughing. We want one which will also help to get *over* our cough quicker. To meet this demand, the Foley people experimented until they finally developed such a cough syrup—a cough syrup which actually helps sufferers from coughs due to colds to recover quicker. * * *

Be more comfortable while you have a cough from a cold. Get over it quicker. Take Foley's Honey & Tar. You'll find it unsurpassed for the speed with which it soothes the rawness in your throat and quiets that cough-starting tickle. It's so effective that you'll start feeling better with the first spoonful of Foley's you

Complaint

48 F. T. C.

take. Before you realize it, those harsh, wracking coughing spells will have ceased. Even more important is the action which Foley's has on your bronchial tubes to help speed your recovery from your cough. For speedy relief and quicker recovery, take Foley's Honey & Tar. * * *

Check your cough from a cold before it gets worse. * * * Get after it with Foley's Honey & Tar cough syrup. Do this—and you'll notice an improvement with the very first spoonful. Your throat will become more comfortable; the tickle will die down; your coughing spells will soon cease. While Foley's is unsurpassed for easing your throat and checking coughing spells, it is famous for its internal action by which the duration of the cough is definitely lessened. * * *

With Foley's Honey & Tar ready and able to help you, don't suffer needless discomforts or let your cough hang on longer than necessary. Get over it quicker by doctoring yourself with Foley's Honey & Tar.

A little over two years ago a nationally known New York medical authority advised the makers of Foley's Honey & Tar that their cough syrup could be greatly improved if they added one newly developed ingredient. As the result, this authority was told to test out the improved Foley formula in a New York hospital under scientific conditions. The authenticated records of their test showed 41% of those suffering from coughs due to colds were benefited in 10 minutes by this improved formula, 35% more within 2 hours, and the remainder within 24 hours. In cases of sore throat, 60% benefited in 15 minutes. This new, improved formula is now embodied in Foley's Honey & Tar. Take advantage of this great step forward in a cough syrup and get well quicker. Throw off your cold in less time and suffer less. For speedy comfort and speeded-up recovery, go to your druggist now for a 30 to 60¢ bottle of Foley's Honey & Tar. But be sure to get this hospital-tested formula which gives so much quicker results, be sure to get Foley's—spelled F-O-L-E-Y—Foley's Honey & Tar.

PAR. 6. Through the use of the advertisements hereinabove set forth and others of the same import but not specifically set out herein, respondents represented that the use of said preparation, as directed, is a remedy or a competent or effective treatment for colds and sore throat and coughs due to colds; that it will check coughs due to colds or shorten their duration; that its use, as directed, supplies a therapeutic dose of terpins and that its value in the treatment of sore throat and coughs due to colds has been proved clinically by a test made in a hospital.

PAR. 7. Said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the value of said preparation under either of said formulas is limited to its demulcent and mild expectorant properties. Its use may lessen the occurrence of coughing spells due to colds, but since neither of said properties will have any effect upon the cause or causes of colds, or sore throat or coughs, due to colds, it is not a remedy or a competent or effective treatment therefor and will not check such ailments or shorten their duration. Its use, as directed, will not supply a therapeutic dose of

terpins. Said preparation has not been tested in a hospital and the test referred to in said advertisements is not a valid or authentic test and does not demonstrate that said preparation is of benefit to persons suffering from sore throat and coughs due to colds in the manner and to the extent set out therein.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 20, 1947, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony and other evidence, the recommended decision of a substitute hearing examiner duly designated by the Commission, the hearing examiner originally designated herein being unavailable, briefs and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Foley & Company is a corporation chartered and doing business under the laws of the State of Illinois, with its office and principal place of business at 945-47 George Street, Chicago, Illinois.

PAR. 2. Respondent A. M. Salomon is an individual operating and training under the name of Lauesen and Salomon, with his office located at 520 North Michigan Avenue, Chicago, Illinois. This respondent is the advertising agent of the respondent Foley & Company and in the course and conduct of his business prepares advertising matter for said company, and in conjunction and cooperation with said company dis-

Findings

48 F. T. C.

seminates or causes the dissemination of advertising matter with respect to the medicinal preparation hereinafter referred to, including the advertising matter set out herein.

PAR. 3. Respondent Foley & Company is now and has been for several years last past engaged in the business of selling and distributing a certain drug preparation, as "drug" is defined in the Federal Trade Commission Act. The designation used by said respondent for its preparation and formula and directions for its use are as follows:

Designation: Foley's Honey & Tar Compound.

Formula, subsequent to March 1944:

Each fluid ounce contains:

Terpin Hydrate.....	3.9 gr.
Pine Tar.....	12.9 m.
Sodium Monobenzyl Succinate (Mobenate).....	0.6 gr.
Gum Arabic (acacia).....	10 gr.
Light Amber Honey.....	48.7 m.
Brown Sugar.....	263.4 gr.
Corn Syrup.....	78.3 gr.
Oil of Peppermint.....	0.8 m.
Oil of Anise.....	1.1 m.
Light Magnesium Carbonate.....	11.1 gr.
Sodium Bicarbonate.....	3.1 gr.
Sugar Color.....	5.4 m.
Propylene Glycol.....	38.5 m.
Water q. s. ad.....	1 fld. oz.

Directions for Use:

For adults, 1 teaspoonful. Children of school age, $\frac{1}{2}$ teaspoonful; children 2 to 4 years, 10 to 20 drops; infants 1 year old, 5 to 10 drops. Repeat doses as directed every 1, 2 or 3 hours as needed.

The formula prior to March 1944 was substantially the same, the main difference being a smaller content of terpin hydrate.

Respondent Foley & Company causes said preparation, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their businesses, as aforesaid, and for the purpose of inducing the purchase of said preparation, respondents have disseminated and caused the dissemination of certain advertisements concerning said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, and they have also disseminated and have caused the dissemination, by various means, of many advertisements for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, principally by insertions in newspapers and by radio announcements, have been the following:

News about coughs. To give sufferers from coughs due to colds benefit of important medical development, N. Y. doctor adds just one ingredient to already speedy Foley's Honey & Tar and creates a cough syrup better and faster. Tests in N. Y. hospital demonstrate that this new, improved Foley's benefited 41% with coughs from colds in 15 minutes, 35% more in 2 hours, balance in 24 hours. Get over your cough quicker by getting the new Foley's Honey & Tar Compound from your druggist, 30 & 60¢.

Coughers find answer to \$64 question. "How can I get rid of my cough from a cold quicker?" The answer is—take plenty of terpins! They definitely help break up, throw off cough quicker. That's why so many doctors prescribe them—why the new Foley's Honey & Tar has been specially terpin-enriched. This improvement insures you more terpins than ever before to help you get well quicker. As heretofore, Foley's soothes throat, checks coughing, but now it also gives you plenty of terpins. * * *

Get well quicker from your cough due to a cold. Foley's Honey & Tar Cough Compound.

If you take Foley's Honey & Tar you may be pleasantly surprised at how much sooner you would get over such a cough. Speeded-up recovery is a special feature of Foley's Honey & Tar. As the result of making cough syrup for over 67 years, the Foley people know that cough sufferers want a cough syrup that does a whole lot more than soothe the throat and check coughing. We want one which will also help us get *over* our cough quicker. To meet this demand, the Foley people experimented until they finally developed such a cough syrup—a cough syrup which actually helps sufferers from coughs due to colds to recover quicker. * * *

Be more comfortable while you have a cough from a cold. Get over it quicker. Take Foley's Honey & Tar. You'll find it unsurpassed for the speed with which it soothes the rawness in your throat and quiets that cough-starting tickle. It's so effective that you'll start feeling better with the first spoonful of Foley's you take. Before you realize it, those harsh, wracking coughing spells will have ceased. * * * Even more important is the action which Foley's has on your bronchial tubes to help speed your recovery from your cough. For speedy relief and quicker recovery, take Foley's Honey & Tar. * * *

Check your cough from a cold before it gets worse. * * * Get after it with Foley's Honey & Tar Cough syrup. Do this—and you'll notice an improvement with the very first spoonful. Your throat will become more comfortable; the tickle will die down; your coughing spells will soon cease. While Foley's is unsurpassed for easing your throat and checking coughing spells, it is famous for its internal action by which the duration of the cough is definitely lessened.

With Foley's Honey & Tar ready and able to help you, don't suffer needless discomforts or let your cough hang on any longer than necessary. Get over it quicker by doctoring yourself with Foley's Honey & Tar.

A little over two years ago, a nationally known New York medical authority advised the makers of Foley's Honey & Tar that their cough syrup could be greatly improved if they added one newly developed ingredient. As the result, this authority was told to test out the improved Foley formula in a New York

Findings

48 F. T. C.

hospital under scientific conditions. The authenticated records of this test showed 41% of those suffering from coughs due to colds were benefited in 10 minutes by this improved formula, 35% more within 2 hours, and the remainder within 24 hours. In cases of sore throat, 60% benefited in 15 minutes. This new, improved formula is now embodied in Foley's Honey & Tar. Take advantage of this great step forward in a cough syrup and get well quicker. Throw off your cough in less time and suffer less. For speedy comfort and speeded-up recovery, go to your druggist now for a 30 or 60¢ bottle of Foley's Honey & Tar. But be sure to get this hospital-tested formula which gives so much quicker results, be sure to get Foley's—spelled F-O-L-E-Y—Foley's Honey & Tar.

PAR. 5. Through the use of the advertisements above set forth and others of like import, respondents have represented that the use of said preparation, as directed, is a remedy or a competent or effective treatment for coughs due to colds; that it will check coughs due to colds or shorten their duration; that its use, as directed, supplies a therapeutic dose of terpins; and that its therapeutic value has been proven clinically by a test made in a hospital.

PAR. 6. In fact the only value of respondent's preparation when taken by persons with a cold is as a palliative to bring about temporary symptomatic relief. There is no known medication which will cure or shorten the duration of a cold or the underlying causes of a cough due to a cold. While such a cough may be temporarily suppressed, the underlying causes will remain. The value of said preparation is limited to its demulcent and mild expectorant properties. A demulcent has the property of forming a protective coating over those areas of mucous membrane of the throat and pharynx with which it comes in contact when swallowed by the patient. This protective coating tends to prevent further irritation of the inflamed areas of the throat and pharynx until it is washed away by saliva and other secretions. Thus it tends to temporarily lessen the amount of coughing due to the irritation of these areas for a limited period of from two to fifteen minutes in most cases and never longer than one half hour from the time of taking. An expectorant has properties which modify the amount or content of the secretions of the respiratory tract. The value of such expectorant action in the treatment of a cough due to a cold is in dispute. But whatever the value of expectorants in sufficient dosage may be, the ingredients in respondent's preparation which have expectorant properties are not present in sufficient quantity to have more than a slight expectorant effect, if any, when taken as directed. Thus respondent's preparation does not constitute a remedy or an effective treatment for coughs due to a cold. Nor will it shorten the period of time during which such coughs will persist. Its sole value, when taken as directed for such coughs, is that it may lessen the occurrence and severity of coughing spells due to a cold for a period of not over one half hour from the time of taking.

The content of terpin hydrate in respondents' preparation is too small to constitute a therapeutic dosage or to have any beneficial effect in the treatment of a cough due to a cold, when taken as directed. The therapeutic value of respondents' preparation has not been proven clinically by tests conducted in a hospital.

PAR. 7. The complaint in this proceeding also alleged that respondents represented that the use of said preparation, as directed, is a remedy or a competent or effective treatment for colds and sore throat due to colds. The evidence of record is not sufficient to support these allegations of the complaint.

PAR. 8. The statements and representations referred to in Paragraphs Four and Five have been and are false and misleading, and the advertisements wherein such statements and representations were made were false advertisements. Respondents' use of the aforesaid false and misleading statements and representations, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce a substantial number of the public to purchase said preparation because of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Respondents contend that the order as recommended by the substitute hearing examiner would be improper and illegal in view of the fact that it is based solely upon a reading of the record by a hearing examiner who was not present at the taking of testimony. The final responsibility for the disposition of all cases coming before it, including the form of its orders to cease and desist, rests upon the Commission itself. Under the law the Commission not only has the right but has the duty to reach its own conclusions on the evidence regardless of the conclusions reached by the hearing examiner—even the hearing examiner who presided at the reception of evidence. While the Administrative Procedure Act requires that the same hearing examiner who presided at the reception of evidence must ordinarily prepare the recommended decision, an exception is made in any case where such hearing examiner has become available. Thus in this matter where the hearing examiner who presided at the reception of evidence becomes unavailable due to retirement, the procedure fol-

Order

48 F. T. C.

lowed by the Commission in reaching its decision is in compliance with the statutory requirements.

Respondents further contend that the substitute hearing examiner was unable to take into consideration their proposed findings of fact, which had been given orally to the original hearing examiner at an unreported conference rather than in writing as required by the Commission's Rules of Practice governing this matter. It is noted, however, that respondents in their brief and oral argument have had full opportunity to present directly to the Commission any exceptions they have to the recommended decision and to make any relevant argument on any phase of this matter. Under these circumstances the Commission is of the opinion that its decision herein is proper and legal and that it has been reached in accordance with due process of law.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence introduced before a hearing examiner of the Commission theretofore duly designated by it, the recommended decision of a substitute hearing examiner duly designated by the Commission (the hearing examiner originally designated herein being unavailable), briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Foley & Company, a corporation, and its officers, and A. M. Salomon, an individual, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the preparation designated Foley's Honey and Tar Compound, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under such name or any other name, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement, by means of the United States mails, or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That said preparation is a remedy or an effective treatment for coughs due to colds.

(b) That the use of said preparation will shorten the total period during which coughing due to a cold will persist.

670

Order

(c) That the use of said preparation will have any value in the treatment of coughs due to a cold in excess of lessening the occurrence and severity of coughing spells for a period of not over one-half hour from the time of taking.

(d) That said preparation, taken as directed, supplies a therapeutic dose of terpin hydrate or that its terpin content would have any beneficial effect in the treatment of a cough due to a cold.

(e) That the therapeutic value of said preparation has been proven clinically by tests made in a hospital.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

Order

48 F. T. C.

IN THE MATTER OF
R. J. REYNOLDS TOBACCO COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 4795. Order, January 17, 1952

Modified order eliminating the words "officers, agents, representatives and employees," and modifying testimonial prohibition in accordance with court's decree in proceeding in question—in which the Commission's original order issued on March 31, 1950, 46 F. T. C. 706 at 733, and in which the Court of Appeals for the Seventh Circuit, on November 1, 1951, in *R. J. Reynolds Tobacco Co. v. Federal Trade Commission*, 192 F. 2d 535, rendered its opinion and decision, "holding that the Commission was without authority to include in its order, 'officers, agents, representatives and employees,' in the absence of any finding other than those directed solely at the corporation," and that latter prohibition was too broad, and on December 7, 1951, entered its final decree modifying, and affirming as modified, the aforesaid desist order, pursuant to its said opinion—

Requiring respondent corporation, in connection with the offer, etc., in commerce, of its "Camel" brand of cigarettes, to cease and desist from representing that the smoking of such cigarettes encourages the flow of digestive fluids, relieves fatigue, etc., as in said order below set out; and from using in any advertising media testimonials of users or purported users which contain any of the prohibited representations.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Edward L. Smith for the Commission.

Davies, Richberg, Tydings, Beebe & Landa, of Washington, D. C., and *Mr. P. Frank Hanes*, of Winston-Salem, N. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said amended complaint, the report of the trial examiner upon the evidence and exceptions to such report, briefs in support of the amended complaint and in opposition thereto, and oral argument of counsel; and the Commission, having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act and issued its order to cease and desist on March 31, 1950; and

Respondent *R. J. Reynolds Tobacco Company*, having filed in the United States Court of Appeals for the Seventh Circuit their petition to review and set aside the order to cease and desist issued herein,

and that Court having heard the matter on briefs and oral argument and fully considered the matter, and having, thereafter on December 7, 1951, entered its final decree modifying and affirming, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on November 1, 1951:

Now, therefore, it is hereby ordered, adjudged, and decreed, That the respondent, R. J. Reynolds Tobacco Company, a corporation, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its "Camel" brand of cigarettes, do forthwith cease and desist from representing, directly or by implication:

1. That the smoking of such cigarettes encourages the flow of digestive fluids or increases the alkalinity of the digestive tract, or that it aids digestion in any respect.

2. That the smoking of such cigarettes relieves fatigue, or that it creates, restores, renews, gives, or releases bodily energy.

3. That the smoking of such cigarettes does not affect or impair the "wind" or physical condition of athletes.

4. That such cigarettes or the smoke therefrom will never harm or irritate the throat, nor leave an aftertaste.

5. That the smoke from such cigarettes is soothing, restful or comforting to the nerves, or that it protects one against nerve strain.

6. That Camel cigarettes differ in any of the foregoing respects from other leading brands of cigarettes on the market.

7. That Camel cigarettes or the smoke therefrom contains less nicotine than do the cigarettes or the smoke therefrom of any of the four other largest selling brands of cigarettes.

And it is hereby further ordered, adjudged, and decreed, That said respondent, R. J. Reynolds Tobacco Company, a corporation, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its "Camel" brand of cigarettes, do forthwith cease and desist from using in any advertising media testimonials of users or purported users of said cigarettes which contain any of the representations prohibited in the foregoing paragraph of this decree.

And it is hereby further ordered, adjudged, and decreed, That within ninety (90) days after the entry of this decree the petitioner shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

IN THE MATTER OF
WARNER ELECTRIC COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5582. Complaint, Sept. 21, 1948—Decision, Jan. 28, 1952

Where a corporation and its two officers, engaged in the interstate sale and distribution of their "Warner Brush Electroplater"; in advertising in newspapers, and periodicals, circulars, pamphlets and other advertising literature, directly or by implication—

- (a) Represented that the results obtained through the use of their machine equalled those obtained through the use of the conventional tank or immersion method of electroplating;
- The facts being that while the brush method serves a useful purpose within its field, it is incapable of accomplishing results equal to those accomplished by the tank method or conventional way of electroplating, in wide use in the trade and capable of handling almost any type of work;
- (b) Falsely represented that the brush method of electroplating works as well on rough as on smooth surfaces, and as well in deep recesses and on irregular shapes as on flat, smooth surfaces and regular shapes; the facts being that, generally speaking, it works satisfactorily only on surfaces which are relatively small and smooth and which do not have deep recesses or complicated or irregular shapes; and
- (c) Falsely represented that said method of electroplating was new or a new invention; the facts being that while their machine and accompanying equipment possessed certain features and improvements which distinguished them from brush electroplater sets generally, the method or substantially similar methods had been in use for fifty years or more;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their product and thereby cause its purchase thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects other charges in the complaint to the effect that respondents falsely advertised that through use of their method it was easy and simple to plate metal articles; that special skill and knowledge was not required for satisfactory results; that worn articles could be replated by a stroke of the brush and that their method would chromium plate; that through doing work for others their device would pay for itself within a week; that a complete set of necessary tools and equipment was furnished purchasers; and that they were owners of a patent entitling them to exclusive use of the method concerned: the Commission was of the opinion that such charges were not sustained by the greater weight of the evidence.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Morton Nesmith and *Mr. George M. Martin* for the Commission.

Mr. William A. Romanek, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Warner Electric Company, a corporation, and Michael M. Warner, Raymond E. Brandell, and Archer L. Howard, individually, and as officers of Warner Electric Company, a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Warner Electric Company, is a corporation organized, existing and doing business under the laws of the State of Illinois with its principal office located at 360 North Michigan Avenue in the city of Chicago, State of Illinois, with its plant located at 1512 West Jarvis Street, in the city of Chicago, State of Illinois. The respondent, Michael M. Warner, is the president and treasurer of said corporation, his address being 4005 West Waveland Avenue in the city of Chicago, State of Illinois. The respondent Raymond E. Brandell, is the vice-president of said corporation, his address being 5401 West Division Street, in the city of Chicago, State of Illinois. The respondent Archer L. Howard, is the secretary of said corporation, his address being 815 Greenwood Street in the city of Wilmette in the State of Illinois. By virtue of their positions as officers, the individual respondents direct, dominate, and control the acts and practices of the corporate respondents.

PAR. 2. The said respondents, Warner Electric Company, a corporation, and Michael M. Warner, Raymond E. Brandell, and Archer L. Howard, individually and as officers of corporate respondent, are now, and for more than one year last past have been, engaged in the offering for sale, sale and distribution in commerce between and among the various States of the United States, of an electroplating device designated as "Warner Brush-Electroplater" causing the same, when sold to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States.

All of said respondents maintain and at all times mentioned herein have maintained, a course of trade in said device, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of promoting the sale of their said device, in commerce,

respondents make and have made certain statements, representations, and claims concerning said device and the use thereof by means of advertisements inserted in newspapers and periodicals and by circulars, leaflets, pamphlets, and other advertising literature. Among and typical of said statements, representations, and claims are the following:

NEW Invention Electroplates by BRUSH. Easy to Plate CHROMIUM, GOLD, SILVER, NICKEL, COPPER—For pleasure and profit! If you have a workshop—at home or in business—you need this new Warner Electroplater. At the stroke of an electrified brush, you can electroplate models and projects, tools, fixtures, silverware, etc. with a durable sparkling coat of metal—Gold, Silver, Chromium, Nickel, Copper or Cadmium. Method is easy, simple, quick. Everything furnished—equipment complete, ready for use. By doing a bit of work for others, your machine can pay for itself within a week.

The Warner Method does not require a skilled operator.

No skill or experience is required.

Warner Brush Plating equals the immersion type plating in both beauty and durability.

Electroplating by brush works equally well on smooth or rough, flat or round surfaces, in deep recesses and on irregular shapes.

PAR. 4. Through the use by the respondents of the foregoing claims and representations, they have directly or indirectly represented that it is easy and simple to plate metal objects with chromium, copper, silver, nickel, or other metals by the Warner method of electroplating; that one does not have to be a skillful operator or have special knowledge of the electroplating process in order to obtain satisfactory plating results by the use of their device and method; that by a stroke of their electroplating brush, worn articles such as faucets, tools, silverware, and other metal articles can be replated with a durable sparkling coat of metal; that their said brush method of electroplating will chromium plate an article; that their method of electroplating by brush, plates equally well on smooth or rough, flat or round surfaces, and in deep recesses and on irregular shapes; that their brush method of electroplating equals the results obtained by using the conventional tank method, insofar as appearance, quality, and durability is concerned; that by doing work for others, the device will pay for itself in one week; that a complete set of tools and equipment necessary for satisfactory electroplating is furnished the purchasers of such devices; that the brush method of electroplating is new and that respondents are the owners of a design or process patent which entitled them to the exclusive use of such method.

PAR. 5. The aforesaid statements and representations, in truth and in fact, are false, misleading and deceptive. The use of respondents' device is not an easy or simple method of electroplating. Its use does require considerable skill and knowledge to obtain a satisfactory

result. Worn out articles such as faucets, tools, and silverware or other metal articles cannot be replated with a durable sparkling coat of metal by a stroke of their electroplating brush. Said brush method of electroplating will not satisfactorily chromium plate an article. The use of said device will not plate equally well on smooth, rough, flat or round surfaces and in deep recesses and irregular shapes. The use of said device will not equal the results obtained by using the conventional tank method of electroplating insofar as appearance, quality and durability is concerned. The device will not pay for itself in one week or any other definite time by doing work for others. A complete set of tools and equipment necessary for satisfactory electroplating is not furnished the purchasers of such device. The brush method of electroplating is not new and respondents are not the owners of a design or process patent which entitles them to the exclusive use of such method.

PAR. 6. The use by the respondents of the foregoing false, deceptive and misleading statements and representations with respect to their device, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 21, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the issuance of said complaint and the filing of answer thereto by respondent Warner Electric Company and of separate answer by respondents Archer L. Howard, Raymond E. Brandell and Michael M. Warner, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission, theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter,

Findings

48 F. T. C.

this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answers, testimony and other evidence, the hearing examiner's recommended decision and exceptions thereto, and brief of counsel supporting the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Warner Electric Company is a corporation organized, existing and doing business under the laws of the State of Illinois, with its principal office located at 360 North Michigan Avenue, Chicago, Illinois, and its plant located at 1512 West Jarvis Street, Chicago, Illinois. Respondent Michael M. Warner is president and treasurer of the respondent corporation, his address being 4005 West Waveland Avenue, Chicago, Illinois. Respondent Raymond E. Brandell is vice president and general manager of the corporation, his address being 5401 West Division Street, Chicago, Illinois. These two individuals direct and control the operation of the corporation and the formulation of its business policies and practices.

While respondent Archer L. Howard was at one time connected with the corporation, being its secretary and office manager, he severed his connection in December 1948. The record does not indicate that during the period of his connection with the corporation he participated actively in the management of the business or in the formulation of its policies and the order of the Commission which is separately issuing herein provides that he be dismissed as a party to this proceeding. The term "respondents" as used hereinafter, therefore, does not include respondent Archer L. Howard, unless the contrary is indicated.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the sale and distribution of an electroplating machine or device designated by them as "Warner Brush Electroplater." Respondents cause and have caused their machine, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of promoting the sale of their product respondents have made certain statements with respect thereto, which statements have appeared in advertisements inserted in newspapers and periodicals, and in circulars, pamphlets and other advertising literature distributed among prospective purchasers. Among and typical of such statements are the following:

Warner Brush Plating equals the immersion type plating in both beauty and durability.

Electroplating by brush works equally well on smooth or rough, flat or round surfaces, in deep recesses and on irregular shapes.

NEW Invention Electroplates by BRUSH.

The Warner Electroplating System, as you well know, is a revolutionary advance in the science of electroplating. This newly patented method cuts the cost of equipment to about ONE-TENTH THE INVESTMENT formerly needed to do practical work. The enclosed circular clearly explains and pictures how the Warner Method permits plating with a BRUSH—instead of using the commonly accepted, complicated and costly tank process.

NOW ELECTROPLATING WITH A BRUSH

A Remarkable Development in the Field of Electrolysis!

THE NEW Warner Method of Electroplating by Brush deposits a plating of gold, silver, nickel, copper, cadmium, or chromium on metal articles by *electrolysis*—without costly equipment, tanks, and generators. * * * In many types of work this simple new method offers definite advantages.

PAR. 4. Through the use of these statements respondents have represented, directly or by implication, that the results obtained through the use of respondents' machine equal those obtained through the use of the conventional tank or immersion method of electroplating; that the brush method of electroplating works as well on rough as on smooth surfaces, and as well in deep recesses and on irregular shapes as on flat, smooth surfaces and regular shapes; and that the brush method of electroplating is new or a new invention.

PAR. 5. As implied by its name, Warner Brush Electroplater, respondents' machine is a brush electroplater as distinguished from the tank or immersion electroplating process. The tank or immersion process is the common or conventional way of electroplating, being in wide use in the trade and being capable of handling almost any type of work. The brush method of electroplating, on the other hand, is limited in its scope and purpose and is ordinarily used only for articles which are relatively small and simple. While the brush method serves a useful purpose within its field, it is, generally speaking, incapable of accomplishing results equal to those accomplished by the tank method.

The brush method of electroplating does not work as well on rough as on smooth surfaces, nor as well in recesses or on irregular shapes as on flat, smooth surfaces and regular shapes. Generally speaking, the method works satisfactorily only on surfaces which are relatively

small and smooth and which do not have deep recesses or complicated or irregular shapes.

Nor is the brush method of electroplating new or a new invention. The method or substantially similar methods have been in use for fifty years or more. While respondents' machine and accompanying equipment do possess certain features and improvements which distinguish them from brush electroplater sets generally, the method itself is not new or a new invention.

PAR. 6. The Commission therefore finds that the representations made by respondents with respect to their product, as set forth above, are erroneous, false, and misleading.

PAR. 7. The use by respondents of the false and misleading representations set forth above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' product, and the tendency and capacity to cause such portion of the public to purchase respondents' product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

(a) The acts and practices of the respondents, as found hereinabove, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

(b) Additional charges of the complaint pertain to other statements appearing in respondents' advertising and allege in such connection that respondents have falsely represented that, through use of their method of electroplating, it is easy and simple to plate metal articles, that special skill and knowledge is not required to obtain satisfactory results, that worn articles can be replated by a stroke of the brush, and that their method will chromium plate. Other charges are that respondents also have falsely represented in their advertising that, through doing work for others, respondents' device will pay for itself within a week, that a complete set of tools and equipment necessary for satisfactory electroplating is furnished to purchasers, and that respondents are owners of a patent entitling them to exclusive use of the brush method of electroplating. Upon consideration of the testimony and other evidence relating to these charges which were introduced into the record, the Commission is of the opinion that these charges are not sustained by the greater weight of the evidence.

ORDER TO CEASE AND DESIST

This proceeding came on to be heard upon the complaint of the Commission, the answers of respondents, testimony and other evi-

dence introduced before a hearing examiner of the Commission, theretofore duly designated by it, recommended decision of the hearing examiner and the exceptions thereto, and brief of counsel supporting the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents hereinafter named have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Warner Electric Company, a corporation, and its officers, and respondents Michael M. Warner and Raymond E. Brandell, 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 and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' device designated "Warner Brush Electroplater" or any device of substantially similar construction, whether sold under the same name or any other name, do forthwith cease and desist from representing directly or by implication:

(1) That results obtained through the use of respondents' device equal those obtained through the use of the tank or immersion method of electroplating.

(2) That respondents' device works as well on rough as on smooth surfaces, as well in deep recesses as on flat, smooth surfaces, or as well on irregular as on regular shapes.

(3) That the brush method of electroplating is new or a new invention.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Archer L. Howard.

It is further ordered, That the charges of the complaint hereinbefore referred to and discussed in paragraph (b) of the Conclusion contained in the Findings as to the Facts and Conclusion of the Commission be, and the same hereby are, dismissed.

It is further ordered, That respondents Warner Electric Company, Michael M. Warner and Raymond E. Brandell 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
CONSOLIDATED MANUFACTURING COMPANY ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5557. Complaint, May 24, 1948—Decision, Jan. 29, 1952

Where, as under the circumstances of the instant case, respondents were given ample opportunity to make an offer of proof by the hearing examiner and declined to do so, they estopped themselves from later urging, on appeal from the initial decision of the trial examiner, that such proof was available.

A contention, in a proceeding involving the sale in interstate commerce of lottery devices designed and used for the distribution of merchandise by gambling, in which the practices were challenged as unfair or deceptive, that, assuming that the acts were "unfair," the allegations of the complaint had not been sustained as there was no evidence of injury to the public, is without merit, since the Commission and the courts have clearly held in other cases that the sale in interstate commerce of such devices is to the injury of the public and an unfair act and practice in violation of the Federal Trade Commission Act, and proof of further specific injury to the public is unnecessary.

The Commission has jurisdiction over unfair practices in merchandising in interstate commerce, and the courts have repeatedly held that merchandising by gambling in interstate commerce and also the sale in commerce of devices designed and intended to encourage merchandising by gambling are unfair practices in violation of the Act, and a contention that the Commission by prohibiting the sale in commerce of such devices is attempting to police public morals and regulate gambling, and has exceeded its jurisdiction, is without merit.

The Commission takes judicial notice of many decisions of the Federal courts to the effect that merchandising by gambling is contrary to the public policy of the Government of the United States; and in a proceeding in which the Commission challenged the sale in interstate commerce of lottery devices designed and intended for use in merchandising through gambling, and in which it appeared that by the design of certain of respondents' punchboards they encouraged and instructed purchasers in a method of merchandising by gambling, a finding that "the use of respondents' sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of such sales plan or method" was "a practice contrary to an established public policy of the Government of the United States and in violation of the criminal laws," and constituted "unfair acts and practices in commerce," was correct and fully supported by the facts of record.

Where a corporation and its president, engaged in the manufacture and interstate sale and distribution of push cards and punchboards—which, bearing explanatory legends or space therefor, were designed for use in the sale of merchandise to the consuming public through means of a game of chance, under plans whereby the purchasers of a punch or push who by chance

selected concealed winning numbers became entitled to designated articles of merchandise without additional cost, at much less than their normal retail price, others receiving nothing for their money other than the privilege of a push or punch—

Sold and distributed such devices to manufacturers of and dealers in merchandise, including candy, cigarettes, clocks, razors, cosmetics, clothing and other articles, assortments of which, along with said devices, made up by the dealers, were exposed and sold by their direct or indirect retailer purchasers to the purchasing public in accordance with the aforesaid sales plan; and thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government and in violation of criminal laws; and means and instrumentalities for engaging in unfair acts and practices;

With the result that many members of the public were induced, because of the element of chance involved, to trade or deal with retailers who thus sold or distributed their merchandise; and many retailers were induced to deal or trade with manufacturers, wholesalers and jobbers who sold and distributed such assortments:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair acts and practices in commerce.

In said proceeding, in which, after respondents had called witnesses to testify that the use of punchboards in the sale of merchandise did not divert trade and that distribution of merchandise by gambling through the use of punchboards did not constitute the sale of merchandise, respondents requested further hearings at various places throughout the United States for the presentation of evidence of a similar nature and other evidence, and the hearing examiner, stating that additional evidence of a similar nature would be of no value in determining the issues, requested respondents' counsel to indicate what other line of evidence he proposed to present so as to enable the examiner to determine whether it would be material to the issues, and said examiner, upon counsel's refusal so to indicate, denied respondents' request for additional hearings, respondents later contending that, had they been afforded the opportunity, they would have proven certain additional facts, some of which would have constituted proper evidence:

The Commission was of the opinion that under the conditions the hearing examiner's request that he be informed of the line of testimony to be developed at the requested additional hearings was eminently proper to insure a prompt and proper disposition of the matter, and that respondents, having refused to indicate to him any proper line of evidence to be presented at the requested hearings, could not later, as on said appeal, be heard to say that, if permitted, they would have presented evidence as to specific material facts, since they had, by their prior refusal, estopped themselves from then urging that said proof was available.

Merchandising by gambling should not be divided into isolated acts which appear innocent when examined separately, but the unfair practice should be viewed as a whole, and in the above proceeding the record showed that respondents sold in interstate commerce lottery devices intended and designed for use in merchandising by gambling, as shown on their face, and that they were so used by certain of their purchasers.

Complaint

48 F. T. C.

Before *Mr. W. W. Sheppard*, *Mr. Abner E. Lipscomb*, and *Mr. Everett F. Haycraft*, trial examiners.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. James A. Murray, of Washington, D. C., and *Glassgold & Blumenthal*, of New York City, for respondents.

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 Consolidated Manufacturing Company, a corporation, and Chester Sax and Allen J. Sucherman, individuals and officers of said Consolidated Manufacturing Company, 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 thereto would be in the public interest, hereby issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Consolidated Manufacturing Company, is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2001 South Calumet Avenue, in the city of Chicago, Illinois. Respondent Chester Sax is President and respondent Allen J. Sucherman is Secretary of respondent corporation, Consolidated Manufacturing Company, and said corporation is owned, dominated, controlled and directed by the individual respondents, Chester Sax and Allen J. Sucherman. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than one year last past have been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of, and dealers in various articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located within the several States of the United States, and in the District of Columbia.

Respondents cause and have caused said devices when sold, to be transported from their place of business in the State of Illinois to purchasers thereof at their points of location in the various States of the United States other than Illinois, and in the District of Columbia. There is now and has been for more than one year last past a course of trade in such devices by said respondents in commerce be-

tween and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in Paragraph One hereof, respondents sell and distribute, and have sold and distributed, to said manufacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in Paragraph Two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as hereinabove alleged are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondents' appeal from initial decision of the hearing examiner, decision of the Commission, and order to file report of compliance, Docket 5557, January 29, 1952, follows:

This matter came on to be heard upon the appeal of respondents Consolidated Manufacturing Company and Chester Sax from the hearing examiner's initial decision herein and upon briefs in support of and in opposition to said appeal. The Commission being of the opinion that the hearing examiner correctly dismissed the allegations of the complaint as to respondent Allen J. Sucherman, and no appeal having been taken from this ruling, he will not be included in the term "respondents" as used hereinafter.

The grounds relied upon in support of this appeal are (1) the hearing examiner erred in refusing to allow respondents to adduce additional testimony, (2) the Commission did not prove any injury to the public, (3) the Commission is attempting to indirectly police public morals and regulate gambling, and (4) the hearing examiner's findings are not supported by the evidence. Specific exception was taken to Paragraphs One, Four, and Five of the findings as to the facts and to the conclusion and order contained in the initial decision.

The record shows that respondent corporation manufactures and sells in interstate commerce punchboards and other lottery devices; that certain of these punchboards are sold with labels attached which provide instructions for use in connection with the distribution of merchandise by gambling; that others are sold in blank, both with and without separate labels containing similar instructions; that certain of these boards are purchased by wholesalers and jobbers who resell them to retailers, both alone and together with assortments of merchandise which the boards are designed and labeled to distribute; and that certain of these retailers in turn sell chances on these boards to the public and distribute the said merchandise to those persons making the winning punches in accordance with the instructions on the punchboards. Chester Sax is the president of the respondent corporation and controls and directs its operations.

In their defense respondents called witnesses who testified to the effect that the use of punchboards in the sale of merchandise does not divert trade and that distribution of merchandise by gambling through the use of punchboards does not constitute the sale of merchandise. Respondents requested further hearings at various places throughout the United States for the presentation of evidence of a similar nature and other evidence. The hearing examiner stated that additional evidence of a similar nature to that already presented would

be of no value in determining the issues, and requested respondents' counsel to indicate what other line of evidence he proposed to present, so as to enable the hearing examiner to determine whether it would be material to the issues. Upon the refusal of respondents' counsel to indicate what other type of evidence he intended to offer, the hearing examiner denied respondents' request for additional hearings. Respondents now state in their appeal brief that if they had been afforded the opportunity, they would have proven certain additional facts, some of which would have constituted proper evidence.

Upon this record the Commission is of the opinion that the hearing examiner's ruling refusing to set additional hearings was correct. Under the conditions, the hearing examiner's request that he be informed of the line of testimony to be developed at the requested additional hearings was eminently proper to insure a prompt and proper disposition of this matter. Respondents, having refused to indicate to the hearing examiner any proper line of evidence to be presented at the requested hearings, cannot now be heard to say that, if permitted, they would have presented evidence as to specific material facts. Respondents were given an ample opportunity to make an offer of proof by the hearing examiner. By their refusal to do so they have estopped themselves from now urging that such proof was available.

The respondents contend that, assuming their acts were "unfair," the allegations of the complaint have not been sustained, as there is no evidence of injury to the public. This argument is of no merit. The Commission and the courts have clearly held in other cases that the sale in interstate commerce of lottery devices designed and used for the distribution of merchandise by gambling is to the injury of the public and an unfair act and practice in violation of the Federal Trade Commission Act. Proof of further specific injury to the public is unnecessary.

Respondents further contend that by prohibiting the sale in interstate commerce of lottery devices for use in the distribution of merchandise, the Commission is attempting to police public morals and has exceeded its jurisdiction. The Commission has jurisdiction over unfair practices in merchandising in interstate commerce. The courts have repeatedly held that merchandising by gambling in interstate commerce is an unfair practice in violation of the Federal Trade Commission Act, and they have further held that the sale in interstate commerce of devices designed and intended to encourage merchandising by gambling is in violation of that Act. Merchandising by gambling should not be divided into insulated acts, which appear innocent when examined separately. The unfair practice should be viewed as a whole. The record shows that respondents sold in interstate com-

merce lottery devices which showed on their face that they were intended and designed for use in merchandising by gambling, and the record further shows they were so used by certain of their purchasers. The contention that this practice does not come within the jurisdiction of the Commission is of no merit.

Respondents have taken specific exception to the following finding of the hearing examiner as not being supported by the record:

"The use of respondents' sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of such sales plan or method, is a practice contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in commerce."

The record shows that by the design of certain of respondents' punchboards they encouraged and instructed the purchasers thereof in a method of merchandising by gambling. The Commission takes judicial notice of the many decisions of the Federal courts that merchandising by gambling is contrary to the public policy of the Government of the United States. This finding is thus correct and fully supported by the facts of record.

The Commission is of the opinion that all of the findings as to the facts contained in the initial decision are supported by the substantial probative evidence of record, that the conclusion contained therein is correct and that the order to cease and desist is proper upon this record and is required to provide proper relief from respondents' illegal practice.

The Commission, therefore, being of the opinion that the respondent's appeal is without merit and that the hearing examiner's initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondents' appeal from the hearing examiner's initial decision be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall, on the 29th day of January, 1952, become the decision of the Commission.

It is further ordered, That respondents Consolidated Manufacturing Company, a corporation, and Chester Sax, an individual, 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 contained in the said initial decision, a copy of which is attached hereto.

Commissioner Mason concurring in this decision insofar as it relates to the findings as to the facts and conclusion, but not concurring in this decision insofar as it relates to the form of order to cease and

desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket No. 5203, Worthmore Sales Company.¹

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY ABNER F. LIPSCOMB, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 24, 1948, issued and subsequently served its complaint in this proceeding upon respondents, Consolidated Manufacturing Company, a corporation, and Chester Sax and Allen J. Sucherman, individuals and officers of respondent Consolidated Manufacturing Company, charging them with the use of unfair or deceptive acts or practices in commerce in violation of the provisions of said Act. After the issuance of such complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel supporting the complaint, counsel for the respondents not having submitted proposed findings and oral argument before the trial examiner not having been requested. The said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Consolidated Manufacturing Company, is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2001 South Calumet Avenue, in the city of Chicago, Illinois. Respondent Chester Sax is President and respondent Allen J. Sucherman is Secretary of respondent corporation, Consolidated Manufacturing Company, and said corporation is owned, dominated, controlled and directed by the individual respondent, Chester Sax. The corporate respondent and respondent Chester Sax have

¹ March 10, 1950. See 46 F. T. C. 606 at 622.

cooperated and acted together in the performance of the acts and practices hereinafter found.

The allegations of the complaint are not sustained as to respondent Allen J. Sucherman.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of and dealers in various articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States, and in the District of Columbia.

PAR. 3. Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof at their points of location in the various States of the United States, other than Illinois, and in the District of Columbia. There is now and has been for more than one year last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business as heretofore found respondents sell and distribute, and have sold and distributed, to manufacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to provide for the use of games of chance, gift enterprises or lottery schemes in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of push cards and punchboards, but all such devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on such push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchaser or prospective purchaser until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise.

Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from the card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of respondents' push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by respondents on the push card and punchboard devices first hereinabove described.

The primary use made of respondents' push card and punchboard devices and the usual manner in which they are used by the ultimate purchasers thereof is in combination with merchandise, to enable such ultimate purchasers of such push card and punchboard devices to sell or distribute merchandise by means of lot or chance as hereinabove found.

PAR. 5. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices, and have sold said assortments to retail dealers and others for resale to the public.

Retail dealers who have purchased such assortments either directly or indirectly have exposed them to the purchasing public and have sold or distributed articles of merchandise by means of respondents' push cards and punchboards in accordance with the sales plan as heretofore described.

Because of the element of chance involved in connection with the sale and distribution of merchandise by means of respondents' push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute assortments comprised of merchandise together with such devices.

692

Order

The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above found involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling among members of the public, all to the injury of the public.

The use of respondents' sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of such sales plan or method, is a practice contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in commerce.

The sale or distribution of push cards and punchboard devices by respondents as hereinabove found supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise.

The respondents thus supply to, and place in the hands of, various persons, firms and corporations the means of, and the instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The acts and practices of respondents as hereinabove found are all to the prejudice and injury of the public, and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Consolidated Manufacturing Company, a corporation, and Chester Sax, an individual and officer of said corporate respondent, Consolidated Manufacturing Company, their representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Allen J. Sucherman, as an individual and as an officer of respondent Consolidated Manufacturing Company, a corporation.

Order

48 F. T. C.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That respondents Consolidated Manufacturing Company, a corporation, and Chester Sax, an individual, 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 contained in the said initial decision, a copy of which is attached hereto.

Syllabus

IN THE MATTER OF
CONTAINER MANUFACTURING COMPANY ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5560. Complaint, May 24, 1948—Decision, Jan. 29, 1952

Where, as under the circumstances of the instant case, respondents were given ample opportunity to make an offer of proof by the hearing examiner and declined to do so, they estopped themselves from later urging, on appeal from the initial decision of the trial examiner, that such proof was available.

A contention, in a proceeding involving the sale in interstate commerce of lottery devices designed and used for the distribution of merchandise by gambling, in which the practices were challenged as unfair or deceptive, that, assuming that the acts were "unfair", the allegations of the complaint had not been sustained as there was no evidence of injury to the public, is without merit, since the Commission and the courts have clearly held in other cases that the sale in interstate commerce of such devices is to the injury of the public and an unfair act and practice in violation of the Federal Trade Commission Act, and proof of further specific injury to the public is unnecessary.

The Commission has jurisdiction over unfair practices in merchandising in interstate commerce, and the courts have repeatedly held that merchandising by gambling in interstate commerce and also the sale in commerce of devices designed and intended to encourage merchandising by gambling are unfair practices in violation of the Act, and a contention that the Commission by prohibiting the sale in commerce of such devices is attempting to police public morals and regulate gambling, and has exceeded its jurisdiction, is without merit.

The Commission takes judicial notice of many decisions of the Federal courts to the effect that merchandising by gambling is contrary to the public policy of the Government of the United States; and in a proceeding in which the Commission challenged the sale in interstate commerce of lottery devices designed and intended for use in merchandising through gambling, and in which it appeared that by the design of certain of respondent punchboards they encouraged and instructed purchasers in a method of merchandising by gambling, a finding that "the use of respondents' sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of such sales plan or method" was "a practice contrary to an established public policy of the Government of the United States and in violation of the criminal laws", and constituted "unfair acts and practices in commerce," was correct and fully supported by the facts of record.

Where a corporation and its president, engaged in the manufacture and interstate sale and distribution of push cards and punch boards—which, bearing explanatory legends of space therefor, were designed for use in the sale of merchandise to the consuming public through means of a game of chance,

under plans whereby the purchasers of a punch or push who by chance selected concealed winning numbers became entitled to designated articles of merchandise without additional cost, at much less than their normal retail price, others receiving nothing for their money other than the privilege of a push or punch—

Sold and distributed such devices to manufacturers of and dealers in merchandise, including candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles, assortments of which, along with said devices, made up by the dealers, were exposed and sold by their direct or indirect retailer purchasers to the purchasing public in accordance with the aforesaid sales plan; and thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government and in violation of criminal laws; and means and instrumentalities for engaging in unfair acts and practices;

With the result that many members of the public were induced, because of the element of chance involved, to trade or deal with retailers who thus sold or distributed their merchandise; and many retailers were induced to deal or trade with manufacturers, wholesalers and jobbers who sold and distributed such assortments:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair acts and practices in commerce.

In said proceeding, in which, after respondents had called witnesses to testify that the use of punch boards in the sale of merchandise did not divert trade and that distribution of merchandise by gambling through the use of punch boards did not constitute the sale of merchandise, respondents requested further hearings at various places throughout the United States for the presentation of evidence of a similar nature and other evidence, and the hearing examiner, stating that additional evidence of a similar nature would be of no value in determining the issues, requested respondents' counsel to indicate what other line of evidence he proposed to present so as to enable the examiner to determine whether it would be material to the issues, and said examiner, upon counsel's refusal so to indicate, denied respondents' request for additional hearings, respondents later contending that, had they been afforded the opportunity, they would have proven certain additional facts, some of which would have constituted proper evidence:

The Commission was of the opinion that under the conditions the hearing examiner's request that he be informed of the line of testimony to be developed at the requested additional hearings was eminently proper to insure a prompt and proper disposition of the matter, and that respondents, having refused to indicate to him any proper line of evidence to be presented at the requested hearings, could not later, as on said appeal, be heard to say that, if permitted, they would have presented evidence as to specific material facts, since they had, by their prior refusal, estopped themselves from then urging that said proof was available.

Merchandising by gambling should not be divided into isolated acts which appear innocent when examined separately, but the unfair practice should be viewed as a whole, and in the above proceeding the record showed that respondents sold in interstate commerce lottery devices intended and designed for use in merchandising by gambling, as shown on their fact, and that they were so used by certain of their purchasers.

705

Complaint

Before *Mr. W. W. Sheppard, Mr. Abner E. Lipscomb* and *Mr. Everett F. Haycraft*, trial examiners.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. James A. Murray, of Washington, D. C., and *Glassgold & Blumenthal*, of New York City, for respondents.

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 Container Manufacturing Company, a corporation, and Max Sax, Jack B. Schiff, and William Stone, individuals and officers of said Container Manufacturing Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in regard thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Container Manufacturing Company, is a corporation organized and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 1825 Chouteau Avenue, in the city of St. Louis, Missouri. Respondent Max Sax is president, respondent Jack B. Schiff is secretary-treasurer and respondent William Stone is vice president of respondent corporation, Container Manufacturing Company, and said corporation is owned, dominated, controlled, and directed by the individual respondents, Max Sax, Jack B. Schiff, and William Stone. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than three years last past have been engaged in the manufacture of devices commonly known as push cards and punch boards, and in the sale and distribution of said devices to manufacturers of and dealers in various articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States, and in the District of Columbia.

Respondents cause and have caused said devices when sold, to be transported from their place of business in the State of Missouri to purchasers thereof at their points of location in the various States of the United States other than Missouri, and in the District of Columbia. There is now and has been for more than three years last past

a course of trade in such devices by said respondents in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph one hereon, respondents sell and distribute, and have sold and distributed, to said manufacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punch board devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold and distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in paragraph two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as hereinabove alleged are all to the prejudice and injury of the public and

constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondents' appeal from initial decision of the hearing examiner, decision of the Commission and order to file report of compliance, Docket 5560, January 29, 1952, follows:

This matter came on to be heard upon the appeal of respondents Container Manufacturing Company, Max Sax and William Stone from the hearing examiner's initial decision herein and upon briefs in support of and in opposition to said appeal. The Commission being of the opinion that the hearing examiner correctly dismissed the allegations of the complaint as to respondent Jack B. Schiff, and no appeal having been taken from this ruling, he will not be included in the term "respondents" as used hereinafter.

The grounds relied upon in support of this appeal are (1) the hearing examiner erred in refusing to allow respondents to adduce additional testimony, (2) the Commission did not prove any injury to the public, (3) the Commission is attempting to indirectly police public morals and regulate gambling, and (4) the hearing examiner's findings are not supported by the evidence. Specific exception was taken to Paragraphs One, Four and Five of the findings as to the facts and to the conclusion and order contained in the initial decision.

The record shows that respondent corporation manufactures and sells in interstate commerce punchboards and other lottery devices; that certain of these punchboards are sold with labels attached which provide instructions for use in connection with the distribution of merchandise by gambling; that others are sold in blank, both with and without separate labels containing similar instructions; that certain of these boards are purchased by wholesalers and jobbers who resell them to retailers, both alone and together with assortments of merchandise which the boards are designed and labeled to distribute; and that certain of these retailers in turn sell chances on these boards to the public and distribute the said merchandise to those persons making the winning punches in accordance with the instructions on the punchboards. Max Sax is the president and William Stone is the vice-president of the respondent corporation, both of whom are active in its management and in the direction of its policies.

In their defense respondents called witnesses who testified to the effect that the use of punchboards in the sale of merchandise does not divert trade and that distribution of merchandise by gambling through the use of punchboards does not constitute the sale of merchandise.

Respondents requested further hearings at various places throughout the United States for the presentation of evidence of a similar nature and other evidence. The hearing examiner stated that additional evidence of a similar nature to that already presented would be of no value in determining the issues, and requested respondents' counsel to indicate what other line of evidence he proposed to present, so as to enable the hearing examiner to determine whether it would be material to the issues. Upon the refusal of respondents' counsel to indicate what other type of evidence he intended to offer, the hearing examiner denied respondents' request for additional hearings. Respondents now state in their appeal brief that if they had been afforded the opportunity, they would have proved certain additional facts, some of which would have constituted proper evidence.

Upon this record the Commission is of the opinion that the hearing examiner's ruling refusing to set additional hearings was correct. Under the conditions, the hearing examiner's request that he be informed of the line of testimony to be developed at the requested additional hearings was eminently proper to insure a prompt and proper disposition of this matter. Respondents, having refused to indicate to the hearing examiner any proper line of evidence to be presented at the requested hearings, cannot now be heard to say that, if permitted, they would have presented evidence as to specific material facts. Respondents were given an ample opportunity to make an offer of proof by the hearing examiner. By their refusal to do so they have estopped themselves from now urging that such proof was available.

The respondents contend that, assuming their acts were "unfair," the allegations of the complaint have not been sustained, as there is no evidence of injury to the public. This argument is of no merit. The Commission and the courts have clearly held in other cases that the sale in interstate commerce of lottery devices designed and used for the distribution of merchandise by gambling is to the injury of the public and an unfair act and practice in violation of the Federal Trade Commission Act. Proof of further specific injury to the public is unnecessary.

Respondents further contend that by prohibiting the sale in interstate commerce of lottery devices for use in the distribution of merchandise, the Commission is attempting to police public morals and has exceeded its jurisdiction. The Commission has jurisdiction over unfair practices in merchandising in interstate commerce. The courts have repeatedly held that merchandising by gambling in interstate commerce is an unfair practice in violation of the Federal Trade Commission Act, and they have further held that the sale in interstate commerce of devices designed and intended to encourage merchandising

by gambling is in violation of that Act. Merchandising by gambling should not be divided into insulated acts, which appear innocent when examined separately. The unfair practice should be viewed as a whole. The record shows that respondents sold in interstate commerce lottery devices which showed on their face that they were intended and designed for use in merchandising by gambling, and the record further shows they were so used by certain of their purchasers. The contention that this practice does not come within the jurisdiction of the Commission is of no merit.

Respondents have taken specific exception to the following finding of the hearing examiner as not being supported by the record:

The use of respondents' sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of such sales plan or method, is a practice contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in commerce.

The record shows that by the design of certain of respondents' punchboards they encouraged and instructed the purchasers thereof in a method of merchandising by gambling. The Commission takes judicial notice of the many decisions of the Federal courts that merchandising by gambling is contrary to the public policy of the Government of the United States. This finding is thus correct and fully supported by the facts of record.

The Commission is of the opinion that all of the findings as to the facts contained in the initial decision are supported by the substantial probative evidence of record, that the conclusion contained therein is correct and that the order to cease and desist is proper upon this record and is required to provide proper relief from respondent's illegal practice.

The Commission, therefore, being of the opinion that the respondents' appeal is without merit and that the hearing examiner's initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the respondents' appeal from the hearing examiner's initial decision be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall, on the 29th day of January 1952, become the decision of the Commission.

It is further ordered, That respondents Container Manufacturing Company, a corporation, and Max Sax and William Stone, individuals, 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 contained in the said initial decision, a copy of which is attached hereto.

Commissioner Mason concurring in this decision insofar as it relates to the findings as to the facts and conclusion, but not concurring in this decision insofar as it relates to the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket No. 5203, Worthmore Sales Company.¹

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY ABNER E. LIPSCOMB, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 24, 1948, issued and subsequently served its complaint in this proceeding upon respondents, Container Manufacturing Company, a corporation, and Max Sax, Jack B. Schiff, and William Stone, individuals and officers of respondent Container Manufacturing Company, charging them with the use of unfair or deceptive acts or practices in commerce in violation of the provisions of said Act. After the issuance of such complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel supporting the complaint, counsel for the respondents not having submitted proposed findings and oral argument before the trial examiner not having been requested. The said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Container Manufacturing Company, is a corporation organized and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 1825 Chouteau Avenue, in the city of St. Louis,

¹ March 10, 1950. See 46 F. T. C. 606 at 622.

Missouri. Respondent Max Sax is president and respondent William Stone is vice president of respondent corporation, Container Manufacturing Company, and said corporation is owned, dominated, controlled and directed by the individual respondents, Max Sax and William Stone. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter found.

The allegations of the complaint are not sustained as to respondent Jack B. Schiff.

PAR. 2. Respondents are now and for more than three years last past have been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of and dealers in various articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States, and in the District of Columbia.

PAR. 3. Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Missouri to purchasers thereof at their points of location in the various States of the United States, other than Missouri, and in the District of Columbia. There is now and has been for more than three years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business as heretofore found respondents sell and distribute, and have sold and distributed, to manufacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to provide for the use of games of chance, gift enterprises or lottery schemes in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punchboards, but all such devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on such push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or

punchboard and a number is disclosed. The numbers are effectively concealed from the purchaser or prospective purchaser until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from the card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of respondents' push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by respondents on the push card and punchboard devices first hereinabove described.

The primary use made of respondents' push card and punchboard devices and the usual manner in which they are used by the ultimate purchasers thereof is in combination with merchandise, to enable such ultimate purchasers of such push card and punchboard devices to sell or distribute merchandise by means of lot or chance as hereinabove found.

PAR. 5. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices, and have sold said assortments to retail dealers and others for resale to the public.

Retail dealers who have purchased such assortments either directly or indirectly have exposed them to the purchasing public and have sold or distributed articles of merchandise by means of respondents' push cards and punchboards in accordance with the sales plan as heretofore described.

Because of the element of chance involved in connection with the sale and distribution of merchandise by means of respondents' push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing merchandise by means thereof. As a result thereof, many retail deal-

Order

48 F. T. C.

ers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute assortments comprised of merchandise together with such devices.

The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above found involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling among members of the public, all to the injury of the public.

The use of respondents' sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of such sales plan or method, is a practice contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in commerce.

The sale or distribution of push cards and punchboard devices by respondents as hereinabove found supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise.

The respondents thus supply to, and place in the hands of, various persons, firms, and corporations the means of, and the instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The acts and practices of respondents as hereinabove found are all to the prejudice and injury of the public, and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Container Manufacturing Company, a corporation, and Max Sax and William Stone, individuals and officers of said corporate respondent, Container Manufacturing Company, their representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

705

Order

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Jack B. Schiff, as an individual and as an officer of respondent Container Manufacturing Company, a corporation.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That respondents Container Manufacturing Company, a corporation, and Max Sax and William Stone, individuals, 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 contained in the said initial decision, a copy of which is attached hereto [as required by aforesaid orders and decisions of the Commission].

IN THE MATTER OF
SUPERIOR PRODUCTS ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5561. Complaint, May 24, 1948—Decision, Jan. 29, 1952

Where a corporation and its president, engaged in the manufacture and interstate sale and distribution of push cards and punchboards—which, bearing explanatory legends or space therefor, were designed for use in the sale of merchandise to the consuming public under plans whereby the purchasers of a punch or push who, by chance, selected concealed winning numbers became entitled to designated articles of merchandise without additional cost, at much less than their normal retail price, others receiving nothing more for their money than the push or punch—

Sold and distributed such devices to manufacturers of and dealers in candy, cigarettes, clocks, razors, cosmetics, clothing and other articles, assortments of which, made up with said devices by dealers, were exposed and sold by their direct or indirect retailer purchasers to the purchasing public in accordance with the aforesaid sales plan; and thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government and in violation of criminal laws; and supplied means and instrumentalities for engaging in unfair acts and practices;

With the result that many members of the public were induced, by the element of chance involved, to deal with retailers who thus sold or distributed their merchandise; many retailers were thereby induced to deal or trade with suppliers of such assortments; and gambling among members of the public was taught and encouraged, to its injury:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce.

Before *Mr. W. W. Sheppard*, *Mr. Abner E. Lipscomb* and *Mr. Everett F. Haycraft*, trial examiners.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. James A. Murray, of Washington, D. C., and *Glassgold & Blumenthal*, of New York City, for respondents.

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 Superior Products, a corporation, and M. Robert Sax, Allen J. Sucherman, and Jack

Morley, officers and directors of Superior Products, 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Superior Products, is a corporation organized 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 2133 West Fulton Street, in the city of Chicago, Illinois. Respondent M. Robert Sax is president; respondent Allen J. Sucherman is secretary; and respondent Jack Morley is an officer and active in the management of respondent corporation, Superior Products, and said corporation is owned, dominated, controlled, and directed by the individual respondents, M. Robert Sax, Allen J. Sucherman, and Jack Morley. All of said respondents cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than three years last past have been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of, and dealers in, various articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located within the several States of the United States, and in the District of Columbia.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Illinois to purchasers thereof at their points of location in the various States of the United States other than Illinois, and in the District of Columbia. There is now and has been for more than three years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in Paragraph One hereof, respondents sell and distribute, and have sold and distributed, to said manufacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan

as described in Paragraph Two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or method in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as hereinabove alleged are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 24, 1948, issued and subsequently serviced its complaint in this proceeding upon respondents, Superior Products, a corporation, and M. Robert Sax, Allen J. Sucherman, and Jack Morley, individuals and officers of Superior Products, the corporate respondent herein, charging them with the use of unfair acts or practices in commerce in violation of the provisions of said Act. After the issuance of such complaint and the filing of respond-

Findings

48 F. T. C.

ents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusion presented by counsel supporting the complaint (counsel for the respondents not having submitted proposed findings); and said hearing examiner, on July 11, 1951, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, respondents filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to the appeal; and the Commission, having issued its order granting said appeal in part and denying it in part, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Superior Products is a corporation organized 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 2133 West Fulton Street, in the city of Chicago, Illinois. Respondent M. Robert Sax is the president of respondent corporation, Superior Products, and is active in its management and the direction of its policies.

The allegations of the complaint have not been sustained as to respondents Allen J. Sucherman and Jack Morley, and said individuals are, therefore, not included in the term "respondents" as used hereinafter.

PAR. 2. Respondents are now and for more than three years last past have been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of and dealers in various articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States, and in the District of Columbia.

PAR. 3. Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof at their points of location in the various States of the United States, other than Illinois, and in the District of Columbia. There is now and has been for more than three years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business as heretofore found, respondents sell and distribute, and have sold and distributed, to manufacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to provide for the use of games of chance, gift enterprises, or lottery schemes in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of push cards and punchboards, but all of such devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on such push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punchboard, and when a push or punch is made, a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchaser or prospective purchaser until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from the card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of respondents' push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by respondents on the push card and punchboard devices first hereinabove described.

The primary use made by respondents' push card and punchboard devices and the usual manner in which they are used by the ultimate purchasers thereof is in combination with merchandise, to enable such ultimate purchasers of such push card and punchboard devices to sell or distribute merchandise by means of lot or chance as hereinabove found.

PAR. 5. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices, and have sold said assortments to retail dealers and others for resale to the public.

Retail dealers who have purchased such assortments, either directly or indirectly, have exposed them to the purchasing public and have sold or distributed articles of merchandise by means of respondents' push cards and punchboards in accordance with the sales plan as heretofore described.

Because of the element of chance involved in connection with the sale and distribution of merchandise by means of respondents' push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute assortments comprised of merchandise together with such devices.

The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above found involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling among members of the public, all to the injury of the public.

The use of respondents' sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of such sales plan or method, is a practice contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in commerce.

The sale or distribution of push cards and punchboard devices by respondents as hereinabove found supplies to and places in the hands

718

Order

of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise.

The respondents thus supply to, and place in the hands of, various persons, firms and corporations the means of, and the instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The acts and practices of respondents as hereinabove found are all to the prejudice and injury of the public, and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Superior Products, a corporation, its officers, and M. Robert Sax, an individual, and their representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the individual respondents Allen J. Sucherman and Jack Morley.

It is further ordered, That respondents, Superior Products, a corporation, and M. Robert Sax, an individual, 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 said order.

Commissioner Mason concurring in this decision insofar as it relates to the findings as to the facts and conclusion, but not concurring in this decision insofar as it relates to the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket No. 5203, Worthmore Sales Company.¹

¹ March 10, 1950. See 46 F. T. C. 606 at 622.

Complaint

48 F. T. C.

IN THE MATTER OF
ALBERT A. SCHWARTZ TRADING AS ELECTRICAL
CENTER

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE
ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26,
1914

Docket 5934. Complaint, Oct. 30, 1951—Decision, Jan. 29, 1952

Where an individual engaged in the District of Columbia in the competitive sale and distribution of television sets, radios and various household appliances; through newspaper advertisements—

Represented that if a television set, radio or appliance was purchased at the regular price, another of the same kind and value might be purchased for an additional dollar, through such typical advertisements as "\$1 SALE ALL NEW 1951 MODELS TELEVISION \$1—Refrigerators \$1—WASHERS \$1 * * * ALL FOR JUST \$1 HERE'S ALL YOU DO: Buy Any Famous Make TV, Radio or Appliance . . . THEN CHOOSE Another FOR JUST \$1 MORE * * * it's so EASY! Get TWO brand new appliances for the price of one, PLUS ONE DOLLAR! * * *—That's how it works on all Famous Name appliances in the entire store * * * ";

The facts being that the article which could be purchased for the additional dollar was based upon the price of the article purchased and was of much less value and price than such article; and an explanation near the bottom of the advertisement in such comparatively small type that it did not constitute an adequate notice of the actual offer, as to articles which might actually be purchased for one dollar, was contrary to the offer contained in the main portion thereof;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true and thereby induce its purchase of said products; and with the result that trade in commerce was unfairly diverted to said individual from his competitors, to their substantial injury;

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce, and unfair methods of competition therein.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Sylvan Schwartz, of Washington, D. C., for respondent.

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 Albert A. Schwartz, an individual trading as Electrical Center, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Albert A. Schwartz is an individual trading as Electrical Center with his office and principal place of business located at 414 10th Street NW., Washington, D. C.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution, among other things, of television sets, radios and various household appliances in the District of Columbia, such sale and distribution being in commerce, as "commerce" is defined in the Federal Trade Commission Act. His volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his products in commerce respondent, by means of advertisements inserted in newspapers, has made various representations concerning discounts and savings on his said merchandise, among and typical of which but not all inclusive are the following:

\$1 SALE

ALL NEW 1951 MODELS
TELEVISION \$1—Refrigerators \$1
WASHERS \$1—IRONERS \$1
FREEZERS \$1—RANGES \$1
ALSO RADIOS—FANS
RADIO-COMBINATIONS &
APPLIANCES ALL FOR JUST \$1

HERE'S ALL YOU DO:

Buy Any Famous Make TV,
Radio or Appliance . . .
THEN CHOOSE Another FOR
JUST \$1 MORE

Thousands of Washingtonians know just what we mean when we say 'Save a Fist-Full of Dollars . . . That's right, thousands have bought in this AMAZING SALE and come away with Money a-plenty in their pockets, YET THEY'VE BOUGHT MORE THAN EVER BEFORE WITH LESS . . . it's so EASY! Get TWO brand new appliances for the price of one, PLUS ONE DOLLAR! Purchase ANY appliance, large or small, then from the list tagged on your choice, take home a second choice and pay only ONE DOLLAR for it. That's how it works on all Famous Name appliances in the entire store. Hurry down tomorrow night, DON'T YOU MISS OUT!

Complaint

48 F. T. C.

15% DOWN

TAKE 18 Months to Pay!

PAR. 4. By means of the statements contained in the aforesaid advertisement, respondent represented that if a television set, radio or appliance is purchased at the regular price, another television set, radio or appliance of the same kind and value may be purchased for an additional \$1.00.

PAR. 5. The aforesaid statements are false, misleading and deceptive. In truth and in fact, the purchase of a television set, radio or appliance at the regular price did not entitle the purchaser to purchase another television set, radio or appliance of the same kind and value for an additional \$1.00. On the contrary, the article of merchandise which could be purchased for the additional \$1.00 was based upon the price of the article purchased and was of much less value and price than the article purchased. While an explanation is made near the bottom of the advertisement as to the articles which may actually be purchased for \$1.00, such explanation is contrary to the offer contained in the main portion of the advertisement and in such comparatively small type that it does not constitute adequate notice of the actual offer of respondent.

PAR. 6. In the course and conduct of his said business, respondent has been and is in substantial competition in commerce with corporations and other firms and individuals likewise engaged in the sale and distribution of the aforesaid merchandise.

PAR. 7. The use by the respondent of the foregoing false and misleading representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations were true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said products. As a result thereof, trade in commerce has been and is unfairly diverted to respondent from his competitors in consequence of which substantial injury has been and is being done by respondent to his competitors in commerce.

PAR. 8. The acts and practices of the respondent, as herein alleged, were all to the prejudice and injury of the public and of respondent's competitors and constituted unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 30, 1951, issued and subsequently served its complaint on the respondent named in the caption hereof, charging him with unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding; any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, respondent hereby:

1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusions, and order to cease and desist, specifically refrains from admitting or denying that he has engaged in any of the acts or practices stated therein to be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Albert A. Schwartz is an individual trading as Electrical Center with his office and principal place of business located at 414 10th Street, N. W., Washington, D. C.

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on January 29, 1952, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Findings

48 F. T. C.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution, among other things, of television sets, radios and various household appliances in the District of Columbia, such sale and distribution being in commerce, as "commerce" is defined in the Federal Trade Commission Act. His volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his products in commerce respondent, by means of advertisements inserted in newspapers, has made various representations concerning discounts and savings on his said merchandise, among and typical of which, but not all inclusive, are the following:

- \$1 SALE
- ALL NEW 1951 MODELS
- TELEVISION \$1—Refrigerators \$1
- WASHERS \$1—IRONERS \$1
- FREEZERS \$1—RANGES \$1
- ALSO RADIOS—FANS
- RADIO-COMBINATIONS &
- APPLIANCES ALL FOR JUST \$1
- HERE'S ALL YOU DO:
- Buy Any Famous Make TV,
- Radio or Appliance . . .
- THEN CHOOSE Another FOR
- JUST \$1 MORE

Thousands of Washingtonians know just what we mean when we say 'Save a Fist-Full of Dollars . . . That's right, thousands have bought in this AMAZING SALE and come away with Money a-plenty in their pockets, YET THEY'VE BOUGHT MORE THAN EVER BEFORE WITH LESS . . . it's so EASY! Get TWO brand new appliances for the price of one, PLUS ONE DOLLAR! Purchase ANY appliance, large or small, then from the list tagged on your choice, take home a second choice and pay only ONE DOLLAR for it. That's how it works on all Famous Name appliances in the entire store. Hurry down tomorrow night, DON'T YOU MISS OUT!

15% DOWN

TAKE 18 Months to Pay! ●

PAR. 4. By means of the statements contained in the aforesaid advertisement, respondent represented that if a television set, radio or appliance is purchased at the regular price, another television set, radio or appliance of the same kind and value may be purchased for an additional \$1.00.

PAR. 5. The aforesaid statements are false, misleading and deceptive. In truth and in fact, the purchase of a television set, radio or appliance at the regular price did not entitle the purchaser to purchase another television set, radio or appliance of the same kind and

726

Order

value for an additional \$1.00. On the contrary, the article of merchandise which could be purchased for the additional \$1.00 was based upon the price of the article purchased and was of much less value and price than the article purchased. While an explanation is made near the bottom of the advertisement as to the articles which may actually be purchased for \$1.00, such explanation is contrary to the offer contained in the main portion of the advertisement and in such comparatively small type that it does not constitute adequate notice of the actual offer of respondent.

PAR. 6. In the course and conduct of his said business, respondent has been and is in substantial competition in commerce with corporations and other firms and individuals likewise engaged in the sale and distribution of the aforesaid merchandise.

PAR. 7. The use by the respondent of the foregoing false and misleading representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations were true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said products. As a result thereof, trade in commerce has been and is unfairly diverted to respondent from his competitors in consequence of which substantial injury has been and is being done by respondent to his competitors in commerce.

CONCLUSION

The aforesaid acts and practices of respondent, as herein alleged, are in violation of Section 5 of the Federal Trade Commission Act and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondent Albert A. Schwartz, an individual trading as Electrical Center or trading under any other name or style, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner that by purchasing an article or articles of merchandise the purchaser may purchase an additional article or articles for \$1.00 or for any other sum or sums unless the additional article or articles and the respondent's usual and regular

Order

48 F. T. C.

selling prices thereof are clearly set out in immediate connection with the order merchandise offered.

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

/s/ ALBERT A. SCHWARTZ.

Albert A. Schwartz, an individual trading as Electrical Center.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 29th day of January 1952.

D. C. DANIEL, *Secretary.*

Order

IN THE MATTER OF
GOLD-TONE STUDIOS, INC. ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 4779. Order, Jan. 30, 1952

Modified order, in accordance with decree below referred to, in proceeding in question in which original order issued on September 2, 1948, 45 F. T. C. 206 at 217, and in which the Court of Appeals for the Second Circuit on July 5, 1950, in *Gold-Tone Studios, Inc. et al. v. Federal Trade Commission*, 183 F. (2d) 257, rendered its opinion and decision, and on August 7, 1950, entered its final decree modifying paragraph 4 of the desist order by adding to the end the proviso as below set forth, and affirming, as thus modified, the order to cease and desist—

Requiring respondent, in connection with the offer, etc., in commerce, of pictures or photographs, to cease and desist from the use of the words "oil painted portrait", "oil colored portrait", "Gold-Tone", etc., and from other misrepresentations as to prices, special and limited offers and values, as in said order in detail below set out.

Before *Mr. J. Earl Cox*, trial examiner.

Mr. S. F. Rose and *Mr. Joseph Callaway* for the Commission.

MacFarlane, Harris & Goldman, of Rochester, N. Y., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence introduced before a trial examiner, and briefs and oral argument in support of and in opposition to the complaint; and the Commission having made its findings as to the facts and conclusion that the respondents have violated the provisions of the Federal Trade Commission Act and issued its order to cease and desist on September 2, 1948; and

Respondents Gold-Tone Studios, Inc., a corporation also trading as Camera Art Company; Irving A. Stern, individually and as president and a director of Gold-Tone Studios, Inc., and a copartner in the firm trading as Camera Art Company; Paul A. McGuire, individually and as vice president and director of Gold-Tone Studios, Inc., and a copartner in the firm trading as Camera Art Company; Berthold Eidlin, individually and as secretary-treasurer of Gold-Tone Studios, Inc., and a copartner in the firm trading as Camera Art Company; and Marion Stern, Doris McGuire, Emanuel Eidlin, and Ephraim Eidlin, individuals and members of the firm trading as Camera Art Company,

Order

48 F. T. C.

having filed in the United States Court of Appeals for the Second Circuit their petition to review and set aside the order to cease and desist issued herein, and that Court having heard the matter on briefs and oral argument and fully considered the matter, and having, thereafter, on August 7, 1950, entered its final decree modifying and affirming, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on July 5, 1950.

Now therefore it is hereby ordered, That the respondent Gold-Tone Studios, Inc., a corporation, also trading as Camera Art Company, its officers, representatives, agents and employees, and respondents Irving A. Stern, Paul A. McGuire, Berthold Eidlin, Marion Stern, Doris McGuire, Emanuel Eidlin, and Ephraim Eidlin, individually or as copartners trading as Camera Art Company or under any other name or names, their agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of pictures or photographs, do forthwith cease and desist from directly or indirectly:

1. Using the words "oil painted portrait," "oil painted," or any other word or words of similar import or meaning, either alone or in combination with any other word or words, as a designation for, as descriptive of, or in connection with a tinted or colored photograph or picture made from a photographic base.

2. Using the words "oil colored portrait," "colored in oils," or any other word or words, as a designation for, as descriptive of, or in connection with a tinted photograph or picture made from a photographic base.

3. Using the words "Gold-Tone" or any other word or words of similar import or meaning, either alone or in combination with any other word or words, to designate, describe, or refer to a photographic reproduction which is not a product resulting from a finishing process involving the use of a toning or developing bath employing salts or chloride of gold.

4. Using the words "Gold-Tone" or any other word or words of similar import or meaning, either alone or in combination with any other words, as a corporate or trade name or otherwise, to designate, describe, or refer to a photographic reproduction by a process involving the use of a toning or developing bath employing salts or chloride of gold: *Provided*, however, that the corporation may in conducting its business under any permitted changed name, state that it is the same corporation which formerly did business under the name "Gold-Tone Studios, Inc."

733

Order

5. Representing that the customary or usual price for any kind or type of photograph or picture is a special advertising offer or other special offer; that an offer of said photographs or pictures is limited in point of time when such offer is not in fact so limited; or that said photographs or pictures offered are of a value in excess of the usual or customary price.

It is further ordered, That the respondents Gold-Tone Studios, Inc., a corporation, also trading as Camera Art Company; Irving A. Stern, individually and as president and a director of Gold-Tone Studios, Inc., and a copartner in the firm trading as Camera Art Company; Paul A. McGuire, individually and as vice president and a director of Gold-Tone Studios, Inc., and a copartner in the firm trading as Camera Art Company; Berthold Eidlin, individually and as secretary-treasurer of Gold-Tone Studios, Inc., and a copartner in the firm trading as Camera Art Company; and Marion Stern, Doris McGuire, Emanuel Eidlin, and Ephriam Eidlin, individuals and members of the firm trading as Camera Art Company, shall within sixty (60) days after service upon them of this modified 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.