

IN THE MATTER OF  
F. & V. MANUFACTURING CO., INC.

COMPLAINT, FINDINGS, ORDER AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

*Docket 5579. Complaint, Aug. 17, 1948—Decision, Mar. 14, 1950*

In a proceeding in which the complaint alleged a violation of Sec. 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, and in which the case was submitted for disposition on the complaint, the respondent's answer, and a stipulation of facts which covered all of the material allegations of the complaint, and included all of the elements necessary to constitute a showing of unlawful price discriminations in violation of said section, but dealt only with price differences ranging from 10 percent to 20 percent of respondent's regular retail prices, the effect of which, as there set forth, might "be substantially to lessen competition in the sale and distribution" of the products involved "in the respective lines of commerce in which respondent and its customers are engaged \* \* \*" etc., and was silent as to what effect, if any, price differences amounting to less than 10 percent might have, the Commission's findings—and, as a consequence, the order to cease and desist—in the absence of any facts to support an inference of the likelihood of competitive injury as a result of smaller price differences, were necessarily limited to differences amounting to 10 percent or more of said retail prices, since the only alternative, namely, to prohibit all price differentials, subject to the proviso that the order shall not be construed to prevent smaller differences which do not tend to lessen, injure or destroy competition, was barred under the decision in *Morton Salt Co. v. F. T. C.*, 334 U. S. 37, 54, as shifting to the courts in possible subsequent proceedings, as there stated, the responsibility which Congress primarily intrusted to the Commission.

Where a corporation engaged in the manufacture of jewelry products consisting of expansion bands and other attachments for ladies', men's and children's watches, and in the competitive interstate sale and distribution thereof to retail jewelers, many of whom were competitively engaged with one another and with the customers of its competitors within their several trade areas—

- (a) Put into operation its so-called "10% Business Volume Rebate" plan, under which each of its retail customers who purchased from it as much as \$1,500 worth of jewelry products, calculated at retail prices, during a calendar year, and without any requirements as to the amount purchased at any one time, and with no contention of statutory cost justification, received from it a 10% cash rebate, paid when said amount was reached, and an additional 10% rebate on all purchases in excess of said amount made during the balance of the year;

With the result that the relatively few customers—generally, the major retail jewelry dealers—who qualified for such volume purchase rebate, were thereby

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enabled to obtain greater profits from the resale of said products and to either undersell their competitors or furnish superior facilities and services to their consumer purchasers, or both, with the capacity of diverting trade to them from the smaller retailers; and

- (b) Likewise extended to chain retail jewelry stores, which resold the products purchased from it to the consuming public through their various branches or outlets, in active competition with other retail customers not thus favored, so-called "jobber's discounts" varying from 12% to 20% below its regular list prices, without regard to the quantity purchased,

Effect of which discriminations in price to competing customers, might be substantially to lessen competition in the sale and distribution of jewelry products, and to injure and destroy or prevent such competition with it and with its customers who received the benefits of said discriminatory prices:

*Held*, That such acts and practices constituted violations of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

*Mr. William C. Kern* and *Mr. William H. Smith* for the Commission.  
*Mr. Israel E. Pechter*, of New York City, for respondent.

## COMPLAINT

The Federal Trade Commission having reason to believe that F. & V. Manufacturing Co., Inc., hereinafter designated and referred to as respondent, since June 19, 1936, has violated and is now violating the provisions of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent F. & V. Manufacturing Co., Inc., is a corporation organized and existing under the laws of the State of Rhode Island with its factory, principal office and place of business located at 373 Taunton Avenue, East Providence, R. I.

PAR. 2. Respondent is now and has been for more than 3 years last past engaged in the business of manufacturing jewelry products consisting of expansion bands and other attachments for ladies', men's and children's watches, which it distributes and sells to retail jewelers located throughout the various States of the United States other than the State of Rhode Island and in the District of Columbia, and causing said jewelry products, when sold, to be transported from the place of manufacture within said State of Rhode Island to the purchasers thereof located in States other than the State of Rhode Island and in the District of Columbia. There is and has been at all times herein mentioned a continuous current of trade and commerce in said jewelry products across State lines between respondent's factory and the purchasers of said products. Said jewelry products are distributed and

sold for use, consumption and resale within the various States of the United States and the District of Columbia. Respondent enjoys a substantial volume of business and has more than doubled its sales volume since 1945.

PAR. 3. The respondent, in the course and conduct of its business, as herein described, has been for more than 3 years last past and still is in substantial competition with other corporations and with individuals, partnerships, and firms who are likewise engaged in the business of manufacturing, selling and distributing jewelry products in commerce between and among the various States of the United States and the District of Columbia.

Many of respondent's customers are competitively engaged with each other and with the customers of respondent's competitors within the trade areas in which respondent's said customers respectively offer for sale and sell the jewelry products purchased from the respondent.

PAR. 4. Respondent, in the course and conduct of its business, as hereinbefore set forth, has been for several years last past and is now discriminating in prices at which it has sold and still sells watch attachments of like grade and quality between the different purchasers of said products and commodities by giving and allowing certain of said purchasers a lower price than given or allowed other purchasers competitively engaged in said line of commerce, and by giving and allowing certain of said purchasers, adjustments, rebates, or discounts in the form of either a cash rebate based on annual volume purchases or of a discount from regular retail dealer prices, which rebates or discounts are not given and allowed to others of respondent's said purchaser-customers. Respondent's said purchaser-customers in whose favor such price discriminations are made are generally the larger retail dealers who are thus enabled to obtain greater profits and thereby enabled either to undersell their competitors or furnish superior facilities and services to their consumer-purchasers, or both, with consequent capacity for diversion of trade from the smaller retailer to the more favored or larger retail dealer in such products.

PAR. 5. The respondent has discriminated and still is discriminating in price by the use of a so-called "10% Business Volume Rebate" which it inaugurated and made effective as of January 1, 1947, whereby it has sold jewelry products, including expansion bands and watch attachments, of like grade and quality, to some of its customers at lower prices than to other of its customers who are in competition with said favored customers in the resale of said jewelry products within the United States. Under such "10% Business Volume Rebate" a retail customer purchasing \$1,500 or more of respondent's jewelry products

calculated at retail list prices during the calendar year receives from respondent a 10% cash rebate paid by check as soon as the amount of \$1,500 is reached and a similar 10% rebate is paid to such customer by separate check from respondent on all purchases in excess of \$1,500 made during the balance of the said calendar year. Respondent invokes no requirements from its customers in order to qualify for such annual volume rebate as to the amount of respondent's jewelry products required to be purchased at any one time. Respondent had approximately 2,500 active purchaser-customer accounts representing retail jewelry dealers during the year 1947 of whom only approximately 150 qualified for the 10% annual volume rebate aforesaid during said calendar year, the remainder of said purchaser-customers being unable to qualify for said rebate. Whether a customer qualified to earn such a discount or not, respondent's methods in soliciting and receiving orders from all customers are the same. Respondent's salesmen customarily call on the customers at their respective and geographical places of business throughout the country and solicit and receive orders, such orders being transmitted to respondent's principal office where said orders are invoiced and where the merchandise is shipped to the purchasers at their respective places of business.

PAR. 6. In addition to the discriminations effected by the aforementioned "10% Business Volume Rebate" respondent has been for several years last past and still is discriminating in price by granting and allowing to some of its customers so-called jobber's discounts although such customers are in truth and in fact merely chain retail jewelry stores which resell respondent's products directly to the consuming public through the various branches or outlets of their said chain stores. Notwithstanding the retail characteristics of said retail chain stores, respondent has given and allowed, and still gives and allows, a so-called jobber's discount to said chain stores varying from 12% to 20% below the regular retail customers' list price on various watch attachments, said discount being allowed by respondent without regard to quantity purchases. Respondent's purchaser-customers receiving such favored discounts are engaged in active competition in the resale of respondent's products at retail with other retail customers of respondent who do not receive any such favored discount as above described.

PAR. 7. The effect of the discriminations in price, as hereinabove set forth, may be substantially to lessen competition in the sale and distribution of jewelry products in the respective lines of commerce in which respondent and its customers are engaged, and has been

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and may be to injure, destroy, or prevent competition in the sale and distribution of said products with the respondent and with its customers who receive the benefits of such discriminatory prices.

PAR. 8. The discriminations in price as hereinabove alleged by the respondent between different purchasers of jewelry products of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of subsection (a) of section 2 of the Clayton Act described in the preamble hereof.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (15 U. S. C., Sec. 13), the Federal Trade Commission on August 17, 1948, issued and subsequently served upon the respondent, F. & V. Manufacturing Co., Inc., its complaint in this proceeding, charging said respondent with having violated the provisions of subsection (a) of section 2 of the said Clayton Act, as amended. The respondent's answer to said complaint was filed on October 13, 1948. Subsequently, a stipulation was entered into by and between the respondent and the Chief Trial Counsel of the Commission, in which it was stipulated and agreed that, subject to the approval of the Commission, the statement of facts contained therein may be taken as the facts in this proceeding in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts, including inferences which it may draw from the facts admitted, and its conclusion based thereon, and enter an order disposing of the proceeding without further hearing as to the facts or other intervening procedure, the filing of briefs and the presentation of oral argument having been expressly waived. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's answer and the stipulation as to the facts, said stipulation having been approved, accepted and filed, and the Commission having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, F. & V. Manufacturing Co., Inc., is a corporation organized and existing under the laws of the State of

Rhode Island, with its factory, principal office, and place of business located at 373 Taunton Avenue, East Providence, R. I.

PAR. 2. The aforesaid respondent is now and for many years last past has been engaged in the business of manufacturing jewelry products, consisting of expansion bands and other attachments for ladies', men's and children's watches, which it sells and distributes to retail jewelers for use, consumption and resale within the various States of the United States and in the District of Columbia. The respondent causes said jewelry products, when sold, to be transported from their place of manufacture within the State of Rhode Island to the purchasers thereof at their various points of location in States other than the State of Rhode Island and in the District of Columbia. There is now and at all times herein mentioned there has been a continuous current of trade in commerce, as "commerce" is defined in the said Clayton Act, in the respondent's jewelry products among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, as aforesaid, the respondent is now and since June 19, 1936, it has been in substantial competition with other corporations and with various individuals, firms, and partnerships also engaged in the business of manufacturing, selling and distributing jewelry products in commerce among and between the various States of the United States and in the District of Columbia. The respondent enjoys a substantial volume of business, and since the year 1945 it has more than doubled its sales volume. Many of the respondent's customers are competitively engaged with each other and with the customers of the respondent's competitors within the several trade areas in which the respondent's said customers respectively offer for sale and sell the jewelry products purchased by them from the respondent.

PAR. 4. Effective as of January 1, 1947, the respondent inaugurated and put into operation its so-called "10% Business Volume Rebate" plan. Under this plan each of the respondent's retail customers who purchased from the respondent as much as \$1,500 worth of jewelry products, calculated at retail list prices, during a calendar year, received from the respondent a 10% cash rebate, which was paid by check as soon as the purchases of such customer amounted to \$1,500. Such a customer was also given an additional rebate, which was paid later by separate check, amounting to 10% on all purchases in excess of \$1,500 made during the balance of the same calendar year. In connection with the operation of said plan, the respondent invoked from its customers no requirements whatever as to the amount of

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jewelry products which must have been purchased at any one time in order to qualify for such annual rebates.

During the year 1947, the respondent had approximately 2,500 active purchaser-customer accounts representing retail jewelry dealers. Of these 2,500, only approximately 150 dealers qualified for the 10% annual volume purchase rebate during the calendar year, the remainder of said dealers, some of whom were in active competition with some of those who received the rebate, being unable to so qualify. Regardless of whether a customer qualified to earn such a rebate or not, the respondent's methods in soliciting and receiving orders from all of its customers were the same. The respondent's salesmen customarily called on the customers at their respective places of business throughout the country, solicited and received orders, and transmitted such orders to the respondent's principal office, where the merchandise ordered was invoiced and shipped to the purchasers at their respective places of business.

The respondent's purchaser-customers who were able to and did qualify for such volume purchase rebates were generally the major retail jewelry dealers. Such dealers were thus enabled to obtain greater profits from the resale of said jewelry products and to either undersell their competitors or furnish superior facilities and services to their consumer purchasers, or both, which had the capacity of diverting trade from the smaller retailers to the larger and more favored retail dealers in such products.

PAR. 5. The respondent, since June 19, 1936, has likewise extended to certain of its purchaser-customers so-called jobber's discounts, varying from 12% to 20% below the respondent's regular list prices to retailers, depending upon the item of jewelry involved, although such purchaser-customers were in fact mere chain retail jewelry stores which resold the products purchased from the respondent to the consuming public through the various branches or outlets of their chain stores. These so-called jobber discounts were allowed to said retail chain stores by the respondent without regard to the quantity of products purchased. As was true in the case of the volume purchase rebates described in paragraph 4, the respondent's purchaser-customers who have received the favored "jobber discounts" have been in active competition in the resale of products purchased from the respondent at retail with other retail customers of the respondent who have not received any such favored discounts.

PAR. 6. The acts and practices of the respondent in paying and granting the rebates and discounts as aforesaid have resulted in discriminations in price from 10% to 20% in sales of jewelry prod-

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ucts of like grade and quality to competing customers of the respondent, and the effect of such discriminations may be substantially to lessen competition in the sale and distribution of jewelry products in the respective lines of commerce in which the respondent and its customers are engaged. The further effect of such discriminations has been and may be to injure, destroy, or prevent competition in the sale and distribution of such products with the respondent and with its customers who receive the benefits of said discriminatory prices.

The respondent made no contention that any of the price differences made only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which the products involved were to such favored customers sold or delivered.

## CONCLUSION

The aforesaid acts and practices of the respondent as herein found constituted violations of subsection (a) of section 2 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answer thereto, and a stipulation as to the facts entered into by and between counsel for the respondent and the Chief Trial Counsel of the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure the Commission may proceed upon the complaint, answer and stipulation to make its report, stating its findings as to the facts, including inferences which it may draw from the facts admitted in the stipulation, and its conclusion based thereon, and enter its order disposing of this proceeding (the filing of briefs and presentation of oral arguments having been expressly waived); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated subsection (a) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936:

*It is ordered*, That the respondent, F & V. Manufacturing Co., Inc., a corporation, and its officers, representatives, agents, and employees,

directly or through any corporate or other device, in or in connection with the sale or distribution in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, of jewelry products, do forthwith cease and desist from:

Directly or indirectly discriminating in the price of jewelry products by charging, accepting, or receiving from different purchasers of such products of like grade and quality net prices which differ as much as, or more than, 10% of the highest of such net prices; *Provided, however,* That the foregoing shall not be construed to prevent the respondent from defending any alleged violation of this order by showing that different prices make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which the products were sold or delivered.

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

OPINION OF COMMISSIONER LOWELL B. MASON

CONCURRED IN BY COMMISSIONERS AYERS, CARSON AND MEAD

The respondent in this proceeding is engaged in the manufacture and sale of jewelry products. It is charged with having violated section 2 (a) of the Clayton Act, as amended, by the use of (1) an annual volume purchase rebate plan, under which it grants rebates of 10% of its retail sales prices to purchasers of \$1,500 or more of its products annually, and (2) a "jobber's discount" plan, under which it grants discounts of from 12% to 20% of its regular retail prices to chain store purchasers of its products, regardless of the quantities of such products purchased. The case was submitted for disposition on the complaint, the respondent's answer, and a stipulation of facts entered into by and between counsel which covers all of the material allegations of the complaint.

On the basis of the stipulation, there can be no question about the respondent's violation of the law. In addition to setting forth the rebate and discount plans above-mentioned, under which price differences are made in sales of products of like grade and quality to competing customers in amounts varying from 19% to 20% of regular retail prices, the stipulation further provides that "The effect of the discriminations in price, as hereinabove set forth, may be substantially to lessen competition in the sale and distribution of jewelry products in the respective lines of commerce in which respondent and its cus-

tomers are engaged \* \* \*," etc. Thus, all of the elements necessary to constitute a showing of unlawful price discriminations in violation of section 2 (a) of the Clayton Act, as amended, are specifically covered. Moreover, the respondent made no contention that any of its price differences make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which the products involved are to its favored customers sold or delivered. Therefore, this case does not involve the question of the respondent's ability to justify the price differences by reason of corresponding differences in costs.

It is to be noted, however, that the stipulation is very specific as to the price differences which may substantially injure competition. By its express terms, the differences having that effect are those "hereinabove set forth," and the differences thus encompassed are those ranging from 10% to 20% of the respondent's regular retail prices. What effect, if any, price differences amounting to less than 10% of the retail prices may have on competition is not stated. It is clear, therefore, in the absence of any facts to support an inference of the likelihood of competitive injury as a result of smaller price differences, that the Commission's findings must necessarily be limited to differences amounting to 10% or more of the respondent's retail prices.

The Commission's findings as to the facts being so limited, its order to cease and desist must be limited accordingly. The only alternative would be for the order to prohibit all price differentials, with a proviso that it shall not be construed to prevent differences of less than 10% of retail prices which do not tend to lessen, injure or destroy competition. This, however, the Commission may not do in view of the decision of the Supreme Court in the *Morton Salt Company* case (334 U. S. 37 (54)). The Court, in that case, had before it an order carrying just such a proviso. In rejecting it, the Court said:

The effective administration of the Act, insofar as the act entrusts administration to the Commission, would be greatly impaired if, without compelling reasons not here present, the Commission's cease and desist orders did no more than shift to the courts in subsequent contempt proceedings for their violation the very fact questions of injury to competition, etc., which the act requires the Commission to determine as the basis for its order. \* \* \*

Whether on this record the Commission was compelled to exempt certain differentials of less than five cents we do not decide. But once the Commission exempted the differentials in question from its order, we are constrained to hold that as to those differentials it could not then shift to the courts a responsibility in enforcement proceedings of trying issues of possible injury to competition, issues which Congress has primarily entrusted to the Commission.

Thus, the Commission's order to cease and desist in this proceeding prohibits only those price differences which, on the basis of the record, are found to have a reasonable possibility of substantially lessening competition, namely, differences of 10%, or more, of the respondent's highest retail prices.

## Syllabus

IN THE MATTER OF  
STEELCO STAINLESS STEEL, INC., AND CLYDE C. CARR  
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 5530. Complaint, Mar. 9, 1948—Decision, Mar. 15, 1950*

While various mineral elements and vitamins are required by the body as a whole, and essential to the strength and functioning thereof, statements and representations which attributed to various mineral elements and vitamins specific or unique functions in connection with specified tissues or organs, and asserted that the method of cooking was responsible for their loss or destruction, or conservation, as the case might be, were false in their breadth, express and implied, and misleading and deceptive in their lack of qualification.

As respects the vitamins, foods or other preparations containing vitamin A do not increase resistance to disease, and vitamin A is not effective in preventing or relieving anemia, pellagra, gallstones or eye trouble generally, vitamin B is not effective in preventing or relieving nervous diseases generally or paralysis, vitamin C does not increase one's strength and endurance and will not prevent or relieve muscular diseases or loss of weight, and vitamin D is not effective in the treatment or prevention of bone disorders generally. And as respects vitamin E, there is no scientific evidence that it plays any role in reproduction in human beings.

With regard to the effect of cooking on minerals and vitamins, the former are not appreciably damaged or destroyed by the heat used in any method. In the case of the latter, vitamin C and some elements of vitamin D are destroyed by prolonged high temperatures; other vitamins are not. As respects losses in cooking, minerals and vitamins B<sub>1</sub> and C leach out in boiling water depending upon the solubility of the compounds in which they occur in food, and if the water is not consumed in gravies, sauces or otherwise, there is loss of said food elements, depending on the amount in the food before cooking, which in turn depends upon the nature of the food, the soil in which grown, the manner of harvesting and storage, and the exposure to light and air between maturity and preparation, matters which, for all practical purposes, govern the food elements derived from the consumption of cooked foods as much as the manner of their cooking. And except for persons already deficient in such food elements or on the border line, or those on restricted diets, the maximum loss from any method of cooking in general use would be insignificant from a nutritional standpoint and would not affect the health of a person in normal health or on a normal diet.

Where a corporation and its president, who was its majority stockholder, engaged in the competitive interstate sale and distribution of cooking utensils; in selling their said products through salesmen who were their agents or employees and not independent contractors or dealers, and whom they furnished with sales manuals, instruction books, advertising matter, charts.

order books, chattel mortgages for deferred payment sales, and sample outfits, and who were authorized to receive the sales price of their products and deposits on deferred payment sales, to evaluate and make trade-in allowances on used cooking utensils, and to conduct cooking demonstrations with their utensils, along with lectures and sales talks, in the homes of prospects, and who usually devoted their full time to selling said merchandise to customers—

- (a) Represented that certain designated minerals were essential and had a specific effect in connection with the functions and structures of various organs and tissues of the body, and that various organs and tissues had special requirements for certain designated mineral elements and vitamins;
- (b) Represented that each of some 20 minerals—including sulphur, calcium, magnesium, potassium, chlorine, fluorine, sodium, iron, iodine, silicon, and manganese—had certain specific effects: in the case of sulphur, purifying, toning the system, and intensifying feeling and emotions; in the case of phosphorus, nourishing the brain cells, building power of thought, and stimulating the growth of hair and bone; etc.;
- (c) Represented and implied that each of the vitamins A, B, C and D had certain specified preventive or affirmatively beneficial effects, that vitamin E was necessary for reproduction, and that all of the aforesaid vitamins were destroyed by water and high temperature; and
- (d) Represented through a depiction of the body and statements in connection therewith, associating various tissues and organs with specified minerals and vitamins, that designated organs and tissues had special requirements for certain vitamins and mineral elements, such as sulphur, iodine, and silicon, in the case of the hair; fluorine and vitamin A, in the case of the eyes, etc.;

The facts being that while the body as a whole requires the vitamin and mineral elements set forth the designated organs and tissues do not have such special requirements, and specific minerals and vitamins do not have the results above specifically attributed thereto; with the exception of silicon in the case of the hair and teeth;

- (e) Represented by way of supplementing the various above statements, that by using their said products one would obtain all the food elements necessary to provide good health, and might expect to receive all the aforesaid beneficial effects to the various organs and other parts, and that the use of their products was the only method of cooking which would provide such benefits;

The facts being that food elements derived from the consumption of cooked foods is for all practical purposes governed as much by the nature of the food and the manner of its production and storage as by that in which cooked; and while their products constitute satisfactory utensils, some adapted to pressure cooking, and to cooking with high temperatures for short periods of time with a minimum of water—methods currently recommended by some dietitians, as conserving the necessary food elements—there are cooking utensils of other manufacture, composition and design which provide equally satisfactory use and results, and are just as adaptable to the cooking methods recommended;

- (f) Represented falsely that their utensils provided a cooking method which was especially conducive to good health, was new and revolutionary, and

faster than any other method, and would effect savings in food, fuel and replacement, and in medical, hospital, medicine, and dental bills; and saving of time and efficiency, as compared with all other methods; that stainless steel, of which their utensils were made, was a new metal; and that said utensils had been endorsed and recommended by noted food, dietetic and medical authorities;

- (g) Represented that they owned, operated, or controlled a factory wherein their utensils were made; and a research or other laboratory wherein they were tested and improved; that their salesmen were bonded for the protection of their customers; and that upon purchase delivery would be made immediately or within from 30 to 90 days;

The facts being their utensils were made to specifications on contract by an independent corporation and they had no laboratory; their salesmen were not bonded; and they did not make immediate delivery, and in some instances did not accomplish delivery for several years;

- (h) Represented falsely that boiling food destroyed its iodine content; that constipation was caused by a lack of magnesium in cooked food; and that the preparation of food in their utensils as recommended would aid digestion; and that the consumption of food thus cooked would insure improved health;

The facts being that iodine is found in food only in combination with other chemical elements; and while, if such compound is soluble, boiling will leach it out, the loss is insignificant; and said representations were otherwise false;

- (i) Falsely represented to prospective purchasers that food cooked in other utensils resulted in destruction of essential minerals and vitamins, and in decayed teeth, faulty elimination, rickets, organic heart disease, ill health and many other diseases, and that water disturbed the "chemical balance" in food;

- (j) Misleadingly and deceptively made it a practice, when deferred payments were not promptly met, to write the delinquent on letterheads of the "Federal Acceptance Company," whereby purchasers were led to believe that they were dealing with an independent commercial paper corporation;

The facts being said Federal Acceptance Company was merely a name invented and used by them for collection purposes; and

Where a number of their salesmen, for whose acts and statements in connection with the sale or offer of their products they were fully responsible, and notwithstanding instruction to sell their utensils on their merits, without disparagement of competitive products—

- (k) Falsely represented, over a substantial number of years, over representative areas, and in a substantial number of instances, to prospective purchasers, that cooking food in aluminum ware would cause cancer, ulcers, bad health, decayed teeth, indigestion and poison, bacterial and metallic; that minerals and vitamins essential to health were lost by cooking therein; that their use was bad for children and pregnant women; that aluminum ware retained an odor and destroyed the color of food; that water boiled in aluminum ware utensils—as stated by one—was the same as embalming fluid; that granite ware was unhealthy because it chipped; and that aluminum ware was porous and allowed bacteria to collect;

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Whereby some of those to whom such representations were made were frightened into discarding their currently used cooking utensils and into buying the products of said corporation and individual, and persuading others to do likewise;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of thereby inducing their purchase of substantial quantities of said cooking utensils; and that trade was unfairly diverted to them from their competitors through such disparagement of competitive products, to the substantial injury of their competitors in commerce:

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

As respects the representation by respondents in said proceeding with respect to the alleged destruction of essential minerals and vitamins through cooking in utensils other than their own, and the harmful results thereof, that water disturbed the "chemical balance" in food, said expression was meaningless to the food experts who testified on the point.

The allegations of the complaint concerning the representation that the peeling and coring of foods and vegetables took the value out of them and constituted enemies of health were not sustained by the evidence.

Before *Mr. Frank Hier*, trial examiner.

*Mr. Joseph E. Callaway* for the Commission.

*Nash & Donnelly*, and *Mr. Earl M. Friesenecker*, 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 Steelco Stainless Steel, Inc., a corporation, and Clyde C. Carr individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said act and, it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Steelco Stainless Steel, Inc., is a corporation, organized, existing, and doing business under, and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 433 East Erie Street, Chicago, Ill. Respondent Clyde C. Carr is an officer of, and formulates and controls the policies, activities, and practices of corporate respondent, including the acts and practices hereinafter alleged. The address of respondent Carr is the same as that of corporate respondent.

PAR. 2. Respondents are now, and for more than 5 years last past, have been engaged in the sale and distribution of stainless steel cooking utensils in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia. There is now and has been, at all times mentioned herein, a constant course of trade in said products sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other corporations and with persons, firms, and partnerships likewise engaged in the business of selling and distributing cooking utensils made from steel or other metals or materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The advertising and selling of respondents' cooking utensils are conducted principally through the medium of agents, representatives or employees through personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives or employees, at respondents' direction, is the giving of demonstrations of respondents' products before groups of prospective purchasers at which times, various pamphlets, leaflets, charts, circulars and other written matter are exhibited and distributed accompanied by sales talks, taken from sales manuals supplied by the respondents, all with respect to the characteristics, nature and effectiveness of said products used in the preparation of food.

PAR. 5. Among and typical of the statements and representations contained in said pamphlets, leaflets, charts, circulars and other written matters and the sales talks of said agents, representatives or employees, used in connection with the offering for sale, sale and distribution of respondents' said products, in commerce, are the following:

FOOD IS HEALTH

The letter T indicates element injured by temperatures. The letter W indicates element is dissolved out either partially or wholly by warm or hot water.

<i>Essential Organic Mineral Salts</i>	<i>Effects</i>
(T) Sulphur— Brain, Nerves, Liver	Purifies—tones system—intensifies feeling and emotions.
(T) Phosphorus— Brain, * * *	Nourishes the brain cells; builds power of thought; stimulates growth of hair and bone.

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<i>Essential Organic Mineral Salts</i>		
(WT) Calcium * * * Lungs	* * * ; gives vitality, endurance ; heals wounds ; counteracts acid.	<i>Effects</i>
(WT) Magnesium— Nerves, Intestines	Relaxes nerves ; refreshes system. Prevents and relieves constipation.	
(W) Potassium— Tissue, Glands	Liver activator ; strongly alkaline ; makes tissue elastic, muscles supple, creates grace, beauty, good disposition.	
(T) Chlorine— Glands, Intestines	Cleans ; expels waste ; freshens ; purifies, disinfects.	
(T) Fluorine— Lungs, Tendons, Veins	Strengthens ; cements, builds resistance ; hardens.	
(W) Sodium— Glands, Stomach, Blood	Aids digestion ; counteracts acidosis ; halts fermentation ; purifies blood ; dissolves congestion.	
(W) Iron * * *	Absorbs oxygen ; for feeding and growth of cell structure through oxidation ; gives energy, vitality, rosy cheeks.	
(T) Iodine— Glands, Brain	* * * ; normalizes gland and cell action ; ejects and counteracts poisons.	
(W) Silicon— Nails, Skin, Teeth, Hair	Gives keen hearing ; sparkling eyes ; pearly teeth and nails ; glossy hair ; tones system.	
(W) Manganese— Heart, Brain, Tissue	Increases resistance ; strengthens ; coordinates thought and action ; improves memory.	
<i>Principal Body Organs</i>		
<i>Heart</i>	<i>Function</i>	<i>Food Elements Needed</i>
	Blood Circulation	Manganese, Calcium, Fluorine, Sodium
Vein, Arteries		
Bones	Supportive Masticatory	* * * Fluorine Silicon
Teeth, Nails	Protective	* * *
* * *	* * *	* * *
	* * *	
Nerves	Communicative Servants of Brain	Magnesium, Silicon, Sulphur, Phosphorus
Lungs	Receive and Transmit Oxygen ; Receive and eliminate Carbon Dioxide	Calcium, Fluorine, Potassium
Stomach	Digestive	All 16 elements organic—natural balance
Intestines	Digestive Eliminative	Potassium, Sodium, Magnesium, Chloride, Sulphur
Liver	Blood Purifier Bile Secretion	Potassium, Sodium
Kidneys	Eliminative	Potassium, Sodium
Glands	Chemical Balance	Iodine, Potassium, Chlorine, Sodium
Skin	Eliminative Protective	Phosphorus Manganese, Silicon

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<i>Principal Body Organs</i>	<i>Function</i>	<i>Food Elements Needed</i>
Muscles Tissue	Structural	Potassium, Sodium, Manganese, Silicon
Ligaments	Operative	Potassium, Sodium, Manganese, Silicon
Generative	Reproduction	Phosphorus, Calcium, Potassium, Silicon

VITAMINS

Fat Soluble A— Growth Resistance to Disease	* * *	Injured by high temperature. Effective in preventing and relieving Anemia. Pellagra, Gall Stones, Xerophthalmia (eye trouble).
Water Soluble B— Normal Function Organs	* * *	Injured by high temperatures. Prevents and relieves Beri Beri (nervous disease), Paralysis.
Water Soluble C— Strength, Endurance	* * *	Destroyed by high temperatures. Prevents, relieves—Scurvy, Muscular Disease, Loss of Weight.
Fat Soluble D— Bone Development Maintenance	* * *	Injured by high temperatures. Prevents Rickets, Bone Disorders.
Water Soluble E— Reproduction	* * *	Destroyed by high temperatures.

PAR. 6. By means of the aforesaid statements and representations, respondents have represented and implied that certain designated minerals are essential and have a specific effect in connection with the functions and structure of various organs and tissues of the human body; that various organs and tissues of the human body have special requirements for certain designated mineral elements and vitamins.

By means of the aforesaid statements and representations, respondents have represented and implied that sulphur purifies and tones the human system and intensifies feeling and emotions; that phosphorus nourishes the brain cells, builds power of thought and stimulates the growth of the hair; that calcium gives vitality, endurance, heals wounds and counteracts acids; that magnesium relaxes nerves, refreshes the human system, prevents and relieves constipation; that potassium is a liver activator, makes tissues elastic, muscles supple, creates grace, beauty and a good disposition; that chlorine cleans, freshens, purifies, disinfects and expels waste from the human body; that fluorine has a beneficial effect on the lungs, tendons and veins by strengthening, cementing, hardening and building the resistance of those tissues, tendons, and veins; that sodium aids digestion, counteracts acidosis, halts fermentation, purifies blood, dissolves congestion; that iron gives energy, vitality and rosy cheeks; that iodine normalizes

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glands and cell action and ejects and counteracts poisons; that silicon gives keen hearing, sparkling eyes, pearly teeth and nails, glossy hair and tones the human system; that manganese increases resistance, strengthens thought and action and improves memory.

Further, by means of said statements and representations, respondents have represented and implied that vitamin A affords resistance to disease and is effective in preventing and relieving anemia, pellagra, gallstones and xerophthalmia (eye trouble); that vitamin B prevents and relieves nervous disease and paralysis; that vitamin C imparts strength and endurance and prevents and relieves muscular disease and loss of weight; that vitamin D prevents bone disorders; that vitamin E is necessary for reproduction; and that all of the aforesaid vitamins are destroyed by water and temperature.

In one of respondents' aforesaid charts, there is a picturization of the human body in connection with which there appear statements associating various tissues and organs of the human body with various specified minerals and vitamins as follows:

Hair—Sulphur, Iodine, Silicon;  
Eyes—Fluorine, Vitamin-A;  
Teeth—Calcium, Silicon, Vitamin-D;  
Liver—Chlorine;  
Stomach—Sulphur, Vitamin-B;  
Intestine—Magnesium;  
Adrenal Gland—Magnesium, Vitamins—A, B, C, and G;  
Muscles—Potassium;  
Brain—Manganese, Phosphorus, Vitamins—B and G;  
Thyroid Gland—Iodine;  
Throat—Vitamin-A;  
Heart—Potassium, Vitamins-A,-G;  
Gall Bladder—Sodium;  
Kidney—Magnesium;  
Blood Stream—Iron, Oxygen, Hydrogen, Vitamin-A.

PAR. 7. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, while the mineral elements referred to are essential to the structure and functioning of the human body as a whole, the designated mineral elements do not have specific or unique functions in connection with the organs and tissues specified in said statements and representations. While the human body taken as a whole requires all of the vitamins and mineral elements set forth in the aforesaid statements and representations, with the exception of the mineral element Silicon, the designated organs and tissues of the body do not have special requirements for the vitamins and mineral elements aforesaid as indicated in the said state-

ments and representations. In truth and in fact, sulphur does not purify or tone the human system nor does it intensify feeling and emotions. Phosphorus does not nourish the brain cells, build power of thought, or stimulate the growth of hair; calcium does not give vitality, endurance, heal wounds, or counteract acid; magnesium does not relax the nerves, refresh the human system or prevent or relieve constipation; potassium is not a liver activator, does not make tissues elastic, muscles supple, and does not create grace, beauty, or good disposition; chlorine does not cleanse, freshen, purify, disinfect, or expel waste matter from the human system; fluorine does not strengthen, cement, harden or build the resistance of the lungs, tendons, or veins; sodium does not aid digestion, counteract acidosis, halt fermentation, purify blood, or dissolve congestion; iron does not give energy, vitality, or rosy cheeks; iodine does not normalize glands and cell action and does not eject or counteract poisons; silicon does not give keen hearing, sparkling eyes, pearly teeth and nails and glossy hair, nor does it tone the human system; manganese does not increase resistance, does not strengthen or coordinate thought and action and does not improve the memory.

In truth and in fact, vitamin A containing foods or other vitamin containing preparations do not increase resistance to disease. Vitamin A is not effective in preventing or relieving anemia, pellagra, gallstones or eye trouble generally; vitamin B is not effective in preventing or relieving nervous diseases generally or paralysis; vitamin C does not increase an individual's strength and endurance nor will it prevent or relieve muscular diseases or loss of weight; vitamin D is not effective in the treatment or prevention of bone disorders generally. There is no scientific evidence that vitamin E plays any role in connection with reproduction in human beings.

PAR. 8. By means of the various statements made in the advertising literature and chart set out and described in paragraphs 5 and 6, respondents represented that by using their said products in the preparation of food, one will obtain all the food elements necessary to provide good health and may expect to receive all the beneficial effects to the various organs and other parts of the body enumerated therein, and that the use of respondents' products is the only method of cooking which will provide these benefits. In truth and in fact, the food elements derived from the consumption of cooked foods is governed, for all practical purposes, by the nature of the food and not by the

dorsed and recommended by the outstanding authorities in medicine and dietetics in the United States, as the ideal method of cooking; that by using respondents' said utensils, savings can be effected in foods, fuel, replacements, doctor bills, hospital bills, medicine bills, dental bills and loss of time and efficiency as compared with all other methods of cooking; that stainless steel is a new metal; that respondents' said utensils afford faster cooking of food than any other cooking utensils.

PAR. 10. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, respondents' said utensils do not constitute a cooking method which is especially conducive to health. Said method of cooking is not new or revolutionary. The consumption of food cooked in said utensils will not insure improved health nor will it promote happiness. The mineral content of foods is not destroyed or affected by heat; while some of the vitamins and minerals may be affected by prolonged exposure to elevated temperatures and may be dissolved by water, there is no significant loss of these substances in any of the procedures commonly employed in cooking, provided the cooking water is used to make gravies, sauces, etc., and not thrown away. Moreover, there are other methods of cooking which will preserve the vitamins and minerals in foods to the same extent as will result from the use of respondents' product; water does not disturb the chemical balance in food; failure to use respondents' said utensils will not result in decayed teeth, ill health, faulty elimination, rickets, organic heart disease, or any other disease; constipation is not caused by lack of magnesium in food; boiling food does not destroy the iodine content therein; peeling and coring fruits and vegetables does not take the value therefrom or constitute enemies to health; the preparation of food in respondents' said utensils will not aid digestion; said utensils have not been endorsed and recommended by the outstanding authorities in medicine and dietetics in the United States as the ideal method of cooking; the use of respondents' said utensils will not effect savings in foods, doctor's bills, hospital bills, medicine bills, dental bills and loss of time and efficiency as compared with the results which will follow the use of cooking utensils sold by respondents' aforesaid competitors; stainless steel is not a new metal; respondents' said utensils do not afford faster cooking of food than other like or similar utensils sold by respondents' aforesaid competitors.

PAR. 11. Respondents, in the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their cooking utensils in said commerce, have made and are now making

false and misleading statements and representations in their aforesaid advertising literature and through their agents, representatives, and employees, as to their business status. Respondents through the use of such statements as "Research in this laboratory keeps Steelco years ahead," have represented and now represent that they own, operate or control a research laboratory within the common and usual meaning of the word, when used in connection with the scientific construction of cooking utensils, that is, a place or places appropriately equipped for and devoted to experimental study in the application of scientific principles in an endeavor to develop and to verify new qualities in said products by the testing and analysis of the metallic contents contained therein by persons skilled in the manufacture thereof. Respondents also, by the use of such statements, as "Steelco Stainless Steel, Inc., General Offices and Factory, Chicago, Illinois," have represented and now represent that they own, operate, or control a factory wherein their said products are manufactured; and that respondents now are and have been the manufacturers of said products.

In truth and in fact, respondents neither own, operate, or control a research laboratory or any laboratory, or a factory wherein their said products are manufactured, but buy their products from others.

PAR. 12. There is a preference on the part of a substantial portion of the purchasing public for dealing with the manufacturer of products sold by it and a preference for dealing with a concern which maintains and operates a research laboratory, or a laboratory, in connection with its business.

PAR. 13. In the course and conduct of their aforesaid business in the offering for sale, sale and distribution of their said products in commerce, respondents by means of the aforesaid advertising matter and in newspapers and in oral statements and representations made by their representatives, agents, or employees, have represented to persons ordering said products that delivery thereof would be made immediately; within 30 to 90 days or within some other specified period of time; and that respondents' representatives were and are bonded for the protection of their customers.

Said statements and representations were false, misleading, and deceptive. In truth and in fact, respondents did not make delivery of such products immediately, within 30 to 90 days, or within the other designated periods of time. Respondents' said representatives were and are not bonded for the protection of their customers.

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PAR. 14. Respondents, in the course and conduct of their said business for the purpose of collecting sums of money due them by their customers on sales contracts have used on their letterheads and elsewhere the following:

FEDERAL ACCEPTANCE CO.  
Commercial Papers.

FEDERAL ACCEPTANCE COMPANY

By means of said statements or representations, respondents have represented and implied that the Federal Acceptance Co. is a financial company separate and apart from respondents and engaged in the purchase of commercial papers; that is, promissory notes, contracts, accounts, and acceptances from the payee and in the collection thereof for their own account.

In truth and in fact, such statements or representations are false, misleading, and deceptive. The Federal Acceptance Co. is not a financial company engaged as aforesaid, but is merely a name used by respondents for the purpose of collecting sums of money due it under contracts with their customers.

PAR. 15. In the course and conduct of their aforesaid business for the purpose of inducing the purchase of their said products in commerce, respondents have made disparaging statements and representations in their aforesaid advertising matter and through their aforesaid agents, representatives, and employees with respect to utensils sold and distributed in commerce by their competitors aforesaid. Such disparaging statements were and are to the effect that the consumption of food prepared or kept in aluminum utensils will cause cancers, stomach trouble, anemia, blood poisons, and various other ailments, afflictions, and diseases; that food so prepared or kept in aluminum utensils is detrimental to the health of the users thereof and that the preparation of food in aluminum utensils causes formation of poisons.

In truth and in fact, aluminum has been used in the manufacture of cooking utensils for many years. During that period of time it has been found to be a highly satisfactory material for use in cooking utensils. Further, in truth and in fact, the consumption of food prepared or kept in aluminum kitchen utensils will not cause cancers, stomach trouble, anemia, blood poisons, and other ailments, afflictions, and diseases of the human body. Foods so prepared or kept in aluminum utensils are not detrimental to the health of the users thereof by reason of the use of aluminum utensils. Poisons are not formed from the preparation of foods in aluminum utensils.

PAR. 16. There are, among the competitors of the respondents in commerce as herein set out, manufacturers and distributors of like or similar commodities who truthfully advertise and represent their respective products and who refrain from unfairly disparaging the products of competitors in the manner and form herein set out by which the respondents disparage their competitors' products.

PAR. 17. The aforesaid false, misleading, deceptive, and disparaging statements and representations so made by respondents, as above alleged, have had and now have the tendency and capacity to and do mislead and deceive a substantial part of the consuming public into the false and erroneous belief that cooking utensils made from aluminum are undesirable and harmful, as above alleged, and are dangerous to the consumers of food prepared in said cooking utensils and that all of said statements and representations made by respondents with reference to said aluminum cooking utensils are true.

As a result thereof, trade has been unfairly diverted to respondents from those competitors herein referred to. As a consequence thereof, substantial injury has been and is being done by respondents to their competitors in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 18. The use by the respondents of the foregoing acts and practices and the false, misleading, and deceptive statements and representations disseminated as aforesaid has had and now has the capacity and tendency to deceive and does mislead and deceive a substantial number of the public into the erroneous and mistaken belief that all of said statements and representations are true and induces a substantial number of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said product.

PAR. 19. The methods, acts, and practices of respondents, as hereinabove alleged, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 March 9, 1948, issued and subsequently served its complaint in this proceeding on the respondents Steelco Stainless Steel, Inc., a corporation, and Clyde C. Carr, individually and as an officer of respondent corporation, charging them

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with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. After the filing of respondents' answer to the complaint, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial 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. Thereafter this proceeding regularly came on for final hearing before the Commission on the complaint, answer thereto, testimony and other evidence, the trial examiner's recommended decision, to which no exceptions were filed, briefs in support of and in opposition to the allegations of the complaint, 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 Steelco Stainless Steel, Inc., is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its principal office and place of business located at 4450 to 4458 Ravenswood Avenue, Chicago, Ill.

PAR. 2. Respondent Clyde C. Carr is president of, and the majority stockholder in, the corporate respondent, and has been such since he organized the corporation. The only other officers and stockholders are his son-in-law and daughter, who, together with him, constitute the board of directors. By virtue of stock ownership, officership, and active direction, the policies, activities, and practices of the corporate respondent are his.

PAR. 3. Respondents are now and for a number of years have been engaged in commerce between the States of the United States and the District of Columbia, causing their products, when sold, to be transported from the State of Illinois to purchasers located in other States in a constant course of trade in such products.

PAR. 4. Respondents in the course and conduct of their business are and have been in substantial competition with other corporations, firms, partnerships, and individuals similarly engaged in selling cooking utensils in commerce among the States of the United States and the District of Columbia.

PAR. 5. In the sale of their products, respondents enter into contracts, called franchises, with salesmen, designated as dealers, and furnish the latter with sales manuals, instruction books, advertising matter, pamphlets, leaflets, charts, circulars, order books, chattel mortgages for deferred payment sales, and sample outfits of respondents' products. Such agents have authority to receive the sales price of respondents' products, to receive deposits on deferred-payment sales, to evaluate and allow trade-in allowances on used cooking utensils, and to conduct demonstrations of cooking with respondents' utensils in the homes of prospects, giving lectures and sales talks in the course thereof. Such salesmen, in most instances, devote their full time to respondents and do not sell other merchandise. These salesmen do not purchase respondents' products for resale to the consumer but sell them on behalf of respondents. Such salesmen are agents or employees of respondents and are not independent contractors or independent dealers. Respondents are fully responsible for such salesmen's acts and statements made in connection with the sale or offering for sale of their products and germane thereto.

PAR. 6. Typical of the statements and representations contained in said pamphlets, leaflets, charts, circulars, and other written matter and the sales talks of said agents, representatives, or employees, used in connection with the offering for sale, sale, and distribution of respondents' said products, in commerce, are the following:

FOOD FOR HEALTH

\* \* \*

The letter T indicates element injured by temperatures.

The letter W indicates element is dissolved out either partially or wholly by warm or hot water.

\* \* \*

<i>Essential Organic Mineral Salts</i>	<i>Effects</i>
(T) Sulphur— Brain, Nerves, Liver	Purifies—tones system—intensifies feeling and emotions.
(T) Phosphorus— Brain, * * *	Nourishes the brain cells; builds power of thought; stimulates growth of hair and bone.
(WT) Calcium * * * Lungs	* * *; gives vitality, endurance; heals wounds; counteracts acid.
(WT) Magnesium— Nerves, Intestines	Relaxes nerves; refreshes system. Prevents and relieves constipation.
(W) Potassium— Tissue, Glands	Liver activator; strongly alkaline; makes tissues elastic, muscles supple, creates grace, beauty, good disposition.

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(T) Chlorine— Glands, Intestines	Cleans; expels waste; freshens; purifies, disinfects.	
(T) Fluorine— Lungs, Tendons, Veins	Strengthens; cements, builds resistance; hardens.	
(W) Sodium— Glands, Stomach, Blood	Aids digestion; counteracts acidosis; halts fermentation; purifies blood; dissolves congestion.	
(W) Iron— * * *	Absorbs oxygen; for feeding and growth of cell structure through oxidation; gives energy, vitality, rosy cheeks.	
(T) Iodine— Glands, Brain	* * *; normalizes gland and cell action; ejects, and counteracts poisons.	
(W) Silicon— Nails, Skin, Teeth, Hair	Gives keen hearing; sparkling eyes, pearly teeth and nails; glossy hair; tones system.	
(W) Manganese— Heart, Brain, Tissues	Increases resistance; strengthens; co-ordinates thought and action; improves memory.	

<i>Principal Body Organs</i>	<i>Function</i>	<i>Food Elements Needed</i>
Heart	Blood Circulation	Manganese, Calcium Fluorine, Sodium
Vein, Arteries * * *	* * *	* * *
Bones	Supportive	* * * Fluorine, Silicon
Teeth, Nails * * *	Masticatory, Protective * * *	* * *
Nerves	Communicative Servants of Brain	Magnesium, Silicon, Sulphur Phosphorous
Lungs	Receive and Transmit Oxygen. Receive and Eliminate Carbon Dioxide	Calcium, Fluorine, Potassium
Stomach	Digestive	All 16 elements organic—natural balance
Intestines	Digestive Eliminative	Potassium, Sodium, Magnesium, Chlorine, Sulphur
Liver	Blood Purifier. Bile Secretion	Potassium, Sodium
Kidneys	Eliminative	Potassium, Sodium
Glands	Chemical Balance	Iodine, Potassium Chlorine, Sodium
Skin	Eliminative Protective	Phosphorus, Manganese, Silicon
Muscles	Structural	Potassium, Sodium, Manganese, Silicon
Tissue		
Ligaments	Operative	Potassium, Sodium, Manganese, Silicon
Generative Organs	Reproduction	Phosphorus, Calcium, Potassium, Silicon

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*Vitamins*

Fat Soluble A— Growth Resistance to Disease	* * * Injured by high temperatures. Effective in preventing and relieving Anemia, Pellagra, Gallstones, Xerophthalmia (eye trouble).
Water Soluble B— Normal Function Organs	* * * Injured by high temperatures. Prevents and relieves Beri Beri (nervous disease), Paralysis.
Water Soluble C— Strength, Endurance	* * * Destroyed by high temperatures. Prevents, relieves—Scurvy, Muscular Disease, Loss of Weight.
Fat Soluble D— Bone Development Maintenance	* * * Injured by high temperatures. Prevents Rickets, Bone Disorders.
Water Soluble E— Reproduction	* * * Destroyed by high temperatures.

PAR. 7. By means of the aforesaid statements and representations respondents have represented and implied that certain designated minerals are essential and have a specific effect in connection with the functions and structure of various organs and tissues of the human body; that various organs and tissues of the human body have special requirements for certain designated mineral elements and vitamins.

Also by means of the aforesaid statements and representations, respondent have represented and implied that sulphur purifies and tones the human system and intensifies feeling and emotions; that phosphorus nourishes the brain cells, builds power of thought, and stimulates the growth of the hair; that calcium gives vitality and endurance, heals wounds, and counteracts acids; that magnesium relaxes nerves, refreshes the human system, prevents and relieves constipation; that potassium is a liver activator, makes tissues elastic and muscles supple, creates grace, beauty and a good disposition; that chlorine cleans, freshens, purifies, disinfects, and expels waste from the human body; that fluorine has a beneficial effect on the lungs, tendons, and veins by strengthening, cementing, hardening, and building the resistance of those tissues, tendons, and veins; that sodium aids digestion, counteracts acidosis, halts fermentation, purifies blood, dissolves congestion; that iron gives energy, vitality, and rosy cheeks; that iodine normalizes glands and cell action and ejects and counteracts poisons; that silicon gives keen hearing, sparkling eyes, pearly teeth and nails, and glossy hair, and tones the human system; that manganese increases resistance, strengthens thought and action, and improves memory.

Further, by means of said statements and representations, respondents have represented and implied that vitamin A affords resistance to

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disease and is effective in preventing and relieving anemia, pellagra, gallstones, and xerophthalmia (eye trouble); that vitamin B prevents and relieves nervous disease and paralysis; that vitamin C imparts strength and endurance and prevents and relieves muscular disease and loss of weight; that vitamin D prevents bone disorders; that vitamin E is necessary for reproduction; and that all of the aforesaid vitamins are destroyed by water and temperature.

In one of respondents' aforesaid charts, there is a picturization of the human body in connection with which appear statements associating various tissues and organs of the human body with various specified minerals and vitamins as follows:

Hair—Sulphur, Iodine, Silicon  
Eyes—Fluorine, Vitamin-A  
Teeth—Calcium, Silicon, Vitamin-D  
Liver—Chlorine  
Stomach—Sulphur, Vitamin-B  
Intestine—Magnesium  
Adrenal gland—Magnesium, Vitamins-A, B, C, and G  
Muscles—Potassium  
Brain—Manganese, Phosphorus, Vitamin-B-G  
Thyroid gland—Iodine  
Throat—Vitamin-A  
Heart—Potassium, Vitamin-A-G  
Gall bladder—Sodium  
Kidney—Magnesium  
Blood stream—Iron, Oxygen, Hydrogen, Vitamin-A

PAR. 8. These statements and representations are false in their breadth, express and implied, and misleading and deceptive in their lack of qualification. While the mineral elements referred to are essential to the structure and functioning of the human body as a whole, the designated mineral elements do not have the specific or unique functions in connection with the organs and tissues specified in said statements and representations. While the human body taken as a whole requires all of the vitamins and mineral elements set forth in the aforesaid statements and representations, with the exception of the mineral element silicon, the designated organs and tissues of the body do not have special requirements for the vitamins and mineral elements aforesaid as indicated in the said statements and representations. Sulphur does not purify or tone the human system nor does it intensify feeling and emotions. Phosphorus does not nourish the brain cells, build power of thought, or stimulate the growth of hair; calcium does not give vitality and endurance, heal wounds, or counteract acid; magnesium does not relax the nerves, refresh the human system, or prevent or, as found in human food, relieve constipation;

potassium is not a liver activator, does not make tissues elastic or muscles supple, and does not create grace, beauty, or good disposition; chlorine does not cleanse, freshen, purify, disinfect, or expel waste matter from the human system; fluorine does not strengthen, cement, harden, or build the resistance of the lungs, tendons, or veins; sodium, as found in human food, does not aid digestion, counteract acidosis, halt fermentation, purify blood, or dissolve congestion; iron does not give energy, vitality, or rosy cheeks; iodine does not normalize glands and cell action and does not eject or counteract poisons; silicon does not give keen hearing, sparkling eyes, pearly teeth and nails, and glossy hair, nor does it tone the human system; manganese does not increase resistance, does not strengthen or coordinate thought and action, and does not improve the memory.

Vitamin-A-containing foods or other vitamin-A-containing preparations do not increase resistance to disease. Vitamin A is not effective in preventing or relieving anemia, pellagra, gallstones, or eye trouble generally; vitamin B is not effective in preventing or relieving nervous diseases generally or paralysis; vitamin C does not increase an individual's strength and endurance, nor will it prevent or relieve muscular diseases or loss of weight; vitamin D is not effective in the treatment or prevention of bone disorders generally. There is no scientific evidence that Vitamin E plays any role in connection with reproduction in human beings.

Minerals are not appreciably damaged or destroyed by the heat used in any method of cooking. Vitamin C and some elements of vitamin B are destroyed by prolonged high temperatures; other vitamins are not. Depending upon the solubility of the compounds in which they occur in foods, minerals and vitamins B<sub>1</sub> and C are leached out in boiling water. If the water is not consumed, there is loss of these food elements. This amount of loss depends on the amount in the food before cooking, which in turn depends on the soil in which grown, the manner of harvesting and storage, and the exposure of light and air between maturity and preparation. Except for persons already deficient in these food elements or on the borderline, or those on restricted diets, the maximum loss, from any method of cooking in general use, would be insignificant from a nutritional standpoint.

PAR. 9. Supplementing the various statements made in the advertising literature and charts set out and described in paragraphs 6 and 7, respondents represented that by using their said products in the preparation of food, one will obtain all the food elements necessary to provide good health and may expect to receive all the beneficial effects to the various organs and other parts of the body enumerated therein,

and that the use of respondents' products is the only method of cooking which will provide these benefits. In fact, the food elements derived from the consumption of cooked foods is governed as much, for all practical purposes, by the nature of the food and the manner of its production and storage, as by the manner in which it is cooked. Moreover, there are other cooking utensils and methods of cooking which will retain the various food elements to the same extent or to a greater extent than is obtained by the use of respondents' products. Respondents' products are satisfactory cooking utensils, some of them adapted to pressure cooking, others to cooking with high temperatures for short periods of time with but a minimum of water—two methods currently recommended by some dietitians as conserving the necessary food elements. There are on the market, however, cooking utensils of other manufacture, composition, and design which provide equally satisfactory use and results and which are just as adaptable to the cooking methods recommended.

PAR. 10. In connection with, and to induce the purchase of, their cooking utensils, respondents have represented:

(a) That their utensils used as recommended provide a cooking method especially conducive to good health.

(b) That such method is new and revolutionary.

(c) That such method is faster than any other method.

(d) That such method will effect savings in food, fuel, replacement, medical, hospital, medicine, and dental bills and loss of time and efficiency as compared with all other methods of cooking.

(e) That stainless steel, of which their utensils are made, is a new metal.

(f) That their utensils have been endorsed and recommended by noted food, dietetic, and medical authorities.

(g) That respondents own, operate, or control a factory wherein their utensils are manufactured.

(h) That respondents own, operate, or control a research or other laboratory wherein their products are tested and improved.

(i) That their salesmen are bonded for the protection of respondents' customers.

(j) That upon purchase respondent corporation would make delivery immediately, or within from thirty to ninety days.

(k) That boiling food destroys the iodine content thereof.

(l) That the consumption of food cooked in respondents' utensils according to their instructions will insure improved health.

(m) That constipation is caused by a lack of magnesium in cooked food.

## Findings

(n) That the preparation of food in respondents' utensils as recommended will aid digestion.

PAR. 11. The representations enumerated in Paragraph Ten are false, misleading, or deceptive, in these respects:

(a) Respondents' utensils, used as recommended, do not provide a cooking method which is any more conducive to health than other methods and other utensils.

(b) Respondents' recommended method of cooking has been known and has been in use with other equally adapted utensils for a substantial number of years.

(c) Such method is faster than some other methods, but not faster than any other.

(d) Such method will not effect any of the savings in food, medical, hospital, medicine, or dental bills or loss of time or efficiency as compared with the use of other utensils.

(e) Stainless steel as a metal has been in use since World War I and has been used in cooking utensils for at least five or six years.

(f) Qualified food and dietetic authorities had seen no endorsements of respondents' products by dietetic or medical authorities, although they routinely keep abreast of such matters as part of their professional duties, and one had made an unsuccessful search for such endorsements. No evidence of the claimed endorsements was offered.

(g) Respondents' utensils are manufactured to specification on contract by an independent corporation, which is neither owned, operated nor controlled by respondents.

(h) Respondents do not own, operate, or control any laboratory.

(i) Respondents' salesmen are not bonded for the protection of respondents' customers.

(j) Respondents did not make delivery immediately, or within sixty to ninety days, of utensils sold. In some instances, delivery was not accomplished for several years.

(k) Iodine is not found in food in its elemental state but always in combination with other chemical elements. If the resulting compound is soluble, boiling will leach it out, but the loss is insignificant.

(l) The consumption of food cooked as recommended in respondents' utensils will not insure improved health.

(m) Constipation is not caused by a lack of magnesium in cooked food.

(n) The preparation of food in respondents' utensils as recommended will not aid digestion any more than such preparation in other utensils.

PAR. 12. There is a preference by a substantial portion of the purchasing public for dealing with the manufacturer of products sold by the manufacturer and a preference for dealing with a concern which maintains and operates a laboratory for the testing and improvement of its products.

PAR. 13. Respondents have also represented to prospective purchasers that food cooked in utensils other than theirs results in destruction of essential minerals and vitamins, and in decayed teeth, faulty elimination, rickets, organic heart disease, ill health, and many other diseases, and that water disturbs the chemical balance in food.

PAR. 14. These representations also are false or misleading and deceptive in their breadth and lack of qualification. Failure to use respondents' utensils does not result in the diseases enumerated or any other disease. The mineral content of food is not destroyed or affected by heat. Some vitamins and minerals, depending on their solubility or the solubility of the compounds in which they occur in food, may be destroyed or reduced by prolonged high temperature in water, but there is no such loss as will affect the health of any person in normal health or on a normal diet. The only effect would be on those already deficient in their food element intake, on the borderline, or on restricted diets. If the water in which the food is cooked is not thrown away but is used for gravies or sauces, there is no loss. There are other methods of cooking and other utensils just as effective as respondents' in the preservation of vitamins and minerals occurring in foods. Water does not affect the "chemical balance" in food except as indicated, assuming that term means the loss of food elements from long boiling. This expression used by respondents was meaningless to the food experts who testified on the point.

PAR. 15. Respondents offer their utensils for sale on a deferred payment plan, taking a deposit or initial payment at the time of sale and a conditional sales contract for the balance. It was their practice when deferred payments were not promptly made to write the delinquent on letterheads of the Federal Acceptance Co. Purchasers were thereby led to believe that they were then dealing with an independent commercial paper corporation having no corporate relationship with respondents. Federal Acceptance Company is not a corporation but is merely a name invented and used by respondents for collection purposes. Although it appears on the conditional sales contracts with the corporate respondent's name, there is nothing on such contracts which would apprise the ordinary purchaser that it is not a corporation but just a name. This practice is misleading and deceptive.

PAR. 16. Respondents instructed their salesmen to sell their utensils on their merits without disparagement of competitive products. Nevertheless, over a substantial number of years, over a representative area, and in a substantial number of instances a number of respondents' salesmen, in the course of their demonstration and selling talks, represented to prospective purchasers that cooking food in aluminum ware would cause, in the consumer of the food, cancer, ulcers, bad health, decayed teeth, indigestion, and poisoning, bacterial and metallic; that minerals and vitamins essential to health were lost by cooking therein; that their use was bad for children and pregnant women; that aluminum ware retained an odor and destroyed the color of food. One salesman stated that water boiled in aluminum ware utensils was the same as embalming fluid. Representations were also made that granite ware was unhealthy because it chipped and that aluminum ware was porous and allowed bacteria to collect. The effect of these representations was to frighten some of those to whom they were made into discarding their currently used cooking utensils and buying respondents' products and persuading others to do likewise.

PAR. 17. These representations were false and deceptive. Aluminum has been used in the manufacture of cooking utensils for many years. It has been found to be a satisfactory material for use in cooking utensils. The consumption of food prepared or kept in aluminum kitchen utensils will not cause cancer, stomach trouble, anemia, blood poisoning, or other ailments, affections, or diseases of the human body. Foods so prepared or kept in aluminum utensils are not detrimental to the health of the users thereof by reason of the use of aluminum utensils. Poisons are not formed from the preparation of foods in aluminum utensils.

PAR. 18. The above-described false, misleading, deceptive, and disparaging statements and representations made by respondents or their agents have had, and now have, the capacity and tendency to deceive and mislead and have misled and deceived, and do mislead and deceive, a substantial portion of the purchasing public into an erroneous belief in their truth, and have induced, and do induce, a substantial number of the public, because of such belief, to purchase substantial quantities of respondents' products. As a result of the disparagement of competitors' products, trade has been unfairly diverted to the respondents from their competitors, whereby substantial injury has been, and is being, done by respondents to their competitors in commerce among the States of the United States and the District of Columbia. The allegations of the complaint concerning the representation that the peeling and coring of fruits and vegetables take the value out of

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them and constitute enemies of health were not sustained by the evidence.

## CONCLUSION

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

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint, answer of the respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, 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 respondent Steelco Stainless Steel, Inc., a corporation, and its officers, agents, representatives, and employees, and respondent Clyde C. Carr, as president thereof or in any other capacity therefor, and individually, and his agents, representatives, and employees, 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 cooking utensils made of stainless steel, or any other product of substantially similar composition, design, construction, or purpose, do forthwith cease and desist from representing, directly or by implication,

1. That the vitamins or minerals as found in human food have the specific effect as set out below:

(a) That sulphur purifies or tones the human system or intensifies feelings and emotions;

(b) That phosphorus nourishes the brain cells, builds power of thought, or stimulates the growth of hair;

(c) That calcium gives vitality, endurance, heals wounds, or counteracts acid;

(d) That magnesium relaxes the nerves, refreshes the human system, or prevents or relieves constipation;

(e) That potassium is a liver activator, makes tissues elastic, muscles supple, creates grace, beauty, or a good disposition;

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(*f*) That chlorine cleanses, freshens, purifies, or disinfects, or expels waste matter from the human system ;

(*g*) That fluorine strengthens, cements, hardens, or builds the resistance of the lungs, tendons, or veins ;

(*h*) That sodium aids digestion, counteracts acidosis, halts fermentation, purifies blood, dissolves congestion ;

(*i*) That iron gives energy, vitality, or rosy cheeks ;

(*j*) That iodine normalizes glands and cell action and ejects and counteracts poisons ;

(*k*) That silicon gives keen hearing, sparkling eyes, pearly teeth or nails, or glossy hair, or tones the human system ;

(*l*) That manganese increases resistance, strengthens thought or action, or improves memory ;

(*m*) That vitamin A increases resistance to disease or is effective in preventing or relieving anemia, pellagra, gallstones, or eye trouble generally ;

(*n*) That vitamin B is effective in preventing or relieving nervous diseases generally or paralysis ;

(*o*) That vitamin C increases an individual's strength or endurance, or will prevent or relieve muscular disease or loss of weight ;

(*p*) That vitamin D is effective for prevention of bone disorders generally ;

(*q*) That vitamin E plays any role in connection with reproduction in human beings.

2. That ordinary cooking methods in utensils other than respondents' will result in destruction or loss of vitamins, minerals, or other food elements so as to prevent the consumer from receiving his minimal requirements ;

3. That respondents' cooking utensils used as recommended constitute a cooking method especially conducive to good health ;

4. That the consumption of food cooked in respondents' utensils will insure improved health ;

5. That the use of respondents' cooking utensils as recommended is the only method by which vitamins, minerals, and other food elements may be preserved in cooked food ;

6. That there is such a thing as chemical balance in food ;

7. That failure to use respondents' cooking utensils in the manner recommended will result in ill health, decayed teeth, faulty elimination, rickets, organic heart disease, or any other disease ;

8. That the method of cooking made possible through the use of respondents' utensils is new or revolutionary ;

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9. That constipation is caused by lack of magnesium in cooked food;

10. That boiling food destroys the iodine content thereof;

11. That respondents' utensils have been endorsed or recommended by outstanding authorities in medicine or dietetics;

12. That respondents' utensils and cooking instructions for the use thereof afford a faster method of cooking than like or similar utensils sold by respondents' competitors;

13. That the use of respondents' utensils in the manner recommended will effect savings in food, time, efficiency, medical, hospital, medicine, or dental bills as compared with the results from the use of cooking utensils sold by respondents' competitors;

14. That stainless steel is a new metal;

15. That the preparation of food in respondents' utensils will aid digestion more than the preparation of food in other cooking utensils;

16. That respondents' cooking utensils used in the manner recommended will retain the minerals and vitamins of food cooked therein to a greater extent than will the utensils sold by any of respondents' competitors;

17. That respondents own, operate, or control a factory in which their products are manufactured;

18. That respondents own, operate, or control a laboratory in connection with their product;

19. That the Federal Acceptance Co., or any other name used by them for the purpose of collecting money due them, is a separate concern;

20. That respondents' representatives are bonded for the protection of their customers, unless such becomes the fact;

21. That respondents' cooking utensils can be delivered immediately or within any certain specified time after purchase contrary to the facts;

22. That the consumption of food prepared or kept in aluminum utensils will cause cancer, stomach trouble, ulcers, indigestion, high blood pressure, decayed teeth, or be poisonous to the human body;

23. That aluminum is not a satisfactory metal for use in cooking utensils or that the consumption of food prepared or kept in aluminum utensils is detrimental to the health of the users.

*It is further ordered*, That respondents shall, within 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.

## Syllabus

## IN THE MATTER OF

TERMITGAS, INC., CHARLES H. LEWIS, DAVID S.  
LEWIS AND BERNARD B. LEWIS

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

*Docket 5631. Complaint, Dec. 31, 1948—Decision, Mar. 15, 1950*

Where a father and two sons, engaged in the interstate sale and distribution of a mixture which they advertised for the destruction and prevention of termites and other insects and sold in containers with labels bearing the name and address of a corporation owned and controlled by them, but which had never done business as a corporation; in advertising said product in newspapers, pamphlets, booklets, letterheads, billheads and other advertising media, in some of which they depicted a can of the product labeled as above set forth—

- (a) Represented that the concern indicated by one of the trade names employed by them was established in 1890; that a significant portion of the business was that of importing and exporting industrial chemicals; and that they were termite experts and entomologists;

The facts being that while the father had been engaged in the business of retailing industrial chemicals to small industries and laboratories for about 40 years, the firm name in question was adopted about 15 years ago and the business here concerned was not begun until about 12 years ago; while the three individuals had in the past exported and imported small quantities of industrial chemicals, the limited extent of such business did not justify the designation of "importers" and "exporters"; their experience in the destruction and control of termites was not sufficient to warrant classifying any of them as experts; and none was an entomologist;

- (b) Represented that their said termitgas worked miracles, and was a new "atomic bomb" spray for termites; that the owner or occupant could use it himself; that 1 gallon was adequate to control termites in a six-room house, and, used as a spray, was sufficient to insure a building such as a home, barn, or cottage against termite infestation; and that there was nothing like it for complete destruction of termites;

The facts being that it was not a miracle chemical, did not utilize atomic energy in the killing of termites and designation thereof as an "atomic bomb spray" was unwarranted; it is impossible to state with any degree of accuracy the amount of said product required to rid a building of termites without a careful inspection of the premises by a person with knowledge of their habits; there are a number of chemicals which, as known for a considerable period, are effective when properly applied as termite killers, but neither they, nor the product concerned, are effective when sprayed on the wood or around the foundation of a building, since, thus applied, they do not reach the termites in the ground or inside the wood; and, even properly applied, the product cannot be depended upon to prevent infestation or reinfestation of a building containing wood for longer than a year;

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(c) Represented falsely that termite eggs are hatched in the nest at the rate of 80,000 eggs a day; that termitgas used as a spray would reach such nests and breeders and completely destroy them; was equally effective on all other insects, roaches, ants, flies, mosquitoes, etc.; was the first effective termite killer and was effective a few minutes after application; and was sold all over the world;

The facts being there is no authority for said statements; and 90 percent of its sales were made in the New York metropolitan area, and it was sold in only a few countries other than the United States;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby cause its purchase of said product:

*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 said proceeding, in which the stipulation included no facts concerning the allegations of the complaint that respondents were not manufacturing chemists, analytical chemists or consulting chemists, as understood in the trade and by the purchasing public, no findings were made with respect thereto.

*Mr. Joseph E. Callaway* for the Commission.

## 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 Termitgas, Inc., a corporation, Charles H. Lewis, David S. Lewis, and Bernard B. Lewis, individually, as directors of Termitgas, Inc., and also trading as The Lewis Co., and as Termite Products Co., 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. Termitgas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and having its principal place of business at 232 Canal Street, New York, N. Y.

PAR. 2. The individual respondents Charles H. Lewis, David S. Lewis, and Bernard B. Lewis are directors of the respondent Termitgas, Inc. They also have their office and principal place of business at 232 Canal Street in the city of New York, N. Y., and formulate, direct, and control the acts, policies and business affairs of said corporation. Said individual respondents also have been and are now trading and doing business as The Lewis Co., and as Termite Products Co., with office and principal place of business at the location stated above.

PAR. 3. Respondents are now and for several years last past have been engaged in the sale and distribution of a mixture of ortho-dichloro-benzene and ortho-cresylic acid called "Termitgas" advertised for the destruction and prevention of termites and other insects. The respondents cause and have caused their said product when sold to be shipped from their place of business located in the State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia. The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States and in the District of Columbia. Respondents' volume of business in said product in said commerce is substantial.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said product designated as "Termitgas," respondents have made and are making, many false, deceptive, and misleading representations relating to their business status, facilities, and the value and effectiveness of their said product, through advertisements in newspapers, pamphlets, booklets, letterheads, billheads, and other advertising media. Among and typical of the false, deceptive, and misleading statements and representations contained in said advertisements are the following:

The Lewis Company. Established 1909. Importers, manufacturers, exporters of industrial chemicals.

Manufacturing, analytical, and consulting chemists.

The miracle chemical. TERMITGAS. New "Atomic Bomb" spray for termites.

TERMITGAS. Enough to treat an average six-room house \$6.00 gallon. \* \* \* TERMITGAS is effective minutes after application.

In general, in the application of TERMITGAS, give your premises a careful survey and you can easily do it yourself. Remember you are primarily interested in the destruction of subterranean termites. Simple language has been used in this pamphlet for you to recognize this termite, its habits, etc. \* \* \* You solve the problem yourself. \* \* \* Should further questions arise consult us. Our advice by our experts is gratis.

There is nothing like TERMITGAS for complete destruction of termites in homes, barns, cottages, farms, etc. Just one gallon of this deadly-to-termites spray gets right to the heart of "termitaria" where eggs are hatched at the rate of 80,000 every day! TERMITGAS destroys the nests and breeders. Equally effective on all other insects: Roaches, ants, flies, mosquitoes, etc.

TERMITGAS Non-inflammable. A single gallon does the job. The universal scientific spray for termites. \* \* \* Actually insure your home, barns, bungalows, buildings, against termite infestation.

TERMITGAS. A liquid. Is first. With this effective termite killer \$6.00 gallon.

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TERMITGAS—a liquid—has been on the market for the past fifteen years. \* \* \* Should any question arise, do not hesitate to call or write to our chemists and entomologists who will answer your every problem gratis.

TERMITGAS—a liquid—is sold in every corner of the globe.

PAR. 5. Through the use of the above-mentioned statements and others similar thereto the respondents have represented that their present business was established in 1909; that they are manufacturing chemists, and analytical and consulting chemists; that they are in the business of importing and exporting industrial chemicals; that they are termite experts and entomologists; that Termitgas works miracles; that it is a new "Atomic Bomb" spray for termites; that one gallon of Termitgas is adequate to control termites in a six-room house; that 1 gallon of Termitgas used as a spray is sufficient to insure a building such as a home, barn, or cottage against termite infestation; that there is nothing like it for complete destruction of termites; that termite eggs are hatched in the nest at the rate of 80,000 eggs per day; that Termitgas used as a spray will reach the termite nest and breeders and completely destroy them; that it is equally effective on all other insects, roaches, ants, flies, mosquitoes, etc.; that it is the first effective termite killer and is effective a few minutes after application; and that Termitgas is sold all over the world.

PAR. 6. The foregoing representations were and are false, misleading, and deceptive in the following respects: Respondents' present business was not established in 1909, but at a much later date. Respondents are neither manufacturing chemists, analytical chemists, nor consulting chemists, as those terms are understood in the trade and by the purchasing public. Respondents are not now, nor have they ever been, in the business of importing or exporting industrial chemicals. They are neither termite experts nor entomologists. Termitgas is not a miracle chemical. There are a number of chemicals that are and have been known for a number of years as effective termite killers when properly applied. Some of these chemicals are ingredients of Termitgas. None of such chemicals are effective when sprayed on the wood or around the foundation of a building, for the reason that, applied in such manner, they do not reach the termites nesting in the ground or working on the inside of wood in a building. It is impossible to state with any degree of accuracy the amount of Termitgas or any other termite killing chemicals necessary to rid a building of termites until after a careful inspection of the premises. Even when properly applied, Termitgas cannot be depended upon to prevent the infestation or reinfestation of any building containing

wood for longer than one year. Termitgas does not utilize atomic energy in the killing of termites and calling it an "Atomic Bomb Spray" is unwarranted. There are other products equally effective for destruction of termites. There is no authority, scientific or otherwise, for the statement that termite eggs are hatched in the nest at the rate of 80,000 eggs per day. Termitgas when used as directed will not destroy all other insects, particularly it will not destroy roaches, flies, or mosquitoes. It was not the first effective termite killer and is not completely effective immediately or within a few minutes after application, no matter how it is applied. Termitgas is not sold all over the world. In fact, it has been sold in only a few of the States of the United States.

PAR. 7. The use by the respondents of the foregoing false, misleading and deceptive representations disseminated as aforesaid, with respect to the product Termitgas, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the consuming public into the erroneous and mistaken belief that such representations were and are true and to cause, and does cause, a substantial portion of the purchasing public to purchase said product because of such erroneous belief.

PAR. 8. The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 December 31, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter a stipulation as to the facts was entered into between Daniel J. Murphy, Chief of Trial Division, of the Federal Trade Commission, and respondents, which provided that, subject to the approval of the Federal Trade Commission, the facts set forth therein might be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon and enter its

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order disposing of this proceeding without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of the recommended decision by the trial examiner. Subsequently the matter regularly came on for final consideration by the Commission upon the complaint and stipulation as to the facts, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Termitgas, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with offices located at 232 Canal Street, New York, N. Y. Termitgas, Inc., has never done business as a corporation, but the individual respondents have used the corporate name in the course and conduct of their business as hereinafter set forth.

PAR. 2. The individual respondents, Charles H. Lewis, David S. Lewis, and Bernard B. Lewis, are the sole owners of all of the stock of the corporate respondent, Termitgas, Inc. They also have their office and principal place of business at 232 Canal Street in the City of New York, N. Y., and have power and control over the acts, policies, and business affairs of said corporation. The said individual respondents also have been and are now trading and doing business as The Lewis Co. with office and principal place of business in the location stated above. As hereinafter used, the term "respondents" includes only the individual respondents.

PAR. 3. The respondents are now and for several years last past have been engaged in the sale and distribution of a mixture of orthodichlorobenzene and orthocresylic acid called "Termitgas," advertised for the destruction and prevention of termites and other insects. The respondents cause and have caused their said product when sold to be shipped from their place of business located in the State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia. The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States and in District of Columbia. During the same period of time the product has been sold and offered for sale as aforesaid with labels on the containers which bore the legend "Termitgas, Inc., 232 Canal Street, New York, N. Y." The volume of business in said product in said commerce is substantial.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said product designated as "Termitgas," the respondents have made certain representations relating to their business status, facilities, and the value and effectiveness of their said product through advertisements in newspapers, pamphlets, booklets, letterheads, billheads, and other advertising media. Pamphlets or booklets relating to the value and effectiveness of Termitgas carried a picture of a can of the product on which could plainly be seen the legend "Termitgas Incorporated, 232 Canal Street, New York, N. Y." Among the statements and representations contained in said advertisements were the following:

The Lewis Company, Established 1909. Importers, manufacturers, exporters of industrial chemicals.

The miracle chemical.

TERMITGAS. New "Atomic Bomb" spray for termites.

TERMITGAS. Enough to treat an average six-room house \$6.00 gallon. \* \* \*

TERMITGAS is effective minutes after application.

In general, in the application of TERMITGAS, give your premises a careful survey and you can easily do it yourself. Remember you are primarily interested in the destruction of subterranean termites. Simple language has been used in this pamphlet for you to recognize this termite, its habits, etc. \* \* \* You solve the problem yourself. \* \* \* Should further questions arise consult us. Our advice by our experts is gratis.

There is nothing like TERMITGAS for complete destruction of termites in homes, barns, cottages, farms, etc. Just one gallon of this deadly-to-termites spray gets right to the heart of "termitaria" where eggs are hatched at the rate of 80,000 every day! TERMITGAS destroys the nests and breeders. Equally effective on all other insects: Roaches, ants, flies, mosquitoes, etc."

TERMITGAS Non-inflammable. A single gallon does the job. The Universal scientific spray for termites. \* \* \* actually insure your home, barns, bunkhouses, buildings, against termite infestation.

TERMITGAS A liquid. Is first. With this effective termite killer \$6.00 gallon.

TERMITGAS—a liquid—has been on the market for the past fifteen years. \* \* \* Should any question arise, do not hesitate to call or write to our chemists and entomologists who will answer your every problem gratis.

TERMITGAS—a liquid—is sold in every corner of the globe.

PAR. 5. Through the use of the above-mentioned statements and others similar thereto the respondents have represented that their present business was established in 1909; that a significant portion of the business is that of importing and exporting industrial chemicals; that they are termite experts and entomologists; that Termitgas works miracles; that it is a new "Atomic Bomb" spray for termites; that one gallon of Termitgas is adequate to control termites in a six-room house;

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that one gallon of Termitgas used as a spray is sufficient to insure a building such as a home, barn, or cottage against termite infestation; that there is nothing like it for complete destruction of termites; that termite eggs are hatched in the nest at the rate of 80,000 eggs per day; that Termitgas used as a spray will reach the termite nest and breeders and completely destroy them; that it is equally effective on all other insects, roaches, ants, flies, mosquitoes, etc.; that it is the first effective termite killer and is effective a few minutes after application; and that Termitgas is sold all over the world.

PAR. 6. In truth and in fact, respondents' present business was not established in 1909. Respondent Charles H. Lewis has engaged in the business of retailing industrial chemicals to small industries and laboratories for approximately 40 years, but the present firm name was adopted approximately 15 years ago, and since that time the respondents David S. Lewis and Bernard B. Lewis, sons of the respondent Charles H. Lewis, have been taken into the business.

The present business of selling a preparation designed for the destruction of termites, including the preparation Termitgas, was begun approximately 12 years ago. Respondents have in the past exported and imported small quantities of industrial chemicals. The amount of such business is, however, of such limited extent that such activities do not justify the designation of "importers" and "exporters." Respondents have had some experience in the destruction and control of termites. Such experience, however, has not been sufficient to warrant classifying any of them as experts. None of the respondents is an entomologist. Termitgas is not a miracle chemical. Termitgas does not utilize atomic energy in the killing of termites, and designating it as an "Atomic Bomb Spray" is unwarranted. It is impossible to state with any degree of accuracy the amount of Termitgas required to rid a building of termites until after a careful inspection of the premises by a person with knowledge of the habits of said insects. There are a number of chemicals that are and have been known for a considerable period of time which, when properly applied, are effective as termite killers. None of such chemicals are, however, nor is the product Termitgas, effective when sprayed on the wood or around the foundation of a building for the reason that, applied in such manner, they do not reach the termites nesting in the ground or working on the inside of wood in a building. Even when properly applied, Termitgas cannot be depended upon to prevent the infestation or reinfestation of any building containing wood for longer than 1 year. There is no authority, scientific or otherwise, for the

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statement that termite eggs are hatched in the nest at the rate of 80,000 eggs per day. Termitgas, when used as directed, will not destroy many insects including roaches, flies, and mosquitoes. It was not the first effective termite killer and is not completely effective immediately or within a few minutes after application, no matter how it is applied. Termitgas is not sold all over the world. Ninety percent of its sales have been in the New York metropolitan area and it has been sold in only a few countries other than the United States.

PAR. 7. For the reasons stated and in the particulars indicated herein, the Commission finds that the statements and representations made by the respondents with respect to their business status, facilities, and the value and effectiveness of their said product, are false, misleading and deceptive.

PAR. 8. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to cause a substantial portion of said purchasing public to purchase respondents' product 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 within the intent and meaning of the Federal Trade Commission Act. No facts were stipulated concerning the allegations of the complaint that the respondents are neither manufacturing chemists, analytical chemists, nor consulting chemists as those terms are understood in the trade and by the purchasing public. Consequently, no findings have been made with respect thereto.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the stipulation as to the facts entered into by and between Daniel J. Murphy, Chief of Trial Division, of the Federal Trade Commission, and respondents, in which stipulation the respondents waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondents, except

corporate respondent Termitgas, Inc., have violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That the respondents Charles H. Lewis, David S. Lewis, and Bernard B. Lewis, individually and trading and doing business as The Lewis Co. or under any other name, their agents, representatives, and employees, 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 their product designated "Termitgas," or any other product of similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

- (1) That their present business of selling a preparation designed for the destruction of termites was established in 1909 or in any other year prior to the date said business was actually begun;
- (2) That they, or any of them, are importers or exporters of industrial chemicals;
- (3) That they, or any of them, are experts in the destruction or control of termites or are entomologists;
- (4) That the said product is a miracle chemical;
- (5) That said product utilizes atomic energy in the killing of termites or that it is an "Atomic Bomb" spray;
- (6) That it is possible to determine the amount of Termitgas required to rid a building of termites prior to inspection of the premises by a person with knowledge of the habits of said insects;
- (7) That there are no other chemicals which are effective in destroying termites;
- (8) That it is possible to determine the number of termite eggs hatched daily or in any other period of time in a termite-infested building;
- (9) That said product when used as a spray on the wood or around the foundation of a building will be effective in destroying termites nesting in the ground or working on the inside of wood in a building;
- (10) That said product when used as directed will destroy all other insects, including roaches, flies, and mosquitoes;
- (11) That said product was the first effective termite killer;
- (12) That said product is effective immediately or within a few minutes after application;
- (13) That said product is sold all over the world.

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*It is further ordered,* That the complaint herein as to Termitgas, Inc., be, and the same hereby is, dismissed.

*It is further ordered,* That the respondents, except Termitgas, Inc., shall, within 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  
MONARCH SALES COMPANY, RALPH E. STOLKIN, RUTH  
M. STOLKIN AND MARY REID

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

*Docket 5477. Complaint, Jan. 10, 1947—Decision, Mar. 20, 1950*

Where a corporation and the two officers who owned its stock and managed and controlled it, engaged in the interstate sale and distribution of cameras, fountain pens, electric razors, billfolds and other articles; in soliciting the sale of and in selling and distributing their merchandise—

- (a) Furnished various devices and merchandising plans which involved the operation of lottery schemes in the sale and distribution of such merchandise to the ultimate consumer, and included the distribution to members of the public throughout the United States of order blanks, illustrated pamphlets describing their merchandise, and circulars explaining their plan of selling and distributing the same to the public and allotting it as premiums or prizes to the operators of said cards, along with push cards, for use in accordance with schemes through which, as typical, the cost of a chance was determined by the number revealed by a push, the person selecting by chance from a list of feminine names the name corresponding with that concealed in the master seal received a "candid color camera," and each of two specified numbers entitled the person punching it to a "genuine leather billfold";

Whereby lot or chance determined whether a purchaser received an article or merchandise or nothing for his money, and likewise the amount he paid for the merchandise or chance to receive it; and,

They thereby placed in the hands of those to whom they furnished said cards the means of conducting games of chance in the sale of merchandise, contrary to an established public policy of the United States Government;

With the result that many persons were attracted by said sales plans and the element of chance involved therein, and were thereby induced to buy and sell said merchandise;

*Held*, That the use of the aforesaid sales plans or methods constituted unfair acts and practices in commerce; and

Where the aforesaid corporation and individuals, in the aforesaid literature distributed to the purchasing public—

- (b) Represented that the camera distributed by them was a color camera equipped with a high-speed lens and shutter, through such statements as "the color camera you never thought you could own," "this remarkable camera actually takes pictures in full natural color as quickly and simply as some cameras take ordinary black and white snapshots"; and "high-speed round lens, faster shutter";

The facts being that there is no camera which will take a colored picture; and while, if colored film were used in their said camera, pictures might be taken

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under ideal lighting conditions which could be developed as colored, said camera was not equipped with the high-speed lens and fast shutter of the average camera sold today for the purpose of taking colored pictures with colored film, and was not the type generally recognized in the photographic trade and by the general public as a color camera;

- (c) Falsely represented that the billfolds promised persons sending in order forms were made of genuine leather; when in fact they were part leather and part paper fiber; and
- (d) Represented that persons sending in orders promptly would be given certain articles of merchandise absolutely free, through such statements as "an extra gift for promptness" and "as soon as we receive the order, your 'thank you' gift will be sent to you absolutely free with our compliments";

The facts being that the articles so referred to as "gifts" were not given free or without cost, but were distributed as additional compensation for ordering and selling merchandise;

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

*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.

While the record in the foregoing proceeding did not disclose the number of orders for merchandise which respondents received as a result of mailing out about 15,000,000 packages containing said push cards and other literature during a year, the evidence was that in the regular course of business orders are received in numbers varying from one-half percent to 4 percent of the number of packages of literature mailed.

Before *Mr. Abner E. Lipscomb*, trial examiner.

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

*Beach, Fathchild & Scofield*, of Chicago, Ill., for Monarch Sales Co.,  
Ralph E. Stolkin and Ruth M. Stolkin.

*Mr. Henry Junge*, of Chicago, Ill., for Mary Reid.

## 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 Monarch Sales Co. and Ralph E. Stolkin, Ruth M. Stolkin, and Mary Reid, individuals and officers of said Monarch Sales Co. 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 its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Monarch Sales Co. is a corporation organized and doing business under and by virtue of the laws of the

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State of Illinois, with its office and principal place of business located at 125 West Hubbard Street, Chicago, Ill. Respondent, Ralph E. Stolkin is president, respondent Ruth M. Stolkin is secretary-treasurer, and respondent Mary Reid is vice president of respondent corporation Monarch Sales Co. and said corporation is owned, dominated, controlled and directed by the individual respondents, Ralph E. Stolkin, Ruth M. Stolkin, and Mary Reid. 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 1 year last past, have been engaged in the sale and distribution of cameras, fountain pens, electric razors, billfolds, and other articles of merchandise and have caused said merchandise when sold to be transported from their place of business in Chicago, Ill., to purchasers thereof at their respective 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 1 year last past a course of trade by respondents in such merchandise, 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 business as described in paragraph 1 hereof respondents in soliciting the sale of and in selling and distributing their merchandise furnish and have furnished various plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the consuming public. One method or sales plan adopted and used by respondent is substantially as follows:

Respondents distribute and have distributed to operators and to members of the public certain literature and instructions including among other things push cards, order blanks, circulars including thereon illustrations and descriptions of said merchandise and a circular explaining respondents' plan of selling and distributing their merchandise and of allotting it as premiums or prizes to the operators of said push cards and to members of the purchasing and consuming public. One of respondents' said push cards bears 26 feminine names with ruled columns on the back of said card for writing in the name of the customer opposite the name selected. Said push card has 26 partially perforated disks. Each of said disks bears one of the feminine names corresponding to those on the list. Concealed within each disk is a number which is disclosed only when the customer pushes or separates a disk from the card. The push card also has a larger master seal and concealed within the master seal is one of the feminine

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names appearing on the disk. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The push card bears the following legend or instruction :

MAJESTIC  
Candid Color Camera  
Also Takes Regular  
Black and White Photos

Nos. 9 and 19  
Each Receive a Genuine Leather Billfold  
No. 1 pays 1¢  
No. 9 pays 9¢  
No. 19 pays 19¢  
No. 28 pays 28¢  
All others pay only 29¢

## NONE HIGHER

WRITE YOUR NAME ON REVERSE SIDE OPPOSITE THE NAME YOU  
SELECT

Sales of respondents' merchandise by means of said push cards are made in accordance with the above described legend or instructions and said prizes or premiums are allotted to the customer or purchaser from said card in accordance with the above legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid and the amount to be paid for the merchandise or the chance to receive said merchandise are thus determined wholly by lot or chance.

Respondents furnish and have furnished various other push cards accompanied by order blanks, instructions and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plans or methods involved in the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described varying only in detail.

PAR. 3. The persons to whom respondents furnish and have furnished said push cards use the same in selling and distributing respondents' merchandise in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

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PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondents and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. In advertising literature distributed to the purchasing public by means of the United States mail respondents have published the following representations:

The color camera you never thought you could own. Camera fans everywhere are saying that this new Majestic color camera is opening a great new era in photography because this remarkable camera actually takes pictures in full natural color as quickly and simply as some cameras take ordinary black and white snapshots.

An extra gift for promptness.

High speed round lens, fast shutter.

As soon as you have sent us the inclosed order form we will rush to you two Majestic candid color cameras and two genuine leather billfolds.

Through the use of the above quoted statements and representations respondents represent that the camera distributed by them is a color camera equipped with high speed lens and fast shutter. In truth and in fact respondents' cameras have a shutter speed of 1/25 second and a lens speed of approximately F-11 and are not what is known in the trade and by the public as color cameras and will make colored pictures only when color film is used. The billfolds represented as being of genuine leather are in fact not genuine leather in their entirety and the carrying case represented as being an "extra gift for promptness" is not a gift nor given free or without cost but is distributed as additional compensation for selling respondents' merchandise.

PAR. 6. The use by respondents of the foregoing false, misleading and deceptive statements has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase said merchandise.

PAR. 7. The aforesaid acts and practices of respondents as herein 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.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 10, 1947, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial 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 complaint, the respondents' answer thereto, the testimony and other evidence, the recommended decision of the trial examiner, and briefs of counsel (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 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. The respondent, Monarch Sales Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 333 West Lake Street, in the city of Chicago, State of Illinois. The respondent, Ralph E. Stolkin, is the president, and the respondent, Ruth M. Stolkin, is the secretary-treasurer of the respondent corporation, and together they own all of the stock of said corporation and manage and control its business affairs.

Mary Reid, the other person named in the complaint as a respondent, was a secretary in the office of the attorney who procured the incorporation of the respondent, Monarch Sales Co., and as a matter of form and convenience she was named the vice president of said corporation. This party has never been otherwise connected with or employed by Monarch Sales Co., however, and she has never par-

ticipated in any of its business activities. The term "respondents" hereinafter used to designate or refer to the other respondents herein shall not be deemed to include the said Mary Reid.

PAR. 2. The respondents are now, and for a number of years last past they have been, engaged in the sale and distribution of cameras, fountain pens, electric razors, billfolds, and other articles of merchandise; and they cause, and have caused, said merchandise, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States other than Illinois and in the District of Columbia. The respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as described in paragraph 2 hereof, the respondents, in soliciting the sale of and in selling and distributing their merchandise, furnish, and have furnished, various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes, when such merchandise is sold and distributed to the ultimate consumers thereof. One method or sales plan so furnished by the respondents is substantially as follows.

The respondents distribute, and have distributed, to members of the public located throughout the United States various pieces of literature and instructions including, among other things, push cards, order blanks, pamphlets containing illustrations and descriptions of certain merchandise which the respondents have for sale and circulars explaining the respondents' plan of selling and distributing said merchandise and of allotting it as premiums or prizes to the operators of said push cards and to members of the purchasing and consuming public. One of the respondents' said push cards bears 26 feminine names with ruled columns on the back of said card for writing in the name of the ultimate customer opposite the name selected. Said push card has 26 partially perforated disks. Each of said disk bears one of the feminine names corresponding to those on the list. Concealed within each disk is a number which is disclosed only when the ultimate customer pushes or separates a disk from the card. The push card also has a larger master seal, and concealed within the master seal is one of the feminine names appearing on the disk. The person selecting the feminine name corresponding to the one under the master

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seal receives a camera. The push card bears the following legend or instruction :

MAJESTIC  
Candid Color Camera  
Also Takes Regular  
Black and White Photos

Nos. 9 and 19  
Each Receive a Genuine Leather Billfold  
No. 1 pays 1¢  
No. 9 pays 9¢  
No. 19 pays 19¢  
No. 28 pays 28¢  
All others pay only 29¢

NONE HIGHER

WRITE YOUR NAME ON REVERSE SIDE OPPOSITE THE  
NAME YOU SELECT

Sales of the merchandise by means of said push cards are made by the respondents' customers in accordance with the above-described legend or instructions, and the prizes or premiums described on the push cards or in the other literature are allotted to the purchaser in accordance with the above legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid and the amount to be paid for the merchandise or the chance to receive said merchandise are thus determined wholly by lot or chance.

The respondents furnish, and have furnished, to members of the public various other push cards accompanied by order blanks, instructions, and other printed matter for use in the sale and distribution of the merchandise sold by them by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods involved in the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described, varying only in detail. During the year 1947 the respondents mailed to members of the public throughout the United States a total of about 15,000,000 packages containing the push cards and other literature. The record does not disclose the number of orders for merchandise which the respondents received as a result of such mailings, but the evidence is that in the regular course of business orders are received from persons to whom literature is sent in numbers varying from one-half percent to 4 percent of the number of packages of literature mailed.

PAR. 4. The persons to whom the respondents furnish, and have furnished, said push cards and other literature use the same in pur-

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chasing from the respondents and in selling and distributing the respondents' merchandise in accordance with the aforesaid sales plans. The respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises, or lottery schemes in the sale of merchandise sold by them in accordance with the sales plans hereinabove set forth. The use by the respondents of said sales plans or methods in the sale of their merchandise and the sale of said merchandise to the ultimate consumers by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 5. The sale of merchandise to the purchasing public in the manner herein described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by the sales plans or methods employed by the respondents and by the element of chance involved therein, and such persons are thereby induced to buy and sell the respondents' merchandise. The use by the respondents of the aforesaid sales plans or methods thus constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. In the literature hereinabove referred to which has been distributed to the purchasing public by means of the United States mails for the purpose of inducing the purchase of certain of their merchandise, the respondents have published the following statements:

The color camera you never thought you could own.

Camera fans everywhere are saying that this new Majestic color camera is opening a great new era in photography because this remarkable camera actually takes pictures in full natural color as quickly and simply as some cameras take ordinary black and white snapshots.

High speed round lens, faster shutter.

As soon as you have sent us the inclosed order form we will rush to you two Majestic candid color cameras and two genuine leather billfolds.

An extra gift for promptness.

As soon as we receive the order, your "Thank you" gift will be sent to you absolutely free with our compliments \* \* \*.

Through the use of these statements, and others similar thereto, the respondents have represented (a) that the camera distributed by them is a color camera equipped with a high-speed lens and fast shutters; (b) that the billfolds promised persons sending in order forms are made of genuine leather; and (c) that persons sending in orders

promptly would be given certain articles of merchandise absolutely free.

PAR. 7. In truth and in fact, there is no camera which will take a colored picture. Pictures may, however, be taken successfully by two types of camera and thereafter developed into colored pictures. The first type is called a "one-shot" camera. This camera takes three negatives on black and white, and by a process of developing and dyeing the three negatives, a colored picture may be produced. This type of camera is very expensive.

The second type is an ordinary fast-speed camera requiring the use of colored film. The average camera being sold to the public today for the purpose of taking colored pictures with colored film has a lens speed of approximately F-4.5, which is approximately eight times faster than the lens of the respondents' camera. In addition, a shutter is regarded as a high-speed shutter when it has a speed of one four-hundredths or one five-hundredths of a second. The respondents' camera, however, is equipped with a shutter speed of approximately one twenty-fifth of a second.

If color films are used in the respondents' camera, pictures may be taken which can be developed as colored pictures if the lighting conditions under which the exposure was made were ideal. It is clear, however, that the respondents' camera is not equipped with a high-speed lens and fast shutter and is not of the type of camera generally regarded in the photographic trade and by the general public as a color camera, and the respondents' representations to the contrary were false and misleading.

The billfolds which the respondents promised persons sending in orders were not made of leather in their entirety, but were composed in part of leather and in part of paper fiber; and the articles referred to in respondents' literature as "gifts" were not given free or without cost, but were distributed as additional compensation for ordering and selling the respondents' merchandise. The respondents' representations to the effect that such billfolds were made of leather and that such other articles of merchandise were "gifts" or given "free" were also false and deceptive.

PAR. 8. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations 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 portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said merchandise.

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## 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.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer, testimony, and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner, and briefs of counsel (oral argument not having been requested); 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 respondent, Monarch Sales Company, a corporation, and its officers, and the respondents, Ralph E. Stolkin and Ruth M. Stolkin, and said 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, as "commerce" is defined in the Federal Trade Commission Act, of cameras, fountain pens, electric razors, billfolds, or any other article of merchandise, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punch boards, or other devices, either with merchandise or separately, which said push or pull cards, punch boards, or other devices, are to be used, or may be used, in the sale or distribution of the respondents' merchandise, or any other merchandise, to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or otherwise disposing of any merchandise by any method or sales plan involving the use of a game of chance, gift enterprise, or lottery scheme.

3. Using the words "gift" or "free," or any other word or term expressly or impliedly importing a like meaning, in advertising, to designate, describe, or refer to any article of merchandise which is not in fact a gift or gratuity, or which is not given without requiring the purchase of other merchandise or the performance of some service inuring, directly or indirectly, to the benefit of the respondents.

4. Representing, directly or by implication, that any camera which is not adapted to the successful taking, under normal conditions, of color pictures, is a color camera.

5. Representing, directly or by implication, that billfolds, or other articles, made in whole or in part of substance other than leather, are made of leather.

6. Misrepresenting in any manner the value, quality, condition, or characteristics of any article offered as a premium, prize, commission, or compensation, for selling the respondents' products.

*It is further ordered,* For reasons appearing in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondent Mary Reid.

*It is further ordered,* That the respondents, Monarch Sales Company, Ralph E. Stolkin and Ruth M. Stolkin, shall, within 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  
BENJAMIN D. RITHOLZ ET AL., TRADING AS NATIONAL  
OPTICAL STORES COMPANY, ETC.

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

*Docket 5176. Complaint, June 8, 1944—Decision, Mar. 22, 1950*

Where six partners, engaged in the interstate sale of eyeglasses and optical supplies, with principal office and place of business in Chicago, and branch offices in various cities and States in advertising their said products in newspapers and by other means, directly and by implication—

- (a) Represented falsely that the lenses for all glasses sold by them were ground in accordance with proper prescriptions made for customers' eyes by their physician-oculists or doctors;
- (b) Represented that their offers of complete glasses at \$2.88, or at substantially similar prices, were special offers at reduced prices and for a limited time only;

The facts being said glasses were wholly unsuited for most people with defective vision and few if any were actually sold at such prices; persons attracted by such subterfuge were examined by doctors whose incomes said partners often guaranteed, and told that their eyes were in such serious condition that other glasses were needed and salesmen were thereby enabled, often by falsely representing that the advertised glasses were unsuited for the customer, to sell such persons glasses at prices many times higher and which very frequently differed otherwise little if at all; and

- (c) Falsely represented through such statements as "15-day free trial," "15-DAY FREE TRIAL \* \* \* MONEY BACK GUARANTY," etc., that customers would be permitted to wear glasses purchased from them for 15 days and that at the expiration of that time, if not satisfied, they might return the glasses and have their money promptly refunded;

The facts being that many such customers, after wearing their glasses, found refunds refused for various excuses; and while in some instances, after the matter was taken up with local better business bureaus, sufficient pressure was brought to bear to obtain the return of customers' money, it was only after said partners were threatened with exposure of their practices or were otherwise forced to do so that they ever made a refund;

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 into the purchase of substantial quantities of their said products:

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

As regards the allegations of the complaint that said partners in the course of their said business traded under the name Midwest Scientific Company, as

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well as under the names National Optical Stores Company, and Dr. Ritholz Optical Company, it appeared that said first designation was a trade name under which they manufactured certain articles for the Government during the war, and that there was no evidence that said name had ever been used in connection with the sale or distribution of eyeglasses.

With respect to charges in the complaint to the effect that some of the alleged physician-oculists or doctors of said partners had not been licensed to operate as such in the States where they were employed that others were unqualified and inexperienced and unable to and did not properly examine or prescribe for defects of the eyes; that in many instances untrained and unqualified store managers measured the pupillary distances of customers' eyes and inaccurately calculated measurements used in prescriptions; that they had 3,000,000 satisfied customers; and that the mountings on certain glasses offered by them were not, as represented, solid rhodium or with rhodium finish, the Commission was of the opinion and found that such additional charges had not been sustained by the greater weight of the evidence.

Before *Mr. Arthur F. Thomas, Mr. Earl J. Kolb, and Mr. Everett F. Haycraft*, trial examiners.

*Mr. John M. Russell* for the Commission.

*Mr. Benjamin D. Ritholz*, 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 Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, and Sophie Ritholz, individually and as copartners trading under the names National Optical Stores Company, Dr. Ritholz Optical Company, and Midwest Scientific Company, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, and Sophie Ritholz are individuals trading individually and as copartners under the names National Optical Stores Company, Dr. Ritholz Optical Company, and Midwest Scientific Company, with their principal place of business at 1148 West Chicago Avenue, Chicago, Ill., and having branch places of business located in various cities including Detroit and Lansing, Mich.; Cleveland and Akron, Ohio; Indianapolis, Gary, South Bend, and Evansville, Ind.; Nashville, Memphis, Knoxville, and Chattanooga, Tenn.; and Atlanta, Ga.

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PAR. 2. The respondents are now, and have been for more than 2 years last past, engaged in the sale and distribution of eyeglasses and other optical supplies. Respondents cause their said products when sold to be transported from their said 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 at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products and the qualifications of their agents or employees by the United States mails and various other means in commerce as "commerce" is defined in the Federal Trade Commission Act. The respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products and qualifications, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers, on cards, in circulars and by other means, are the following:

**GLASSES ON CREDIT**

Buy direct and save. Save on your glasses by buying direct from factory, through our local branch. Why pay more? It's smart to be thrifty. Be wise. Buy direct. Glasses complete with Toric lenses, for far or near vision, with "Engraved" gold filled mounting at our now low factory price. All glasses ground on prescription of Licensed Doctor.

Lowest Factory Price.

15-day free trial.

Convince yourself by 15 days actual test, at our risk. Perfect satisfaction guaranteed or no cost.

**HIGH PRICES FOR GLASSES ARE UNNECESSARY**

(Picture Representation of Spectacles)

\$3.45 Complete

CASH or CREDIT

"DIXIE"

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**WE MANUFACTURE ALL GLASSES WE SELL. SAVES YOU SEVERAL PROFITS**

No longer any need to pay high prices for good glasses. \* \* \* quality Rhodium-Rimless glasses complete with TORIC stock lenses for FAR OR NEAR VISION, all complete, only \$3.45.

**FACTORY-TO-YOU**

Deal with your local factory branch and save many dollars. All lenses ground on prescription of licensed Physician-Oculist.

**SAVE MIDDLEMAN'S PROFIT**

Volume purchasing and single ownership of largest chain of optical stores in America save you the middleman's profit. \* \* \*

**15-DAY FREE TRIAL . . . MONEY BACK GUARANTEE**

**SPECIAL! THIS WEEK ONLY**

(Representation of spectacles)

**WHY PAY MORE? \$2.88. 15-DAY TRIAL**

Glasses no better than these are sold by other concerns for several times this price. Take advantage of this low factory price. "Peerless-Rhodium" finish mounting complete with TORIC stock lenses for FAR OR NEAR VISION, complete only \$2.88.

Convince yourself by 15-day test, that this is the biggest bargain you ever had. Glasses ground on prescription of licensed doctor. Moderate extra charge for bifocal, tinted or astigmatic correction.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, respondents represent, directly or by implication, that the glasses sold by them will correct defective vision; that they have at each of their stores a duly licensed physician-oculist, or a licensed registered doctor qualified to examine eyes and properly prescribe to correct any defects in vision; that the lenses for all of the glasses sold by them are ground in accordance with proper prescriptions made for customers' eyes by their said physician-oculists, or doctors; that their offers of complete glasses at \$2.88, or substantially similar prices, are special offers at reduced prices and for a limited time only; that they have 3,000,000 satisfied customers; that the mountings of their glasses sold at \$3.45, or approximate amounts, are solid rhodium, and the finish of those sold at \$2.88, or approximate amounts, contains substantial amounts of rhodium; that their glasses offered for \$2.88 and \$3.45, or approximate amounts, are suitable for all persons in need of glasses; that customers are permitted to test the glasses by wearing them for fifteen days and at the expiration of said time, if they are not completely satisfied, they may return them and their money will be promptly refunded.

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PAR. 5. The foregoing statements and representations are grossly exaggerated, false, misleading, and deceptive. The glasses sold by respondents will not, in a large proportion of cases, correct the defective vision of the purchasers. Some of respondents' alleged physician-oculists, or doctors, have no license to operate as physicians, oculists, or otherwise in the States where they are employed, and others are unqualified or inexperienced and are unable to, and do not, properly examine or prescribe for eye defects. In many instances, managers of respondents' stores, who are untrained and unqualified, measure the pupillary distances of customers' eyes and inaccurately calculate measurements which are used in prescriptions. A large proportion of the lenses used in glasses sold by respondents are not ground in accordance with any proper prescription, or even in accordance with the prescriptions written therefor by respondents' alleged physician-oculists, or doctors. In many instances, glasses sold by respondents are ill-fitted and absolutely useless to the purchasers thereof. Respondents' alleged special offers of glasses are not special offers at reduced prices or for a limited time only, but on the contrary are continuous offers over long periods of time and are the usual and customary prices charged for said glasses. Respondents sell very few glasses at the advertised prices, as they are unsuited for the great majority of persons with defective vision. In truth and in fact, respondents use such advertisements only as an inducement to persons to visit their various stores. The general practice of respondents' agents and representatives is, after so-called examinations, to advise prospective purchasers that the glasses advertised are unsuited for their particular eye conditions, and then by adroit salesmanship, and in many instances by false and misleading statements to the effect that serious and dangerous conditions exist in their eyes, to sell them glasses at much higher prices. Often, the glasses sold are the same or approximately the same as those offered by the terms of the aforesaid advertisements, but at many times the advertised price. Respondents do not have 3,000,000 satisfied customers. In truth and in fact, they have comparatively few satisfied customers. The mountings of the glasses offered for sale by respondent at \$3.45, or approximate amounts, are not solid rhodium, and the finish on the glasses sold for \$2.88, or approximate amounts, does not contain a substantial amount of rhodium. In truth and in fact, the base metal of these mountings has only a rhodium wash or a thin plating of rhodium which soon deteriorates and wears away, exposing the base metal which is then subject to rust. Respondents do not promptly refund

the purchase price of their glasses, or any part thereof, to dissatisfied customers, any refunds made being only after extreme pressure is brought to bear upon respondents or their agents or employees, or they are threatened with exposure of their practices. In many cases no refunds whatsoever are made.

PAR. 6. The advertisements disseminated by respondents as aforesaid are false, misleading, and deceptive for the further reason that they fail to reveal facts material in the light of the representations contained therein in that it is not revealed that the glasses advertised by them for \$2.88, \$3.45, or approximate amounts, are unsuited for most persons in need of glasses and that it is only by chance that stock lenses will correct the visual defects of persons buying such glasses. Such advertisements constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations therein contained, or material with respect to the consequences which may result from the use of their said glasses under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, the wearing of glasses sold by respondents containing stock lenses which are unsuited to a customer's eyes, or glasses for which a proper examination has not been made and proper prescription written or where the prescription has not been followed, may result in serious injury to the already impaired vision of the purchasers.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true and that respondents' glasses will correct defective vision and may be safely used and without ill effects. As a result of the erroneous and mistaken belief engendered by respondents' said advertisements, the public has purchased substantial quantities of respondents' products.

PAR. 8. 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 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 June 8, 1944, issued and subsequently served upon the respondents named in the caption hereof its

complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of the respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial 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 complaint, the respondents' answer thereto, the testimony and other evidence, the trial examiner's recommended decision and exception thereto (which exceptions have been disposed of by separate orders herein), and briefs and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. The respondents, Benjamin D. Ritholtz, Morris I. Ritholtz, Samuel J. Ritholtz, Sylvia Ritholtz, Fannie Ritholtz, and Sophie Ritholtz, are individuals trading individually and as copartners under the names National Optical Stores Company and Dr. Ritholtz Optical Company, with their principal office and place of business located at 1148 West Chicago Avenue, in the city of Chicago, State of Illinois. Said respondents also have branch offices and places of business in various cities of the United States, including Detroit and Lansing, in the State of Michigan; Cleveland and Akron, in the State of Ohio; Indianapolis, Gary, South Bend, and Evansville, in the State of Indiana; Nashville, Memphis, and Chattanooga, in the State of Tennessee; and Atlanta, in the State of Georgia.

PAR. 2. The aforesaid respondents are now, and for a number of years last past they have been, engaged in the sale and distribution of eyeglasses and other optical supplies. The respondents cause these products, when sold by or through their branch offices or places of business, to be transported from their principal office and place of business in the State of Illinois to or for the purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade and commerce in said products 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 inducing the purchase of their eyeglasses and other optical supplies, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination, by the United States mails, through the use of advertisements in newspapers, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of many advertisements concerning said products. Included among such advertisements have been a large number containing the following statements and representations and others similar thereto:

Save on your glasses by buying direct from factory \* \* \* glasses complete with Toric lenses, for far or near vision, with "Engraved" gold filled mounting at our new low factory price. All glasses ground on prescription of Licensed Doctor.

Convince yourself by 15 days actual test, at our risk. Perfect satisfaction guaranteed or no cost.

HIGH PRICES FOR GLASSES ARE UNNECESSARY. \* \* \* WE MANUFACTURE ALL GLASSES WE SELL. SAVES YOU SEVERAL PROFITS.

No longer any need to pay high prices for good glasses. \* \* \* quality Rhodium-Rimless glasses complete with TORIC stock lenses for FAR or NEAR VISION, all complete, only \$3.45.

FACTORY-TO-YOU—Deal with our local factory branch and save many dollars. All lenses ground on prescription of licensed Physician-Oculist. 15-DAY FREE TRIAL.

SAVE MIDDLEMAN'S PROFIT—Volume purchasing and single ownership of largest chain of optical stores in America save you the Middleman's profit. \* \* \* MONEY BACK GUARANTEE.

SPECIAL! THIS WEEK ONLY  
WHY PAY MORE? \$2.88 15-DAY TRIAL

Glasses no better than these are sold by other concerns for several times this price. Take advantage of this low factory price. "Peerless-Rhodium" finish mounting complete with TORIC stock lenses for FAR OR NEAR VISION, complete only \$2.88.

Convince yourself by 15-day test, that this is the biggest bargain you ever had. Glasses ground on prescription of licensed doctor. Moderate extra charge for bifocal, tinted or astigmatic correction.

PAR. 4. By means of said statements and representations contained in the advertisements disseminated and caused to be disseminated as herein set forth, the respondents have represented, directly and by implication, that the lenses for all of the glasses sold by them are ground in accordance with proper prescriptions made for customers' eyes by their physician-oculists or doctors, that their offers of complete glasses at \$2.88 or substantially similar prices are special offers at reduced prices and for a limited time only, and that customers are

permitted to test the glasses sold by the respondents by wearing them for 15 days, and at the expiration of said time, if such customers are not completely satisfied, they may return the glasses and their money will be promptly refunded.

PAR. 5. The aforesaid representations are false, misleading, and deceptive, and the advertisements wherein they are made are false advertisements.

The record discloses that a substantial portion of the lenses used in glasses sold by the respondents are not ground in accordance with any proper prescription, or even in accordance with prescriptions written therefor by the respondents' own physician-oculists or doctors. Out of 15 pairs of glasses sold by the respondent which were introduced as exhibits in this proceeding, competent experts who testified in support of the complaint testified that they would reject 10 pairs, for the reason that the lenses used in the glasses were not ground in accordance with the specifications set forth in the prescriptions therefor. In addition to this testimony, the Commission has also given consideration to the testimony of the purchasers of the glasses themselves, each of whom testified that the glasses were not satisfactory for the purposes for which they purchased them. This type of evidence, while not itself conclusive, is of some probative value, it being the consensus of opinion among all of the experts testifying that the comfort of the purchaser in using glasses is an important factor in determining whether or not the glasses are acceptable.

In advertising complete glasses at \$2.88 or substantially similar prices, the respondents do not in good faith offer to prospective purchasers a real opportunity to purchase glasses at the advertised price, or at any price lower than the price customarily charged for the glasses prescribed. The record discloses that the glasses advertised in these alleged "special offers" are wholly unsuited for the great majority of persons with defective vision, and consequently very few, if any, of the respondents' glasses are actually sold at the advertised prices. The advertisements are used practically exclusively by the respondents to induce persons to visit their various stores, where such persons, prospective purchasers, are given examinations by doctors whose incomes are often guaranteed by the respondents. The doctors, after completion of the examinations, and at the instance of the respondents, then advise the prospective purchasers that their eyes are in such serious condition that glasses other than those advertised are needed, and salesmen of the respondents are thus enabled, often by falsely and misleadingly representing that the glasses advertised are unsuited for the

particular eye condition of such prospective customers, to sell them glasses for much higher prices than those advertised. Very frequently the glasses so sold are the same or approximately the same as those offered by the terms of the advertisements, the only substantial difference being that the glasses are sold at many times the advertised price. Thus, contrary to the respondents' representations, their alleged "special offers" do not in fact afford prospective purchasers an opportunity to buy glasses at reduced prices for a limited time only, but, on the contrary, constitute a mere subterfuge by which the respondents induce such prospective purchasers to visit their various stores, where, by the use of additional false representations, the respondents' agents and employees sell them glasses at prices much higher than those advertised.

Through the use in advertising of such statements as "15-day free trial," "15-DAY FREE TRIAL . . . MONEY BACK GUARANTEE," etc., the respondents clearly represent to their customers that they will be permitted to wear glasses purchased from the respondents for 15 days, and that at the expiration of that time, if the customers are not satisfied, they may return the glasses to the respondents and have their money promptly refunded. This, however, has not been the experience of a large number of the respondents' customers who testified in this proceeding. Many of these customers who sought refunds after wearing glasses purchased from the respondents were unable to obtain such refunds, various excuses being given by the respondents for their refusal. In some instances, the customers have taken the matter up with the local better business bureaus and have brought sufficient pressure on the respondents to obtain the return of their money, but it is only after the respondents are threatened with exposure of their practices or are otherwise forced to do so that they ever make a refund. The respondents' representations that the customers purchase glasses on a 15-day free trial, and that their satisfaction is guaranteed, are wholly false and misleading.

PAR. 6. The complaint herein alleged that the respondents, in the course and conduct of their business of selling eyeglasses and other optical supplies, have traded under the name Midwest Scientific Company, as well as under the names National Optical Stores Company and Dr. Ritholz Optical Company. The record discloses, however, that the designation Midwest Scientific Company is a trade name under which the respondents manufactured certain articles for the United States Government during the war, and there is no evidence that this name has ever been used in connection with the sale or dis-

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tribution of eyeglasses. The complaint further charged that a number of representations in the respondents' advertisements, in addition to those herein mentioned, are false and deceptive, but the Commission is of the opinion, and finds, that these additional charges have not been sustained by the greater weight of the evidence.

PAR. 7. The use by the respondent of the false, misleading, and deceptive representations contained in their advertisements, as set forth in paragraph 3, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and mistaken belief that such representations are true and, as a result of such false and mistaken belief, into the purchase of substantial quantities of the respondents' products.

## CONCLUSION

The acts and practices of the respondents as herein found are 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.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto (which exceptions have been disposed of by separate orders herein), and 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, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, and Sophie Ritholz, individually and as copartners trading under the names National Optical Stores Company and Dr. Ritholz Optical Company, or trading under any other name or trade designation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of eyeglasses or other optical supplies, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is

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defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication—

(a) That the lenses in all or any of the glasses sold by the respondents are ground in accordance with prescriptions by doctors, when in fact said lenses are not accurately ground in accordance with the prescriptions of doctors, optometrists, or physician-oculists.

(b) That any of the respondents' glasses are offered for sale at prices substantially lower than the prices actually charged for said glasses; or that any offer of glasses at the respondents' usual or customary prices which is not limited in point of time is a special offer for a limited time only.

(c) That the purchase price of glasses sold by the respondents will be refunded to dissatisfied customers, or that the respondents in the sale of their glasses guarantee satisfaction, when in fact said respondents do not in all instances accept the return of glasses from dissatisfied customers and refund the full purchase price thereof.

2. Entering into any arrangement, agreement, or understanding with any doctor, optometrist, or physician-oculist to advise any prospective purchaser that the condition of his eyes is such as to require glasses other than those advertised by the respondents, when such condition actually does not exist.

3. Representing that glasses advertised by the respondents at special low prices are unsuitable to correct the defective vision of any prospective purchaser, when such glasses would be adequate for such purpose.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the respondents' eyeglasses or other optical supplies, any advertisement which contains any of the representations prohibited in paragraph 1 (a), (b), or (c) of this order.

*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 said order.

IN THE MATTER OF  
R. J. REYNOLDS TOBACCO COMPANY

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

*Docket 4795. Complaint, Feb. 26, 1943<sup>1</sup>—Decision, Mar. 31, 1950*

No two comparable normal persons, due to a number of variables such as the fact that the tobacco constituents are not uniform, and varying conditions under which the smoking takes place and others, will take into their mouths the same amount of smoke or experience the same physiological effects from smoking a like number of cigarettes under like conditions and within a given time. Furthermore, the physiological effect upon an individual of a given amount of cigarettes smoked depends in large measure upon the degrees of physiological normalcy, sensitivity and tolerance of the individual—matters as to which variance to a greater or lesser extent exist in different persons. And while as a general proposition the smoking of cigarettes in moderation by individuals not allergic nor hypersensitive to cigarette smoking, who are accustomed to smoking and are in normal good health, with no existing pathology of any of the bodily systems, is not appreciably harmful—what is normal for one person may be excessive for another.

Nicotine is not a therapeutic agent, and excessive smoking is injurious in various degrees to all of the bodily systems, including the circulatory, respiratory, digestive, nervous, neuromuscular, and the special senses; and which in some cases if a person is accustomed to smoking cigarettes and becomes tense and nervous the smoking of a cigarette may have a psychological tendency to relieve the tension and produce a quieting effect, the smoking of cigarettes will not under any conditions be physiologically beneficial to any of the bodily systems.

In the instant proceeding in which respondent made various representations which were general in their nature and were made alike to all persons irrespective of their physiological condition or the quantity of cigarettes smoked, to the effect that the smoking of its cigarettes was either beneficial to or not injurious to a particular bodily system or part of the body—such as digestion and other functions, throat and nerves—the record clearly showed that said cigarettes were physiologically injurious when smoked to excess and where the smoker was diseased; so that it followed that in such respects at least each of said respondents' advertisements concerning the effect of its cigarettes upon parts of the body or upon several bodily systems were deceptive and misleading.

Smoking cigarettes does not bring about or increase the alkalinity of the digestive tract, and smoking is not under any circumstances good for, advantageous to, or an aid to digestion, and the only physiological effect cigarette smoking has upon digestion, if any at all, is harmful, irrespective of (a) the physical condition of the smoker; (b) the time of smoking, whether

<sup>1</sup> Amended.

before, during, or after meals; (c) the character of the food; (d) whether the smoking is in moderation or is excessive; or (e) any other known circumstance or condition under which the smoke may enter the mouth. And if smoking in some circumstances may have a psychological effect of relaxation, and of producing some relief from tension, such effects, insofar as any aid to digestion is concerned, are at best only secondary and largely mental, and merely temporary; are present only when the smoker is accustomed to smoking and is in normal good health, with no existing pathology of the gastro-intestinal tract, and do not in any respect impede or prevent the poisonous constituents in the smoke from producing their normal deleterious physiological results.

In determining the meaning of advertisements, the words used therein must, of course, be given their ordinary and well-understood meaning and, thus tested, advertising representations that smoking certain cigarettes "renews and restores body energy; creates and activates the extra energy needed," and other like phrases, plainly imported the meaning that smoking said cigarettes created new energy; that such energy supplemented and was added to that present in the body before the smoking of the cigarette; and that there was thereby generated and produced additional physiological power of greater intensity and duration—representations which were clearly false and deceptive in that there is in tobacco no constituent which could possibly create energy.

As respects the question whether smoking certain cigarettes had the effect of temporarily releasing additional energy already present, and the related and underlying question as to the effect of such smoking upon the blood sugar level of the smoker, it appeared that the smoke from a cigarette has no uniform effect upon the blood sugar level of all persons; that the effect, if any, of, and to what extent, a rise in the blood sugar level of many individuals caused by cigarette smoking has upon their muscular contraction has not been definitely determined and remains in the realm of scientific conjecture; and that the record in the instant proceeding failed to establish that the small changes in blood sugar following smoking, which were reported by competent observers, were alone significant of any changes in bodily energy, or that the mere presence of a high sugar level, whether induced by smoking or otherwise, in and of itself indicates the availability of greater bodily energy.

An athlete cannot smoke as many cigarettes as he likes without affecting or impairing his physical condition due to the adverse action upon the endurance and energy resulting from the increase of pulse rate, rise in blood pressure, and the deprivation of the smoker of oxygen necessary for bodily activity, particularly in athletic competition.

While it may be that a majority of individuals in normal good health, with normal healthy throats, can smoke cigarettes in moderation (which varies with the individual) without causing pathological indications of throat irritation, cigarette smoke, by virtue of the substances contained therein, is an irritant and, being such, the smoke will irritate disordered throats, and excessive smoking of any brand of cigarettes will irritate even throats in normal healthy condition.

The effect of smoking is not the same upon every individual, and in the case of persons addicted to cigarette smoking who become nervous and tense, the smoking of a cigarette of any brand will often afford the smoker some temporary relaxation, while in the case of persons not accustomed to smoking, the effect of even one cigarette will be the opposite; and even in the case of a regular smoker, if he smokes "as many cigarettes as he likes," he is smoking to excess, and excessive smoking, regardless of the conditions of the smoker's nerves, will not be soothing, comforting, or restful.

The nicotine content of domestic tobacco used in the manufacture of cigarettes, as related to the question of nicotine in cigarette smoke, varies very greatly, not only in and among the several types of tobaccos used, but also as among the individual plants of the same types of tobaccos, on the same farm and in the same field, and even as among the leaves on the same plant, due, principally, to difference in the varieties of crops grown, varying soil conditions, differing fertilization methods and cultivation and cropping practices, climatic and weather conditions existing during the growing season, and numerous other factors, and there is no known practical process by which the nicotine content of tobacco leaf may be substantially reduced without at the same time denaturing the tobacco and rendering it unsatisfactory for use in the manufacture of cigarettes.

Where one of the largest manufacturers of tobacco products in the United States; in advertising its Camel cigarettes through magazines of Nation-wide circulation and newspapers of interstate distribution, and by radio broadcasts in Nation-wide hookups and by other means—

- (a) Falsely and deceptively represented to the public, directly or by implication, that the smoking of such cigarettes during, after, or between meals, irrespective of what, where, or when one ate, was good for, advantageous to, and aided digestion in that it renewed and encouraged the flow of digestive fluids and increased the alkalinity of the digestive tract;
- (b) Represented, without limitation or qualification, that the smoking of such cigarettes relieved fatigue, and created, restored, and released a new flow of bodily energy, giving needed bodily strength and vigor, and that this was "a basic discovery of a famous research laboratory" which threw "new light on the subject of cigarette smoking";

The facts being that said representations, even if restricted in their meaning to the claim that such smoking accelerated the release of existing bodily energy, being general in nature and without limitation or qualification, were misleading and erroneous;

- (c) Falsely represented that the wind and physical condition of athletes would not be impaired by the smoking of as many Camel cigarettes as desired;
- (d) Falsely represented that Camel cigarettes were always gentle to and never harmed or irritated even a sensitive throat, or left an after taste;
- (e) Falsely represented that the smoking of Camel cigarettes was soothing, restful, and comforting to the nerves, and protected one against becoming "jittery" or "unsure" when subjected to intense nerve strain; that one with healthy nerves might smoke as many such cigarettes as he or she liked, without the risk of keyed up, jangled, or frazzled nerves; and that Camels in said respect differed from all other brands;
- (f) Falsely represented that the smoke of Camel cigarettes contained less nicotine than did that of any of the four other largest selling brands of cigarettes;

(g) Represented through the dissemination of large numbers of testimonials from users and purported users of Camel cigarettes, which included such statements as "gives me a lift," "don't jangle my nerves," "at meal times I like to enjoy Camels for 'digestion's' sake," "seem to smooth the way for digestion," "no matter how many I smoke Camels always give me a lift yet they never tire my taste," "to me that slower burning explains why Camels smoke so mild and cool and taste so much better"; "Camel gets the best tobacco at most every warehouse sale," etc.; that the claims and expressions contained therein were true, and represented the actual personal experience, knowledge, or beliefs of the persons giving such testimonials;

The facts being that with few, if any exceptions, said testimonials were deceptive and misleading, some who signed such testimonials not only did not smoke Camels exclusively, but smoked no cigarettes of any kind; others who testified to their preference for Camels over all other brands could tell no difference between Camels and other cigarettes; the statements attributed to others were signed without having been read and did not represent their views or opinions; and the real motive inducing the signing in the case of practically all was to obtain the consideration which they were to receive therefor from said corporation;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false belief that such representations were true, and thereby into the purchase of said cigarettes; whereby substantial trade was diverted unfairly to it from its competitors:

**Held,** That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of said corporation's competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

In said proceeding, tests made by the Food and Drug Administration at the instance of the Commission, for the purpose of determining, among other things, the nicotine content of the tobacco in and the smoke from a number of cigarettes of 6 of the largest selling brands, including Camels, showed (a) that the nicotine content of both the tobacco in and the smoke from the individual cigarettes involved in the tests (measured in groups of 10) varied very greatly both in actual weight and in percentage by weight of the cigarettes, not only as among the 6 different brands, but also as among the individual cigarettes of the same brand, and (b) that the average weight and average percentage by weight of nicotine contained in the tobaccos in and the smoke from the Camel cigarettes involved actually exceeded those of the cigarettes of each of the four brands of the same length as Camel.

In said proceeding it further appeared, among other things, as stipulated, that, during all of the time concerned in the complaint, respondent purchased at public auction about 90 percent of the domestic tobaccos which entered into the manufacture of its Camel cigarettes; that it bought substantially all grades of tobaccos offered for sale; that its cigarette manufacturing competitors bid on and purchased at the same auction sales the identical grades of tobaccos purchased by it at substantially the same prices; and that its Camel cigarettes were made chiefly of blends of various types and grades of domestic tobaccos and a small part of imported tobacco, as were the cigarettes made by its principal competitors.

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As respects the fact that the use of certain false and deceptive representations, challenged by the amended complaint in the instant proceeding, had been discontinued by the respondent several years theretofore, and respondent's contention that the issuance of an order to cease and desist such representations would not be justified, the respondent further contending, however, that each and every one of said representations was true and contained no element of falsity or deception: The Commission was of the opinion such being the case, it was manifestly in the public interest for it, through the issuance of an appropriate order, to prevent the continuation or resumption of the use of the representations in question.

As respects other alleged false, deceptive, and misleading advertising statements and representations which, the amended complaint charged were made by respondent, including such representations as that Camels were the cigarettes of costlier tobacco, made of finer tobaccos than any other popular brand, and that all the finest cigarette tobacco went into Camels; that almost all tobacco planters and tobacco planters generally preferred or smoked Camels; that Camels burned 25 percent slower than most leading brands and contained more tobacco by weight than did most of the largest selling competing brands; that "Prince Albert Smoking Tobacco" was 86° cooler than most other brands of pipe tobacco and was the coolest of all smoking tobacco; and that respondent, in the course of its broadcasts, falsely represented therein that certain voices were those of persons named by it and that such persons were present: The Commission was of the opinion and found that the charges with respect to such additional statements and representations had not been sustained by the greater weight of the evidence.

Before *Mr. Webster Ballinger*, trial examiner.

*Mr. Edward L. Smith* for the Commission.

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

## AMENDED 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 R. J. Reynolds Tobacco Co., a corporation, 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, R. J. Reynolds Tobacco Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office in Jersey City in said State, and with its principal place of business in Winston-

Salem, N. C. It is now, and for more than 5 years last past has been, engaged in the manufacture and processing of tobacco products, including cigarettes branded "Camel" and pipe tobacco branded "Prince Albert," and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. It now causes, and for more than 5 years last past has caused, such tobacco products, when sold by it, to be transported from its place of business in the State of North Carolina to the purchasers thereof, some located in said State and others located in various other States of the United States and in the District of Columbia, and there is now, and has been for more than 5 years last past, a constant current of trade and commerce conducted by said respondent in such tobacco products, between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than 5 years last past has been, one of the largest manufacturers of tobacco products in the United States and is now, and for more than 5 years last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of tobacco products 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 its business, described in paragraph 1 hereof, and for the purpose of aiding and promoting the sale by it of its said "Camel" brand of cigarettes and its said "Prince Albert" brand of tobacco in the commerce aforesaid, respondent has disseminated, and caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation, in newspapers of interstate circulation, by radio broadcasts in Nation-wide hook-ups and by other means in commerce, advertisements in which it has represented and still represents, directly and by implication:

(a) That the smoking of Camel cigarettes is good for and advantageous to digestion and aids digestion; that science so proves, and that such is a fact backed by millions of smokers; that it is an aid to digestion no matter where, what, or when one eats, at odd hours and in all sorts of places, and is a positive benefit to the digestion during, after and between meals;

(b) That Camel cigarettes are good to the digestion, promote good digestion, keep the digestion working normally, running smoothly and clicking even when the going is hectic; that they enable the eating of favorite dishes any time one pleases, and help keep digestion on its proper course;

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(c) That when Camels are smoked one's digestion is fine; and that such smoking stimulates, assists, and encourages digestion and has a genuinely beneficial, wholesome, and helpful effect on the digestive process;

(d) That good health follows or is fortified or sustained by indulgence in Camel cigarettes; and that no matter what one eats, the smoking of Camels causes his digestion to behave itself and assures him the digestive stamina of an iron stomach;

(e) That the smoking of Camel cigarettes speeds up and increases the flow of the digestive fluids, renews and increases the secretion thereof and as a scientific fact increases alkalinity and, in general, thereby promotes and facilitates proper digestion;

(f) That the smoking of Camel cigarettes gives a "lift" in energy; picks up, perks up, renews, and restores bodily energy; creates and activates the extra energy needed; releases a new flow of energy inside one; and in general has the capacity to produce and increase bodily strength and vigor;

(g) That the quickest way to relieve fatigue is by smoking Camels; that fatigue then fades away; that when tired, it brings one back, sets one right, puts one right back into the running, helps one snap right back into form, go on with renewed vigor, a new feeling of vim or with returned "pep"; and in general that the smoker of Camels is thereby quickened from a state of fatigue to one of brisk animation;

(h) That the people with abounding energy are Camel smokers; that Camels are efficacious where a sport demands unfailing energy; that smoking a Camel does the same thing that stepping on the accelerator does for one's car—gives the added power that one needs; that Camels are productive of astounding results in increasing energy;

(i) That the effect of smoking Camels is a harmless restoration of the flow of natural body energy, releasing the flow of one's own natural energy, causing such natural energy to snap back; that this is a basic discovery of a famous research laboratory and throws new light on the subject of cigarette smoking;

(j) That to keep in athletic condition one should smoke Camels, as many as he likes; that athletes who must guard condition, and famous champions who can't take chances on condition, do so; that great athletes and outstanding stars of sport use Camels because from their own experience such use either enables or helps them to keep in condition or does not damage or affect good condition; and generally, that athletes conditioning themselves for any type of competition will be benefited or helped, or will not be impaired or harmed, by the smoking of Camel cigarettes;

(k) That national championships have been won because the winners smoked Camels; that the winner of an auto race was in condition for it, having had a Camel the last thing before the race and the first thing after winning it; that a golf champion naturally was fit for the grueling contest because he was a Camel smoker; and in general, that an aspirant for honors in sport or athletics may promote his chances by smoking Camel cigarettes;

(l) That Camels do not "get your wind" or cut or affect the wind of athletes; that athletes say generally, and a host of athletes throughout the country agree in saying that the smoking of Camels is not disadvantageous to breathing capacity during an athletic contest;

(m) That Camels are the athlete's cigarette, the overwhelming choice of athletes, endorsed by athletes in large majority, and otherwise are generally recognized and acclaimed as especially suitable, fitting, and appropriate for the particular needs or welfare of athletes as well as other types and classes of persons;

(n) That Camel cigarettes never irritate the throat, that they cause no sign of throat irritation, leave the user free of throat irritation, are always gentle to the throat and never leave an aftertaste, that even people with sensitive throats can smoke as many Camels as they like, and that Camels are different or unique in this respect, and generally, that the smoking of Camel cigarettes does not harm the throat;

(o) That the smoking of Camels is soothing, positively soothing, and comforting to the nerves; eases and rests nerves, eases and protects against nerve strain and tension; secures one under intense stress against becoming "jittery" or "unsure"; is recommended or approved for thrilling sports demanding "nerves of steel"; and keeps a speed champion's nerves as sound as the motor in his racer;

(p) That Camel cigarettes never get on the nerves, bother, upset, or affect the nerves; may be smoked, even as many as one likes, without interference with healthy nerves or without risk of keyed-up, jangled, or frazzled nerves; and that in such respects Camels are different from other standard brands;

(q) That Camels are the cigarettes of costlier tobacco; that it is a well-known fact that they are made of finer, more expensive tobaccos than any other popular brand; and that all of the finer cigarette tobaccos go into Camels;

(r) That the makers of Camels buy and take up, for said brand of cigarettes, the choice lots of tobacco, the best loads and the really fine baskets of the year's crop; that they don't bother with the cheap

grades, just go after the choice tobacco; and, in general, that the total annual crop of high grade cigarette tobacco is acquired by respondent, and that no kind of tobacco but the highest priced and the finest grown is blended into Camel cigarettes;

(s) That almost all tobacco planters, and tobacco planters, generally, prefer or smoke Camels; that Camels are far and away the choice of men who grow tobacco and are the leading or most popular cigarettes with planters; that the tobacco planters know that only the choice, fine, or costlier tobaccos are used in Camels, having real inside information relative thereto;

(t) That Camels burn 25 percent slower than most other competing brands and contain more tobacco by weight than do most of the largest selling, competing brands; that smokers of Camels receive the equivalent of, or a "smoking plus" equal to five extra smokes or cigarettes per package over other competing brands; and that the use of Camels thereby results in a saving;

(u) That the smoke of Camels contain 28 percent less nicotine than does the smoke of other competing brands of cigarettes and that the tobaccos in Camels contain 28 percent less nicotine than do the tobaccos used in competing brands of cigarettes;

(v) That Prince Albert smoking tobacco is 86° cooler than most other brands of pipe tobacco and that it is the coolest of all said smoking tobaccos.

PAR. 3. In the course of its business, as described in paragraph 1 hereof, and for the purpose of inducing the purchase of its tobacco products in commerce, as aforesaid, the respondent now uses and for more than 5 years last past has published in commerce, paid testimonials from users and purported users of its Camel cigarettes which do not present or reflect the actual personal experience, knowledge, or beliefs of the signers thereof and in some of such cases the testimonialists not only do not and have not smoked Camel cigarettes, but have not and do not smoke cigarettes of any kind or make. Many of such testimonials are prewritten by representatives of respondent and are signed by the testimonialists without their knowing or being advised by the respondent or by any of its representatives of the contents of them; and many of such testimonials are false and are known by the respondent to be false; and all of such testimonials so obtained by respondent are given and secured in sole consideration of the payments which respondent makes therefor.

PAR. 4. In the course and conduct of its business, described in paragraph 1 hereof, and for the purpose of aiding in and promoting the

sale by the respondent of its Camel cigarettes in the commerce aforesaid, the respondent has represented in its radio broadcasts that certain voices used in such broadcasts are those of persons named by it and by its representatives in such broadcasts when in truth and in fact such voices were not those of the persons so represented by it, and such persons were not present at such broadcasts; and in such broadcasts it has represented to be present and speaking persons not actually present and speaking and has used other artifices and pretenses implying and inducing and leading the listening public into the belief that such nonpresent persons were on its said radio programs and that the voices of such nonpresent persons were the voices actually heard on such broadcasts.

PAR. 5. In truth and in fact (1) smoking Camel cigarettes is of no aid or benefit to digestion, does not increase the flow of digestive fluids nor increase alkalinity and does leave an after taste; (2) good health will not be fortified or sustained by smoking Camel cigarettes; (3) the smoking of such cigarettes will not give a "lift" in energy, renew energy, release natural energy, provide added power, relieve fatigue or renew vigor, nor are the claims of respondent in such respects sustained by impartial scientific laboratory research; nor are the claims regarding the effect of smoking Camels as set out in subparagraph (i) of paragraph 2 hereof a basic discovery of a famous research laboratory or of any research laboratory, and such claims cannot be sustained by impartial scientific laboratory research; (4) the smoking of Camel cigarettes does not keep one in athletic condition and is neither beneficial to nor harmless to athletes in their training or contests; said cigarettes are not the preponderant choice of athletes; (5) the use of Camel cigarettes irritates the throat and has a deleterious effect thereon; (6) Camel cigarettes do not contain any properties capable of mitigating or correcting neuromental disturbances; (7) Camel cigarettes are not made of tobacco more costly than the tobacco used in other cigarettes, do not absorb the total supply of finer cigarette tobaccos grown, and are not the favorite brand of tobacco planters; (8) Camel cigarettes do not burn 25 percent slower nor any percentage slower than most other competing brands, nor do they contain more tobacco by weight than do most of the largest selling, competing brands; smokers of Camels do not receive the equivalent of, or a "smoking plus" equal to, five extra smokes or cigarettes per package over other competing brands, resulting in a saving; (9) the smoke of Camel cigarettes does not contain 28 percent less nicotine nor any less nicotine than does the smoke of other competing brands, nor do

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the tobaccos in Camels contain 28 percent less nicotine nor any less nicotine than do the tobaccos used in competing brands of cigarettes; in truth and in fact the content of nicotine, of tarry matter, and of other substances, irritating to the throat and nasal passages of the smoker and otherwise harmful, varies continually in respondent's cigarettes and the smoke therefrom, as they are offered for sale to the general public; and the relative content of nicotine, of tarry matter and of such substances in respondent's cigarettes as compared with that of competing brands of cigarettes likewise varies continually. The number of variable factors involved in the growing of tobacco for cigarettes, in the blending and processing of such tobacco into cigarettes, and in the packing, handling, and distribution of such cigarettes to the consumer make it impossible for respondent or any of its competitors to produce and market the large volume of cigarettes, which they respectively sell, with a standard or constant content of nicotine, tarry matter, and other harmful substances. Among these variable factors are differences in weather conditions during the tobacco-growing season in different localities in which tobacco of the same variety is grown; differences in such weather conditions from year to year; differences in the soil in which cigarette tobacco is grown, and in the cultivation and fertilization thereof; variation in the mixing and blending of the varieties of tobacco incorporated in the cigarettes; variations in the changes brought about in cigarette tobacco in the processing thereof; deviations in the density with which the tobacco is packed in cigarettes and in the weight of the cigarettes themselves; variations in methods of handling and distribution of cigarettes and changes and differences in climatic conditions affecting cigarettes after they leave the factory where made. In truth and in fact, there is no practicable method whereby the content of nicotine, tarry matter, and other harmful substances in the general run of respondent's cigarettes as they reach the consumer or in those of its competitors, or in the smoke therefrom, can be ascertained with any degree of accuracy for any appreciable length of time. Any test which may be made to determine such content must as a practical matter, be limited to a few samples, infinitesimal in number as compared with the total number of such cigarettes on sale at any one time, and the results obtainable from any such test are indicative of nothing more than the facts sought to be ascertained as of the particular time and place of the initiation of the test. In truth and in fact, the differences in the content of nicotine, tarry matter, and other harmful substances to be found in respondent's cigarettes as compared with

those of competing cigarettes, and such differences among the cigarettes of such competitors, are so minute as to be insignificant and undetectable from the standpoint of the effect which such substances have on the smoker of respondent's cigarettes as compared to that experienced by the smoker of competing brands. For the above reasons, among others, the representations which respondent has made concerning the content of nicotine, tarry matter, and other harmful substances in its cigarettes and the smoke therefrom are false and deceptive, and mislead the public into erroneously believing that respondent's cigarettes are less injurious, when smoked, than are other and competing brands of cigarettes; (10) Prince Albert smoking tobacco is not 86° cooler nor any degree cooler than most other competing brands of pipe tobacco and is not the coolest of all competing smoking tobaccos. In general, the representations made by the respondent as set out in paragraph 2 hereof and the implications and intendments thereof, whether specifically controverted herein or not, are inaccurate, deceptive, false, and misleading.

PAR. 6. The aforesaid representations made by the respondent, as set out in paragraph 2 hereof, have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations are true and to purchase respondent's products, Camel cigarettes and Prince Albert tobacco, in the belief that such representations are true. Thereby substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 7. The use of testimonials by the respondent, as alleged in paragraph 3 hereof, has the capacity and tendency to mislead and deceive the purchasing public into the beliefs that the statements in such testimonials are true; that the testimonialists furnishing such testimonials smoke Camel cigarettes; that such testimonials have been furnished to the respondent voluntarily and that the persons giving such testimonials have known and did know the contents thereof when signing the same; and the aforesaid use by the respondent of such testimonials has the capacity and tendency to induce and has induced the purchasing public to purchase Camel cigarettes in such erroneous beliefs and thereby substantial injury has been done by respondent to substantial competition in interstate commerce.

PAR. 8. The representations by the respondent, as set out in paragraph 4 hereof, that certain persons are present and speaking at radio broadcasts when such persons are not present and speaking, as alleged in paragraph 4 hereof, has the capacity and tendency to mislead and

deceive the purchasing public into the beliefs that such persons are actually present and making at such broadcasts the statements purportedly made by such nonpresent persons, and thereby to induce the public to purchase Camel cigarettes and Prince Albert tobacco. Thereby substantial injury has been done by respondent to substantial competition in interstate commerce.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 26, 1943, issued and subsequently served upon the respondent, R. J. Reynolds Tobacco Co., a corporation, its amended complaint in this proceeding, charging said respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of the respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the amended complaint were introduced before Webster Ballinger, a trial 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. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the respondent's answer, testimony, and other evidence, the trial examiner's report and exceptions thereto, briefs in support of and in opposition to the amended complaint, 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. The respondent, R. J. Reynolds Tobacco Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office located in the city of Jersey City, State of New Jersey, and its principal place of business located in the city of Winston-Salem, State of North Caro-

lina. Said respondent is engaged in the manufacture and processing of tobacco products, including cigarettes branded "Camel," and in the sale and distribution of such products.

PAR. 2. The respondent causes, and for more than 5 years last past it has caused, the aforesaid tobacco products, when sold, to be transported from its place of business in the State of North Carolina to purchasers thereof located in various other States of the United States and in the District of Columbia. There is now, and for more than 5 years last past there has been, a constant current of trade and commerce conducted by the respondent in its tobacco products in commerce among and between the various States of the United States and in the District of Columbia. The respondent is one of the largest manufacturers of tobacco products in the United States, and it is now, and at all times mentioned herein it has been, in substantial competition with other corporations and with persons, firms, and partnerships also engaged in the sale and distribution of tobacco products 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 its business, and for the purpose of aiding and promoting the sale in commerce of its tobacco products, the respondent has disseminated, and has caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation, in newspapers of interstate distribution, by radio broadcasts in Nation-wide hookups, and by other means in commerce, large numbers of advertisements concerning such products. In certain of these advertisements relating to its Camel brand of cigarettes, the respondent has made, and has caused to be made, among others, the following claims and representations:

(a) That the smoking of Camel cigarettes is good for and advantageous to digestion and aids digestion; that science so proves, and that millions of smokers so attest; that it is an aid to digestion no matter where, what, or when one eats, and is a positive benefit to digestion, during, after, and between meals.

(b) That Camel cigarettes are good to the digestion, promote good digestion, keep the digestion working normally, running smoothly, and help keep digestion on its proper course.

(c) That the smoking of Camels stimulates, assists, and encourages digestion, and has a genuinely beneficial, wholesome, and helpful effect upon the digestive process.

(d) That the smoking of Camel cigarettes speeds up and increases the flow of the digestive fluids, renews and increases the secretion

thereof, and as a scientific fact increases alkalinity, and in general thereby promotes and facilitates proper digestion.

(*e*) That the smoking of Camel cigarettes gives a "lift" in energy; that it picks up, perks up, renews, and restores bodily energy; and that it releases a new flow of energy inside one.

(*f*) That if Camels are smoked, fatigue then fades away; that when one is tired, the smoking of Camels brings him back and sets him right; and that it helps one go on with renewed vigor and with a new feeling of vim, or returned "pep."

(*g*) That the effect of smoking Camels is a harmless restoration of the flow of natural body energy, releasing the flow of one's own natural energy, causing such natural energy to snap back; that this is a basic discovery of a famous research laboratory and throws new light on the subject of cigarette smoking.

(*h*) That the wind and physical condition of athletes will not be impaired by the smoking of Camel cigarettes, as many as one likes; that athletes and famous champions smoke Camels because the smoking of such cigarettes does not affect or damage their condition; and that the smoking of Camels is not disadvantageous to breathing capacity during an athletic contest.

(*i*) That Camel cigarettes never harm or irritate the throat; that they cause no sign of throat irritation, leave the user free of throat irritation, are always gentle to the throat, and never leave a cigarettey aftertaste; that even people with sensitive throats can smoke as many Camels as they like; and that Camels are different or unique in this respect.

(*j*) That the smoking of Camels is soothing, positively soothing, and comforting to the nerves; that it eases and rests nerves, eases and protects against nerve strain and tension; and that it secures one under intense strain against becoming "jittery" or "unsure."

(*k*) That Camel cigarettes never get on the nerves; bother, upset, or affect the nerves; may be smoked, even as many as one likes, without interference with healthy nerves and without risk of keyed-up, jangled, or frazzled nerves; and that in such respects Camels are different from all other brands of cigarettes.

(*l*) That the smoke of slower burning Camels contains 28 percent less nicotine than the average of the four other of the largest-selling cigarettes tested—less than any of them—according to independent scientific tests of the smoke itself.

The representations referred to in subparagraphs (*a*) to (*d*), inclusive, were first made beginning in January 1936; were repeated regu-

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larly until November 1937; and were used sporadically thereafter until November 1939. The representations referred to in subparagraphs (e) to (g), inclusive, were first made beginning in May 1934; were used regularly until November 1938; and were used sporadically thereafter until January 1, 1939. The representations referred to in subparagraph (h) were first made beginning in May 1935; were used regularly until February 1936; and were used sporadically thereafter until April 1936. The representations referred to in subparagraph (i) were first made beginning in 1937; were used regularly until February 1939; and similar statements in somewhat milder form were used in testimonials thereafter until as late as 1944. The representations referred to in subparagraphs (j) and (k) were first made beginning in June 1933, and were used regularly until June 1939, and occasionally thereafter. The representations referred to in subparagraph (l) were first made in November 1940 and were continued until July 1942.

PAR. 4. For the purpose of further aiding and promoting the sale in commerce of its tobacco products, the respondent has also disseminated, and has caused to be disseminated, by the means and in the manner aforesaid, large numbers of testimonials from users and purported users of such products. Among such testimonials relating to Camel cigarettes, which the respondent used in advertising subsequent to 1935, were the following:

One given by Miss Helen Stansbury, then the director of women's traffic for United Airlines, as follows:

I choose Camels for their mildness. They're never harsh, and have such a good rich taste. When the pace I go gets me fatigued, a Camel gives me a "lift." (Comm. Ex. 549.)

Another given by Miss Margaret Bourke-White, a well-known photographer, as follows:

Camels are very different, Mr. Martin, in a *lot* of ways. My nerves must be as trustworthy as a steeple jack's, and Camels don't jangle my nerves. When I'm tired I get a lift with a Camel. At mealtimes I like to enjoy Camels for "digestion's sake." There's something about Camels that agrees with me—all around! I think that's what counts most. (Comm. Ex. 546.)

Another given by Allan Patterson, owner of an automobile repair shop, which included the following:

In the garage business you sometimes have to catch your meals on the run—but after a quick bite I always grab a Camel, because Camels seem to smooth the way for digestion.

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I smoke all I want, because no matter how many I smoke Camels always give me a "lift," yet they never tire my taste.

\* \* \* \* \*  
The Mrs. smokes Camels too because they hit the spot with her just like they do with me. (Comm. Ex. 720.)

Another given by Joseph Bolan, a farm foreman, as follows:

Look how slowly the Camel burns compared to other brands—to me, that slower burning explains why Camels smoke so *mild* and *cool* and taste so much better. "Seeing is believing and smoking is believing," I say. (Comm. Ex. 122.)

Another given by John T. Bone, a tobacco farmer, as follows:

My finest grades of tobacco last year went to Camel . . . Camel gets the best tobacco at most every warehouse sale. You bet I smoke Camels. Most planters who know tobacco prefer Camels. (Comm. Ex. 473.)

PAR. 5. Through the use of the claims and representations set forth in paragraph 3, the respondent has represented to the public, directly or by implication, that the smoking of Camel cigarettes, during, after, or between meals, irrespective of what, where, or when one eats, is good for, advantageous to, and aids digestion, in that it renews and encourages the flow of digestive fluids and increases the alkalinity of the digestive tract; that the smoking of such cigarettes relieves fatigue and creates, restores, renews, and releases a new flow of body energy giving needed bodily strength and vigor, and that this is "a basic discovery of a famous research laboratory and throws new light on the subject of cigarette smoking"; that the wind and physical condition of athletes will not be affected or impaired any way by the smoking of as many Camel cigarettes as they desire; that Camel cigarettes, unlike other brands of cigarettes, are always gentle to and never harm or irritate even a sensitive throat, nor leave an after taste; that the smoking of such cigarettes is soothing, restful, and comforting to the nerves, and protects one against becoming "jittery" or "unsure" when subjected to intense nerve strain; that one with healthy nerves may smoke as many Camel cigarettes as he or she likes without the risk of keyed-up, jangled, or frazzled nerves, and that Camels are in these respects different from all other brands of cigarettes; and that the smoke of Camel cigarettes contains less nicotine than does the smoke of any of the four other largest selling brands of cigarettes.

Through the use of the testimonials referred to in paragraph 4, the respondent has represented that the several claims, statements, and expressions contained therein are true and that they represented the actual personal experience, knowledge, or beliefs of the persons giving such testimonials.

PAR. 6. The record in this proceeding consists largely of expert testimony and documentary evidence. It shows as a preliminary matter that the tobacco in all of the leading brands of cigarettes consists of inorganic material usually obtained as ash, of carbohydrates, protein material, and nitrogenous bases, principally nicotine, together with other organic substances—pyridine, aldehydes, organic acids and alcohols, and various aromatic substances, which are responsible for the odor. The smoke from a lighted cigarette consists chiefly of carbon dioxide, carbon monoxide, particles of carbon—partially oxidized tobacco products which are carried off with the smoke—volatilized nicotine, and other nitrogenous substances—aldehydes, including furfural and formaldehyde-ammonia and some water vapor. In addition, the smoke contains actual particles of tobacco, some charred tobacco and tarry and oily materials, the exact chemical composition of the tarry materials being generally not determined.

No two comparable normal persons will take into their mouths the same amount of smoke, or experience the same physiological effects, from smoking a like number of cigarettes, under like conditions, and within a given time. This is due to a number of variables, a reference to only a few of which will serve as illustrations. The tobacco constituents of cigarettes are not uniform. The smoke from a lighted cigarette passes off in two streams, the main stream passing through the wrapper in the direction of the suction, and the side stream passing off the lighted end when there is no suction. The main stream goes into the mouth of the smoker as the cigarette is smoked, the volume and composition thereof varying greatly, depending, among other things, upon the position of the cigarette while burning; the volume speed, and frequency of the puffs; the humidity of the tobacco and of the room; density of the packing; porosity of the wrapper; and the air current to which the lighted end is exposed, the unburned portion acting as a filter, and as the cigarette is smoked the butt or unburned portion increasing in tarry density, and others. These factors likewise produce variances in the tobacco constituents in a given amount of smoke entering the mouth, which include carbon monoxide, varying from approximately 13/100 to 26/100 percent; carbon dioxide; forms of salts like ammonium, cyanide, nitrates, aldehydes (acrolein, formaldehyde, and furfural); resins, tar, and a small amount of nicotine. The amount of deposits of tar depends upon the length of time the smoke remains in the mouth, irregularities in the respiratory tract, which are common and which impede the free passage of the smoke, causing eddies and a deposit of tar on the surface, and the extent to which the smoke is inhaled.

The physiological effect upon an individual of a given amount of cigarette smoke depends in large measure upon the degrees of physical normalcy, sensitivity, and tolerance of the individual, variances to a greater or lesser extent in all of which in different persons exist. The record shows, however, as a general proposition, that the smoking of cigarettes, including Camel cigarettes, in moderation by individuals not allergic nor hypersensitive to cigarette smoke who are accustomed to smoking and who are in normal good health, with no existing pathology of any of the bodily systems (circulatory, respiratory, digestive, nervous, neuromuscular, and special senses), is not appreciably harmful. But what is normal for one person may be excessive for another, and excessive smoking is injurious in varying degrees to all of the bodily systems. Moreover, while in some cases, if a person is accustomed to smoking cigarettes and becomes tense and nervous, the smoking of a cigarette may have a psychological tendency to relieve the tension and produce a quieting effect, the smoking of cigarettes will not under any condition be physiologically beneficial to any of the bodily systems. Nicotine is not a therapeutic agent for any purpose.

All of the representations referred to in paragraphs 3 and 4 concerning the effect of Camel cigarettes were that the smoke therefrom is either beneficial to or is not injurious to a particular bodily system or some part of the body. Such representations were general in their nature and were made alike to all persons irrespective of their physical condition or the quantity of cigarettes smoked. The record clearly shows that Camel cigarettes are physiologically injurious (1) when smoked to excess, and (2) where the smoker is diseased (a fact not disputed even by the most enthusiastic of the respondent's witnesses); and it follows that in these respects at least each of the respondent's advertisements concerning the effect of its cigarettes upon parts of the body or upon the several bodily systems were deceptive and misleading.

PAR. 7. (a) The smoking of a sufficient number of Camel cigarettes does increase, by accelerating the flow of saliva, a digestive secretion, but it does not renew it. Moreover, the real function of saliva is to moisten the mouth and food, and normal chewing and swallowing produces all the saliva necessary for digestive purposes. Any additional saliva which may be induced by smoking is of no digestive significance unless it is swallowed, and in that event it is not helpful, but harmful, to digestion, in that it inhibits the motility of the esophagus and of the stomach and the upper end of the small intestine. Smoking cigarettes, including Camels, does not bring about or in-

crease the alkalinity of the digestive tract, and smoking is not, under any circumstances, good for, advantageous to, or an aid to digestion. The only physiological effect cigarette smoking can have upon digestion, if it has any at all, is harmful, irrespective of (a) the physical condition of the smoker, (b) the time of smoking, whether before, during, or after meals, (c) the character of the food, (d) whether the smoking is in moderation or is excessive, or (e) any other known circumstances or conditions under which the smoke may enter the mouth. Such harmful effects may be an interference with the normal gastric and intestinal motility, an increase in the acidity of the digestive fluids of the stomach, a lessening of the hunger sensation, or an aggravation of existing incipient gastrointestinal disorders.

In support of its advertising representations concerning the effect of smoking Camel cigarettes on digestion, the respondent produced certain testimony tending to show that smoking does in some circumstances have a psychological effect of relaxation and of producing some relief from tension. The record is clear, however, that insofar as any aid to digestion is concerned, these effects at best are only secondary and largely mental and merely temporary, are present only when the smoker is accustomed to smoking and is in normal good health, with no existing pathology of the gastrointestinal tract, and that they do not in any respect impede or prevent the poisonous constituents in the smoke from producing their normal deleterious physiological results.

The Commission therefore finds that the respondent's representations to the effect that the smoking of Camel cigarettes is good for, advantageous to, and aids digestion, were false, deceptive, and misleading.

(b) As they related to bodily energy, the respondent's representations were that the smoking of Camel cigarettes will relieve fatigue, that it creates, restores, renews, and releases a new flow of bodily energy needed, and that this was a basic discovery of a famous laboratory. By such representations the respondent contends it was claiming only that the smoking of Camel cigarettes accelerates the release of existing bodily energy—only that it has the effect of temporarily releasing additional energy already present. The Commission does not so interpret these representations. In determining the meaning of advertisements, the words used in such advertisements must, of course, be given their ordinary and well-understood meaning. When subjected to this test, the respondent's representations that "smoking Camel cigarettes renews and restores bodily energy; creates and acti-

vates the extra energy needed," and other like phrases, plainly imported the meaning that smoking Camel cigarettes creates new energy; that such new energy supplements and adds to that present in the human body before the smoking of the cigarette; and that there is thereby generated and produced additional physical power of greater intensity and duration. As so interpreted, the representations were clearly false and deceptive, there being in tobacco smoke no constituent which could possibly create energy, and neither the respondent nor any of its witnesses seriously contend otherwise.

A large part of the evidence on this phase of the case, however, had to do with the question whether or not the smoking of Camel cigarettes will actually accelerate, even temporarily, the release of bodily energy and relieve fatigue, and in view of the earnestness with which the respondent urges this interpretation of its advertisements, all of the evidence pertaining to this subject has been carefully considered.

The record clearly establishes that the source of all bodily energy is food, which is digested in the stomach and the small intestine, and the glucose (blood sugar) therein segregated. From the small intestine the glucose is taken into the blood stream, in which a part remains, with the balance being deposited as glycogen in the liver and muscles under the stimulus of hormone insulin generated in the pancreas gland. The normal concentration of sugar in the blood stream of a normal person is from 70 to 100 milligrams per 100 cubic centimeters of blood. The glucose (blood sugar) in the blood stream, subject to all the variables affecting the human economy, particularly the state of the nervous system, state of the blood, weight and activity of the endocrine glands, etc., is fed to the muscular and other tissues in order to meet their respective requirements under the control of body hormones and enzymes. The glucose, coming in contact with the oxygen in the air breathed into the body, is burned, giving off carbon dioxide, which is exhaled. This consumption by oxidation of the blood sugar in the muscles, like the burning of coal in a furnace, produces power or energy. When extra power or energy is needed, the stored supplies of glycogen in the liver and muscles are drawn upon as the occasion requires, and under the stimulus of adrenalin from the adrenal gland is transferred back into glucose and distributed throughout the blood stream to meet the needed tissue requirements. Thus, the answer to the question whether or not the smoking of Camel cigarettes accelerates the temporary release of existing bodily energy depends in large measure on the effect of such smoking upon the blood-sugar level of the smoker. It was to this point that substantially all of the testimony and other evidence on this phase of the case was directed. Such

testimony and other evidence, although sometimes couched in language which appears to render it somewhat conflicting, upon careful analysis, is found to be not irreconcilable.

The witnesses testifying on this subject were in agreement that the smoke from a cigarette has no uniform effect upon the blood-sugar level of all persons. In the case of some, it will, under certain conditions, cause a rise; in the case of others, it will cause a reduction; and in the case of still others, it will have no appreciable effect at all. Under many conditions, such as "following a meal," or if the blood sugar at the time of the smoking is "fairly well elevated," or if the storage of glycogen in the liver and muscle tissues is depleted, the smoke will have no significant effect upon the blood-sugar level of anyone. The most noticeable increase in blood sugar as a result of smoking occurs in persons who have fasted, or whose blood-sugar level is below normal, or who inhale the smoke, or who are under 50 years of age. Moreover, the effect, if any, and to what extent, a rise in the blood-sugar level of many individuals caused by cigarette smoking has upon their muscular contraction has not been definitely determined and remains in the realm of scientific conjecture. It has not been established in this record that the small changes in blood sugar following smoking that have been reported by competent observers are alone significant of any changes in bodily energy, or that the mere presence of a high sugar level, whether induced by smoking or otherwise, in and of itself, indicates the availability of greater bodily energy.

The respondent's representations, even if restricted in their meaning to the claim that the smoking of Camel cigarettes accelerates the release of existing bodily energy, being general in nature and without limitation or qualification, were misleading and erroneous.

(c) In other advertisements the respondent represented that an athlete can smoke as many Camel cigarettes as he likes without affecting or impairing his physical condition. The record shows, however, that for one to smoke as many cigarettes "as he likes" is to smoke to excess, and that smoking to excess, like eating or drinking to excess, is harmful, not only to an athlete but to others as well. In the words of one of the scientific witnesses (Dr. Anton Julius Carlson), "One cannot smoke as many Camels, or any other brand of cigarettes, as he likes and keep in athletic condition because of its apparent adverse action upon the endurance and energy." The adverse action upon the endurance and energy referred to by this witness is due in part to the increase in pulse rate, the rise in blood pressure, and the deprivation of the smoker of oxygen so necessary for bodily activity, particularly in

athletic competition. While ordinarily an individual suffers no disadvantage from a slight increase in pulse rate and a slight rise in blood pressure, whenever there is unusual strain put upon the circulatory system, as in the stress of an athletic contest, the individual will very likely become breathless from the exertion, even though he is only a moderate smoker. Because of this impairment of wind and physical condition as a result of smoking, it is, and for many years last past has been, a common practice among colleges, universities, and coaches of athletic teams to forbid the use of tobacco, particularly during training periods, by those participating in sports.

The Commission is of the opinion, therefore, and finds, that the respondent's representations to the effect that athletes may smoke as many Camel cigarettes as they like without having their wind or physical condition affected or impaired, were false, deceptive, and misleading.

(d) As was true in the case of the other representations involved, the respondent, in representing that Camel cigarettes never irritate even a sensitive throat or leave an after-taste, did not limit its claims to persons in normal good health or to those who smoke in moderation, but applied them generally to all persons irrespective of their physical condition or the quantity of cigarettes smoked. It may be, as the respondent contends, that a majority of individuals in normal good health with normal healthy throats can smoke cigarettes in moderation (which varies with the individual) without causing pathological indications of throat irritation. The medical witnesses testifying in this case were in agreement, however, that cigarette smoke, containing, as it does, the substances carbon dioxide, carbon monoxide, nicotine, ammonia, various aldehydes, such as acrolein, formaldehyde, furfural, tars, and formic acid, is an irritant. The smoke from Camel cigarettes contains all the irritating substances in essentially the same quantities and degree found in the smoke from five other leading brands of cigarettes, and in this respect Camel cigarettes are no different from any other of the five leading brands. Being an irritant, the smoke will irritate disordered throats, and excessive smoking of Camels, or any other brand of cigarettes, will irritate even throats in normal healthy condition. Contrary to the respondent's representations, Camel cigarettes are not always gentle to the throat; individuals with sensitive throats cannot smoke as many Camels as they like without irritation to the throat; and Camel cigarettes, like other cigarettes, do leave an after-taste.

(e) The representations that the smoking of Camel cigarettes is always soothing and restful to the nerves, and that such smoking protects one against becoming "jittery" or "keyed up," regardless of the number of cigarettes smoked, are in much the same category. The record is clear that the effect of smoking, including the smoking of Camel cigarettes, is not the same upon every individual. In the case of persons addicted to cigarette smoking who become nervous and tense, the smoking of a Camel, or any other brand of cigarette, often will afford the smoker some temporary relaxation. In the case of persons not accustomed to smoking, however, the effect of smoking even one cigarette will be the opposite. Such a person will not only fail to have his nerves soothed or steadied, but he will probably become positively ill and quite upset as a result of his experience. Even in the case of the regular smoker, if he smokes "as many cigarettes as he likes" he is smoking to excess, and the record is uncontradicted that excessive smoking, regardless of the condition of the smoker's nerves, will not be soothing, comforting, or restful. In this respect, there is no difference between the smoke from Camel cigarettes and the smoke from any of the other leading brands of cigarettes. The respondent's representations to the contrary, as set forth above, were false and misleading.

(f) Concerning the nicotine content of Camel cigarettes, the respondent's representations were in effect that the smoke from such cigarettes contains substantially less nicotine than does the smoke from the cigarettes of any of the four other largest selling brands. In view of the scientific evidence establishing the fact that the nicotine content of cigarette smoke is in direct proportion to the nicotine content of the tobaccos contained in the cigarette itself, the respondent's advertisements necessarily imported also that the tobaccos contained in Camel cigarettes have a substantially lower nicotine content than do the tobaccos contained in the cigarettes of any of the other four largest selling brands. It follows that the answer to the question whether or not the respondent's representations with respect to the nicotine content of the smoke of Camel cigarettes were true or false depends in large measure on the answer to the further question whether or not the tobaccos in the respondent's cigarettes contain less nicotine than do the tobaccos in the cigarettes of each of the respondent's principal cigarette manufacturing competitors.

As it relates to this question, the evidence in the record consists of:  
(1) A stipulation entered into between counsel in which it was stipulated, among other things, that during all of the time mentioned in the

complaint the respondent purchased at public auction approximately 90 percent of the domestic tobaccos entering into the manufacture of its Camel cigarettes; that it bought substantially all grades of tobaccos offered for sale; that its cigarette-manufacturing competitors bid on and purchased at the same auction sales the identical grades of tobaccos as those purchased by the respondent at substantially the same prices; and that the respondent's Camel cigarettes were made chiefly of blends of various types and grades of domestic tobaccos and a small part of imported tobacco, as were the cigarettes manufactured by the respondent's principal competitors; and (2) expert testimony by chemists, plant physiologists, and others familiar with the chemical composition of domestic tobaccos used in the manufacture of cigarettes, to the effect that the nicotine content of such tobaccos varies very greatly, not only as among the several types of tobaccos used (principally flue-cured, Burley, and Maryland tobaccos), but also as among the individual plants of the same types of tobacco on the same farm and in the same field, and even as among the leaves on the same plant; that such variations in nicotine content are due principally to difference in the varieties of crops grown, varying soil conditions, differing fertilization methods and cultivation and cropping practices, climatic and weather conditions existing during the growing season, the positions of the leaves on the tobacco plants, the height of topping, the manner and conditions of curing and packing the tobacco, the amount of moisture and the temperature to which the tobacco is subjected, and other factors too numerous to mention; and, further, that there is no known practical process by which the nicotine content of tobacco leaf may be substantially reduced without at the same time denaturing the tobacco and rendering it unsatisfactory for use in the manufacture of cigarettes. The record also contains certain testimony and reports concerning a series of tests which were made by the Food and Drug Administration, at the instance of the Commission, for the purpose of determining, among other things, the nicotine content of the tobaccos in and the smoke from a number of cigarettes of six of the largest selling brands, including Camels. The results of these tests showed (a) that the nicotine content of both the tobacco in and the smoke from the individual cigarettes involved in the tests (measured in groups of 10) varied very greatly, both in actual weight and in percentage by weight of the cigarettes, not only as among the six different brands, but also as among the individual cigarettes of the same brand, and (b) that the average weight and average percentage by weight of nicotine contained in the tobaccos in and the smoke from the Camel cigarettes involved in the tests actually exceeded the average weight and the

average percentage by weight of nicotine contained in the tobaccos in and the smoke from the cigarettes of each of the other four brands of the same length as Camels.

It is thus apparent to the Commission: (1) That the nicotine content of the tobaccos used by the respondent in the manufacture of its Camel cigarettes varies very materially; (2) that the tobaccos used by the respondent in the manufacture of its Camel cigarettes contains substantially the same amount of nicotine in substantially the same quantities and variations as do the tobaccos used by the respondent's principal cigarette manufacturing competitors in the manufacture of their cigarettes; and (3) that the variations in the nicotine content of said tobaccos, both those used by the respondent and those used by its principal competitors, in the manufacture of their respective brands of cigarettes, continue throughout the process of manufacturing such tobaccos into cigarettes and are definitely reflected in both the tobaccos in and the smoke from samples of cigarettes of each of said manufacturers.

The Commission is of the opinion, therefore, and finds, that the respondent's Camel cigarettes do not, as a matter of fact, contain less nicotine than do the cigarettes of any of its four principal cigarette-manufacturing competitors, and that the respondent's representations to the effect that the smoke from Camel cigarettes contains less nicotine than does the smoke from any of the other four largest selling brands were false and deceptive.

(g) On the question of the truth or falsity of testimonials published by the respondent, counsel in support of the complaint called as witnesses 43 persons who signed testimonials which were reproduced by the respondent in whole or in part in advertisements in periodicals or in radio broadcasts. The testimony of these witnesses establishes conclusively that with few, if any, exceptions these witnesses' testimonials were deceptive and misleading. In each of the testimonials, for example, the testimonialist either stated categorically or necessarily implied that he or she was an exclusive Camel smoker. A number of such testimonialists testified, however, that they not only did not smoke Camels exclusively, but that they did not smoke cigarettes of any kind. Others whose testimonials showed them as favoring Camels over all other brands of cigarettes for one reason or another testified that they could tell no difference between Camel cigarettes and cigarettes of any other brand. Still others testified that the statements attributed to them were signed by them without even having been read, and that such statements did not represent the testimonialists' views or opinions.

Some testified that they could not even read and that the contents of the testimonials were not read to them before they signed them, and in the case of practically all it is apparent that the real motive inducing the signing of the testimonials was to obtain the consideration which they were to receive from the respondent for such testimonials. The allegations of the amended complaint with respect to the falsity of such testimonials have been fully sustained.

PAR. 8. As the Commission has found in paragraph 3 hereof, the use of certain of the representations shown by the evidence to have been false and deceptive was discontinued by the respondent several years before the amended complaint in this proceeding was issued. For this reason, the respondent contends that the issuance of an order to cease and desist those representations would not be justified. The respondent further contends, however, that each and every one of said representations was true, and that it contained no element of falsity or deception; and in these circumstances it is manifestly in the public interest for the Commission, through the issuance of an appropriate order, to prevent the continuation or resumption of the use of such representations.

PAR. 9. The amended complaint in this proceeding listed a number of advertising statements and representations in addition to those referred to herein, which have been used by the respondent in promoting the sale of its tobacco products, and charged that such statements and representations were also false, deceptive, and misleading. The Commission is of the opinion, however, and finds, that the charges with respect to these additional statements and representations have not been sustained by the greater weight of the evidence.

PAR. 10. The use by the respondent of the false, deceptive, and misleading representations, as set forth in paragraphs 3 and 4 hereof, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations were true and into the purchase of the respondent's Camel cigarettes as a result of such false and erroneous belief. In consequence thereof, substantial trade has been diverted unfairly to the respondent from its competitors.

#### CONCLUSION

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

## 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:

*It is ordered*, That the respondent, R. J. Reynolds Tobacco Company, a corporation, and its officers, agents, representatives, and employees, 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.

*It is further ordered*, That said respondent, and its officers, agents, representatives, and employees, 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 order or which are not factually true in all respects.

Order

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