IN THE MATTER OF

HAIR EXPERTS, INC. ET AL.

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

Docket 5757. Complaint, Mar. 22, 1950—Decision, May 17, 1952

Where a corporation and its three officers, engaged in the operation in cities in various States of branches and retail stores dealing exclusively in the sale of cosmetic and medicinal preparations for external use in the treatment of conditions of the hair and scalp, and in the use of said preparations in office treatments;

In conducting their operations (1) through extensive advertising inviting persons to come to their places of business for diagnosis and treatments involving purchase of their preparations; (2) through selling home treatment kits of their preparations to persons thus induced to visit their offices; (3) through sending traveling representatives to various cities, extensively advertising their visits and inviting the public to call upon them for diagnosis and advice, following which said representatives recommended either office treatment or purchase of the home treatment kits; and (4) the mailing of questionnaires, answers to which were followed up by offers of branch office treatment or the sale of home treatment kits; in advertisements in newspapers, periodicals, and other advertising literature—

(a) Represented falsely that use of their preparations, methods and treatments, by their operators in their places of business and by purchasers in their homes, would cause hair to grow when growth had ceased and resulted in thin hair or partial baldness; that the hair growing functions of the scalp would be rejuvenated; and that fuzz on the scalp would be developed into normal hair;

(b) Represented falsely that the germicides included among their preparations would penetrate below the skin surface and kill bacteria there located, and destroy bacilli on the scalp surface;

(c) Represented falsely that their preparations would prevent baldness, grow hair on bald heads and enable an individual to maintain a thick growth of hair for life; would reopen clogged hair passages in the scalp, energize hair papillae, make sluggish circulation in the scalp normal, and eliminate excessive falling hair, loose dandruff, itching and dryness and oiliness of the hair and scalp;

(d) Represented that their preparations, treatments and methods were new scientific discoveries in the treatment of hair and scalp disorders; when in fact all the ingredients in said preparations, as well as said methods of treatment, have been used without success for many years in efforts to correct falling hair and prevent baldness; and

(e) Represented falsely by the use of the designation "Trichologist" in their advertisements that certain of their operators or employees had had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair;

With capacity and tendency to deceive a substantial portion of the public into the mistaken belief that such representations were true and thereby induce it to visit respondents' offices for treatment and purchase of aforesaid products:

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.

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

Mr. George M. Martin and *Mr. J. M. Doukas* for the Commission.

Hogan, Kelleher & Bill, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Hair Experts, Inc., a corporation, and Robert W. Farrell, Harold E. Candler and Abram Jacobson as individuals and as officers of said corporation 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. Hair Experts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 1214 Griswold Street, Detroit, Michigan.

Robert W. Farrell is the president of said corporation. The office and principal place of business of said respondent is 1214 Griswold Street, Detroit, Michigan.

Harold E. Candler is vice president and treasurer of said corporation. The office and principal place of business of said respondent is 1448 Wabash Street, Detroit, Michigan.

Abram Jacobson is the secretary of said corporation. The office and principal place of business of said respondent is 1214 Griswold Street, Detroit, Michigan.

The respondent, Hair Experts, Inc., also maintains and operates branches and retail stores in the cities of Philadelphia, Pennsylvania; New York, New York; Brooklyn, New York; Newark, New Jersey; Jamaica, Long Island; Baltimore, Maryland; Washington, D. C.; Boston, Massachusetts, and Pittsburgh, Pennsylvania, which places of business are operated under the name of Hair Experts, Inc., and which deal exclusively in the preparations sold, by respondents, and the use of said preparations in office treatments.

The individual respondents, individually and as officers of the corporate respondent, formulate, direct and control all of its business activities and policies. In connection with the control of the business activities of the main offices in Detroit and the branch offices, the respondents cause the preparation of all advertising copy used by such branches.

PAR. 2. In the course and conduct of their business the respondents, for several years last past, have been engaged in the sale and distribution of various cosmetic and medicinal preparations for external use in the treatment of conditions of the hair and scalp, and in the use of said preparations in connection with treatments administered in their various offices. Respondents cause said preparations, when sold, to be transported from the place of business of the corporate respondent in Michigan and from other manufacturers located in the State of Michigan and in other States to its various branches or retail stores owned and operated as hereinabove set forth and 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 cosmetic and medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent has adopted several methods in connection with the sale of their various preparations. First, respondents, through extensive advertising, invite persons to come to their places of business for diagnosis and treatment; whereupon certain series of treatments are recommended. If said treatments are agreed to, certain of their cosmetic and medicinal preparations are sold to such persons and used in the process of such treatments. Second, respondents sell home treatment kits with instructions to persons induced to visit respondents' said offices by virtue of said advertisements. These kits consist of respondents' cosmetic and medicinal preparations for the treatment of the hair and scalp. Third, certain of respondents' branches have sent traveling representatives to various cities, whose visits were extensively advertised in the cities to be visited which advertisements invited the public to call upon said representatives for diagnosis and advice. These representatives recommended either treatment at one of respondents' branches or the purchase of the home treatment kits previously described. Still another method employed by respondents was the mailing of questionnaires to prospective purchasers, which questionnaires when answered were followed up by offers of branch office treatment or the sale of home treatment kits previously described.

PAR. 4. In the course and conduct of their aforesaid business the respondents have disseminated, and have caused the dissemination of

advertisements concerning their preparations by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of advertisements concerning their said preparations, by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their preparations 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 advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by circulars, leaflets, pamphlets and other advertising literature are the following:

THICKER HAIR
Within 6 Months!
NEW PROVED SCIENTIFIC DISCOVERY REVOLUTIONIZED
Past Methods Inducing Growth Faster
–Re–Grow Hair to Full Length *
Thin Hair gets Thicker Within 6 Months *

Excessive Hair Loss, Dandruff, Itching and Dryness (or oiliness) are more quickly corrected by this new type of treatment and weak diseased hair is more readily replaced by a strong, vigorous growth, so essential to true attractiveness in both social and business life.*

JUST THREE STEPS

First your scalp is thoroughly cleansed of the dandruff or the other disorder through special, gentle but effective antiseptics which penetrate below the skin surface to kill the source of the infection. Then rejuvenating or rebuilding treatments put the scalp in a condition conducive to the growth of strong, vigorous hair. Finally the different stimulating action of these advanced liquid formulae aid Nature in starting the growth of mature hair.

THICKER HAIR FOR A LIFETIME

Once started, this healthy hair grows to normal length.

Robert W. Farrell, Trichologist * * *

WONDERFUL NEWS!

Grow thicker hair within 6 months!

FREE Hair and Scalp Examination by Mr. Wayne M. Saari, Representative of nationally famous HAIR EXPERTS, INC. *

Here's the chance of a lifetime . . . . An opportunity to grow thicker hair within 6 months . . . and maintain it for the rest of your life! To analyze the condition which is retarding your hair growth, Mr. Saari will personally conduct private, professional hair and scalp examinations at the Rowe Hotel from 10 A. M. to 8 P. M. on Friday, October 24th. He will give you invaluable professional advice on how you can retain the hair you have . . . and still grow gloriously thicker hair *

Should your case require dermatological aids, Mr. Saari will have with him a sample kit of special laboratory-created formulae and chemo-therapeutical preparations that Hair Experts use in their world famous, hair growing profes-

sional office treatments. This professional treatment kit has been especially created for those who cannot come into Hair Experts' office, yet still want to enjoy the amazing, gratifying, hair growing results of their treatments.
Robert W. Farrell, Trichologist *
LOSING YOUR HAIR!
Our Modern Science-Based Treatments
RESTORE
Better Hair . . . .
Healthier Scalp
In 30 Days
or we pay the fee! *

YES in one short month Hair Experts, Inc.'s complete new HAIR TREATMENTS will cleanse out dandruff, clogged in hair passages, kill vast numbers of bacteria swarming beneath diseased scalp, relieves itchiness, revives blood circulation, establish more blood circulation, help nature better perform her function of growing healthy hairs from your scores of thousands of hair follicles—

Your hair will have more body, life and snap to it.

GROW THICKER HAIR! *

Our famous treatments can grow healthier luxuriously thicker hair! Whatever the condition that is obstructing your hair growth, Hair Experts will analyze it, eliminate the "hair-destroying bacillus", rejuvenate the hair and scalp to the best possible condition for thriving hair growth, and finally aid Continued Hair Growth through the years with specialized treatments now, and instructions for future personal use that will help you enjoy a Lifetime of
Thicker Hair! *
Eliminate the germ *
Eliminate dandruff itching *
Energize the papilla *
Thicker Hair within a few months.

PROFESSIONAL HAIR TREATMENTS *

Persons treated for thinning hair first see actual replacement hairs within about 2 months . . . and very abundantly thicker hair within months! *

Learn how to maintain it for a lifetime *

NEW SCIENTIFIC DISCOVERIES
Used in Hair Experts Exclusive Treatments
Help GROW Thicker Hair

Old Methods Revolutionized and Made Obsolete and Hair Experts' Nationally Famous Treatments Help Regrow "Fuzz" to Full Length, Full Strength! *

Once your scalp has been rejuvenated to hair growing activity, Hair Experts equip you to maintain that growth for a lifetime.

PROFESSIONAL
HAIR TREATMENTS *

If your hair is thinning, or you have the symptoms of alopecia (gradual baldness) we urge you to delay no longer*

Let our proven methods save your hair, produce thicker hair *
YOUR SCALP . . .
A Dynamic Hair Grower!

AVOID BALDNESS . . .

Let Hair Experts "Normalize" Your Scalp to Help Produce THICKER HAIR within a Few Months!

Hair Experts Analyze and Rejuvenate the complete cycle of hair growth so that lost hair will be replaced naturally by strong, virile, obvious hair growth.

LOSING YOUR HAIR AND YOUR LOOKS?

Head for the Hair Experts for the professional care that will help you GROW THICKER HAIR*

Hair Experts' Specialized Rejuvenating System*

NOW! HAIR EXPERTS CAN HELP YOU GROW HAIR AT HOME!

WANT TO GROW THICKER HAIR?

Here's How Hair Experts Science-Based Treatments Can Help You

Hair Experts' Modern Treatments are Completely Comprehensive

1. They disgorge the scalp disorder that is stunting hair growth.
2. They normalize hair-growing activity.
3. They stimulate short, weak fuzz to full, vigorous growth.*

They stimulate the hair-making "factory" to dynamic production*

Will help you to gloriously, virile, thicker hair . . . and we'll teach you how to maintain it for life.

PAR. 5. Respondents' preparations are composed of the following ingredients in various combinations:

Wool Fat	Benzocain
Castor Oil	Benzoic Acid
White Oil	Mercury
Cantharides	Phenol
Thymol	Cresol
Isopropyl Alcohol	Stearic Acid
Jaborandi Leaves	Triethanolamine
Euresol	Cetyl Alcohol
Diethylene Glycol Monethylether	Resorcinol
Salicylic Acid	Natural Estrogenic
Castor Oil	Substance P. M. U.
Balsam Peru	Androgenic Substance
Capsicum	Sulphur
Menthol	Sorbitol
Chlorestone	Potassium Hydroxide
Ichthammol	Parasept M
Chloralhydrate	Ammonium Chloride
Pyridium Chloride	Sulfonated Oils

PAR. 6. Through the use of the aforesaid statements and representations and others similar thereto not specifically set out herein, respondents represented, directly and by implication, that the use of said prep-

arations, methods and treatments by their operators in their various places of business and by purchasers of their preparations, in their homes, will cause hair to grow when growth has ceased and resulted in thin hair or partial baldness; that the hair growing functions of the scalp will be rejuvenated; that fuzz on the scalp will be developed into normal hair; that the germicides included among their preparations will penetrate below the skin surface, kill bacteria there located and will destroy bacilli on the scalp surface; that their said preparations will prevent baldness, grow hair on bald heads and will enable an individual to maintain a thick growth of hair for life; will reopen clogged hair passages in the scalp, energize hair papillae, make sluggish blood circulation in the scalp normal, eliminate excessive falling hair, loose dandruff, itching and dryness and oiliness of the hair and scalp; and that the preparations, treatments and methods used by respondents are new, scientific discoveries in the treatment of hair and scalp disorders.

Respondents, by the use of the designation "Trichologist" in their advertisements in connection with certain of their operators or employees, thereby represent that said persons have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

PAR. 7. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of respondents' preparations, methods and treatments in their places of business and the use of their said preparations by persons in their homes will have no effect in causing hair to grow in cases of thin hair or partial baldness. Their use will not rejuvenate or have any effect on the hair growing functions of the scalp and will not cause fuzz to develop into normal hair. Their germicidal preparations will not penetrate below the skin surface nor will they destroy bacilli on the scalp surface. They will not prevent baldness, cause hair to grow on bald heads nor enable a person to maintain a thick growth of hair for any length of time. Said preparations will not reopen clogged hair passages, will not energize hair papillae, make sluggish blood circulation in the scalp normal, eliminate excessive falling hair, loose dandruff, itching, dryness or oiliness of the hair and scalp. The drugs contained in said preparations and the methods and treatments used by respondents are not new or scientific discoveries. As a matter of fact, all the ingredients in said preparations and respondents' methods of treatment have been used without success for many years in an effort to correct falling hair, to grow hair and to prevent baldness.

The designation "Trichologist" is self-assumed and the persons to whom it is applied have not undergone competent training in dermatology or any other branch of medicine pertaining to the treatment of scalp disorders affecting the hair.

PAR. 8. The use by the respondents of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that all such statements and representations are true, and induces a substantial portion of the purchasing public to visit respondents' various offices for the purpose of obtaining treatments and to purchase respondents' products hereinabove referred to because of such erroneous and mistaken belief, engendered as above set forth.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated May 17, 1952, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 22, 1950, issued and subsequently served its complaint in this proceeding upon respondents Hair Experts, Inc., a corporation, and Robert W. Farrell, Harold E. Candler and Abram Jacobson, individually and as officers of Hair Experts, Inc., they being respectively President, Vice-President and Treasurer, and Secretary thereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After issuance of the complaint respondents filed their joint answer on April 20, 1950. On September 20, 1951, respondents formally moved the withdrawal of the aforesaid answer and requested permission to file in lieu thereof an answer admitting all the material allegations of fact set forth in the complaint (excepting those set forth in the following sentence), and waiving all intervening

procedure and further hearings as to said facts, such admission answer having been recorded herein on September 21, 1951. The foregoing exceptions are that respondents are not now engaged in business in the District of Columbia; correcting the spelling of one chemical ingredient; deleting another such; substituting two and adding one ingredient not set forth in the complaint, all of which are apparent on the face of the record and the Findings of Fact herein contained will correctly reflect the facts consonant with the foregoing. No hearings were held for the taking of testimony or other evidence.

Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated by the Commission, on the complaint and answer thereto, as well also proposed findings as to the facts and conclusions presented by counsel in support of the complaint, oral argument thereon not having been requested. Respondents did not submit proposed findings and conclusion.

Said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Hair Experts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 1214 Griswold Street, Detroit, Michigan.

Robert W. Farrell is the president of said corporation. The office and principal place of business of said respondent is 1214 Griswold Street, Detroit, Michigan.

Harold E. Candler is vice-president and treasurer of said corporation. The office and principal place of business of said respondent is 1448 Wabash Street, Detroit, Michigan.

Abram Jacobson is the secretary of said corporation. The office and principal place of business of said respondent is 1214 Griswold Street, Detroit, Michigan.

The respondent, Hair Experts, Inc., also maintains and operates branches and retail stores in the cities of Philadelphia, Pennsylvania; New York, New York; Brooklyn, New York; Newark, New Jersey; Jamaica, Long Island; Baltimore, Maryland; Boston, Massachusetts; and Pittsburgh, Pennsylvania, which places of business are operated under the name of Hair Experts, Inc., and which deal exclusively in the preparations sold, by respondents, and the use of said preparations in office treatments.

The individual respondents, individually and as officers of the corporate respondent, formulate, direct and control all of its business activities and policies. In connection with the control of the business activities of the main offices in Detroit and the branch offices, the respondents cause the preparation of all advertising copy used by such branches.

PAR. 2. In the course and conduct of their business the respondents, for several years last past, have been engaged in the sale and distribution of various cosmetic and medicinal preparations for external use in the treatment of conditions of the hair and scalp, and in the use of said preparations in connection with treatments administered in their various offices. Respondents cause said preparations, when sold, to be transported from the place of business of the corporate respondent in Michigan and from other manufacturers located in the State of Michigan and in other States to its various branches or retail stores owned and operated as hereinabove set forth and to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetic and medicinal preparations in commerce between and among the various States of the United States.

PAR. 3. Respondent has adopted several methods in connection with the sale of their various preparations. *First*, respondents, through extensive advertising, invite persons to come to their places of business for diagnosis and treatment; whereupon certain series of treatments are recommended. If said treatments are agreed to, certain of their cosmetic and medicinal preparations are sold to such persons and used in the process of such treatments. *Second*, respondents sell home treatment kits with instructions to persons induced to visit respondents' said offices by virtue of said advertisements. These kits consist of respondents' cosmetic and medicinal preparations for the treatment of the hair and scalp. *Third*, certain of respondents' branches have sent traveling representatives to various cities, whose visits were extensively advertised in the cities to be visited which advertisements invited the public to call upon said representatives for diagnosis and advice. These representatives recommended either treatment at one of respondents' branches or the purchase of the home treatment kits previously described. Still another method employed by respondents was the mailing of questionnaires to prospective purchasers, which questionnaires when answered were followed up by offers of branch office treatment or the sale of home treatment kits previously described.

PAR. 4. In the course and conduct of their aforesaid business the respondents have disseminated, and have caused the dissemination of, advertisements concerning their preparations by the United States

mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated, and have caused the dissemination of, advertisements concerning their said preparations, by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their preparations 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 advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by circulars, leaflets, pamphlets and other advertising literature are the following:

THICKER HAIR
Within 6 Months!
NEW PROVED SCIENTIFIC DISCOVERY REVOLUTIONIZED
Past Methods Inducing Growth Faster
-Re-Grow Hair to Full Length*
Thin Hair gets Thicker Within 6 Months*

Excessive Hair Loss, Dandruff, Itching and Dryness (or oiliness) are more quickly corrected by this new type of treatment and weak diseased hair is more readily replaced by a strong, vigorous growth, so essential to true attractiveness in both social and business life.*

JUST THREE STEPS

First your scalp is thoroughly cleansed of the dandruff or the other disorder through special, gentle but effective antiseptics which penetrate below the skin surface to kill the source of the infection. Then rejuvenating or rebuilding treatments put the scalp in a condition conducive to the growth of strong, vigorous hair. Finally the different stimulating action of these advanced liquid formulae aid Nature in starting the growth of mature hair.

THICKER HAIR FOR A LIFETIME
Once started, this healthy hair grows to normal length.
Robert W. Farrell, Trichologist * * *

WONDERFUL NEWS!
Grow thicker hair within 6 months!

FREE Hair and Scalp Examination by Mr. Wayne M. Saari, Representative of nationally famous HAIR EXPERTS, INC. * Here's the chance of a lifetime .... An opportunity to grow thicker hair within 6 months .... and maintain it for the rest of your life! To analyze the condition which is retarding your hair growth, Mr. Saari will personally conduct private, professional hair and scalp examinations at the Rowe Hotel from 10 A. M. to 8 P. M. on Friday, October 24th. He will give you invaluable professional advice on how you can retain the hair you have . . . and still grow gloriously thicker hair *

Should your case require dermatological aids, Mr. Saari will have with him a sample kit of special laboratory-created formulae and chemo-therapeutical preparations that Hair Experts use in their world famous, hair growing professional office treatments. This professional treatment kit has been especially

created for those who cannot come into Hair Experts' office, yet still want to enjoy the amazing, gratifying, hair growing results of their treatments.
Robert W. Farrell, Trichologist *

LOSING YOUR HAIR!
Our Modern Science-Based Treatments
RESTORE
Better Hair . . . .
Healthier Scalp
In 30 Days
or we pay the fee! *

YES in one short month Hair Experts, Inc.'s complete new HAIR TREATMENTS will cleanse out dandruff, clogged in hair passages, kill vast numbers of bacteria swarming beneath diseased scalp, relieves itchiness, revives blood circulation, establish more blood circulation, help nature better perform her function of growing healthy hairs from your scores of thousands of hair follicles—
Your hair will have more body, life and snap to it.
GROW THICKER HAIR! *

Our famous treatments can grow healthier luxuriously thicker hair! Whatever the condition that is obstructing your hair growth, Hair Experts will analyze it, eliminate the "hair-destroying bacillus," rejuvenate the hair and scalp to the best possible condition for thriving hair growth, and finally aid Continued Hair Growth through the years with specialized treatments now, and instructions for future personal use that will help you enjoy a Lifetime of Thicker Hair! *
Eliminate the germ *
Eliminate dandruff itching *
Energize the papilla *
Thicker Hair within a few months.
PROFESSIONAL HAIR TREATMENTS *

Persons treated for thinning hair first see actual replacement hairs within about 2 months . . . and very abundantly thicker hair within months! * Learn how to maintain it for a lifetime *
NEW SCIENTIFIC DISCOVERIES
Used in Hair Experts Exclusive Treatments
Help GROW Thicker Hair

Old Methods Revolutionized and Made Obsolete and Hair Experts' Nationally Famous Treatments Help
Regrow "Fuzz" to Full Length,
Full Strength! *

Once your scalp has been rejuvenated to hair growing activity, Hair Experts equip you to maintain that growth for a lifetime.
PROFESSIONAL
HAIR TREATMENTS *

If your hair is thinning, or you have the symptoms of alopecia (gradual baldness) we urge you to delay no longer *

Let our proven methods save your hair, produce thicker hair *
YOUR SCALP . . .
A Dynamic Hair Grower!
AVOID BALDNESS . . .

Let Hair Experts "Normalize" Your Scalp to Help Produce **THICKER HAIR** within a Few Months! *

Hair Experts Analyze and Rejuvenate the complete cycle of hair growth so that lost hair will be replaced naturally by strong, virile, obvious hair growth.

LOSING YOUR HAIR AND YOUR LOOKS?

Head for the Hair Experts for the professional care that will help you GROW THICKER HAIR *

Hair Experts' Specialized Rejuvenating System *

NOW! HAIR EXPERTS CAN HELP YOU GROW HAIR AT HOME!

WANT TO GROW THICKER HAIR?

Here's How Hair Experts Science-Based Treatments Can Help You

Hair Experts' Modern Treatments are Completely Comprehensive

1. They disgorge the scalp disorder that is stunting hair growth.
2. They normalize hair-growing activity.
3. They stimulate short, weak fuzz to full, vigorous growth. * They stimulate the hair-making "factory" to dynamic production * Will help you to gloriously, virile, thicker hair . . . and we'll teach you how to maintain it for life.

PAR. 5. Respondents' preparations are composed of the following ingredients in various combinations:

Wool Fat	Mercuric undecylenate
Castor Oil	Phenol
White Oil	Cresol
Cantharides	Stearic Acid
Thymol	Triethanolamine
Isopropyl Alcohol	Cetyl Alcohol
Jaborandi Leaves	Natural Estrogenic
Euresol	Substance P. M. U.
Diethylene Glycol Monethylether	Androgenic Substance
Salicylic Acid	Sulphur
Balsam Peru	Sorbitol
Capsicum	Potassium Hydroxide
Menthol	Parasept M
Chloretone	Parasept P
Ichthammol	Ammonium Chloride
Chloralhydrate	Sulfonated Oils
Benzocain	N (acyl colamine formylmethyl)
Benzoic Acid	Pyridium Chloride.

PAR. 6. Through the use of the aforesaid statements and representations and others similar thereto not specifically set out herein, respondents represented, directly and by implication, that the use of said preparations, methods and treatments by their operators in their various places of business and by purchasers of their preparations, in their homes, will cause hair to grow when growth has ceased and

resulted in thin hair or partial baldness; that the hair growing functions of the scalp will be rejuvenated; that fuzz on the scalp will be developed into normal hair; that the germicides included among their preparations will penetrate below the skin surface, kill bacteria there located and will destroy bacilli on the scalp surface; that their said preparations will prevent baldness, grow hair on bald heads and will enable an individual to maintain a thick growth of hair for life; will reopen clogged hair passages in the scalp, energize hair papillae, make sluggish blood circulation in the scalp normal, eliminate excessive falling hair, loose dandruff, itching and dryness and oiliness of the hair and scalp; and that the preparations, treatments and methods used by respondents are new, scientific discoveries in the treatment of hair and scalp disorders.

Respondents, by the use of the designation "Trichologist" in their advertisements in connection with certain of their operators or employees, thereby represent that said persons have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

PAR. 7. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of respondents' preparations, methods and treatments in their places of business and the use of their said preparations by persons in their homes will have no effect in causing hair to grow in cases of thin hair or partial baldness. Their use will not rejuvenate or have any effect on the hair growing functions of the scalp and will not cause fuzz to develop into normal hair. Their germicidal preparations will not penetrate below the skin surface nor will they destroy bacilli on the scalp surface. They will not prevent baldness, cause hair to grow on bald heads nor enable a person to maintain a thick growth of hair for any length of time. Said preparations will not reopen clogged hair passages, will not energize hair papillae, make sluggish blood circulation in the scalp normal, eliminate excessive falling hair, loose dandruff, itching, dryness or oiliness of the hair and scalp. The drugs contained in said preparations and the methods and treatments used by respondents are not new or scientific discoveries. As a matter of fact, all the ingredients in said preparations and respondents' methods of treatment have been used without success for many years in an effort to correct falling hair, to grow hair and to prevent baldness.

The designation "Trichologist" is self-assumed and the persons to whom it is applied have not undergone competent training in dermatology or any other branch of medicine pertaining to the treatment of scalp disorders affecting the hair.

The use by the respondents of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that all such statements and representations are true, and induces a substantial portion of the purchasing public to visit respondents' various offices for the purpose of obtaining treatments and to purchase respondents' products hereinabove referred to because of such erroneous and mistaken belief, engendered as above set forth.

CONCLUSION

The aforesaid 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

It is ordered, That the respondent Hair Experts, Inc., a corporation, and its officers, agents, representatives and employees, and the respondents Robert W. Farrell, Harold E. Candler, and Abram Jacobson, individually and as officers of said respondent corporation, their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale and sale of treatments of the hair and scalp in which the various cosmetic and medicinal preparations, as set out in the findings herein, are used; and in connection with the sale, offering for sale and distribution of the various cosmetic and medicinal preparations, as set out in the findings herein, which are used in the treatment of conditions of the hair and scalp, or any other products or preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from, directly or indirectly:

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

(a) That the use of said preparations, methods or treatments by their operators in their various places of business and by purchasers of their preparations, in their homes, will cause hair to grow when growth has ceased and resulted in thin hair or partial baldness.

(b) That the hair growing functions of the scalp will be rejuvenated.

(c) That fuzz on the scalp will be developed into normal hair.

(d) That the germicides included among their preparations will penetrate below the skin surface, kill bacteria there located and will destroy bacilli on the scalp surface.

(e) That their said preparations will prevent baldness, grow hair on bald heads and will enable an individual to maintain a thick growth of hair for life; will reopen clogged hair passages in the scalp, energize hair papillae, make sluggish blood circulation in the scalp normal, eliminate excessive falling hair, loose dandruff, itching and dryness and oilness of the hair and scalp.

(f) That the preparations, treatments and methods used by respondents are new, scientific discoveries in the treatment of hair and scalp disorders.

(g) That the respondents, or any of the respondents' respective representatives, agents or employees are "Trichologists," or the use of any similar name which may tend to, or does by implication, either directly or indirectly, convey the idea or inference that such persons have had competent training in dermatology or other branch of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

2. 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 respondents' products and treatments, any advertisement which contains any of the representations prohibited in Paragraph 1 of this order.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of May 17, 1952].

IN THE MATTER OF

ALEXANDER AUERBACH TRADING IN HIS OWN NAME AND AS FRANK CORWIN, ETC.

MODIFIED CEASE AND DESIST ORDER

Docket 5025. Order—June 2, 1952

Order modifying prior order in the aforesaid matter, April 18, 1944, 38 F. T. C. 272 at 277, so as to require respondent, his agents, etc., in connection with the offer, etc., in commerce, of fibrous stock composed in whole or in part of fibers reclaimed from woolen rags, clippings or other wool waste which have been reclaimed and reworked, to cease and desist from making certain misrepresentations in connection with the use of the term "wool", "reprocessed wool", and otherwise; and from misbranding "shoddy" or other wool products, in violation of the Federal Trade Commission and Wool Products Labeling Act, as in said order below set out.

Mr. R. P. Bellinger and *Mr. Randolph W. Branch* for the Commission.

Mr. Samuel Shapiro, of New York City, for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admitted all the material allegations of fact set forth in the complaint and 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 respondent has violated the provisions of the Federal Trade Commission Act, and the provisions of the Wool Products Labeling Act of 1939, on April 18, 1944, issued and subsequently served upon the respondent said findings as to the facts, conclusion and its order to cease and desist.

Thereafter, this matter came on for reconsideration by the Commission upon a motion by counsel for the Commission's Bureau of Antideceptive Practices to reopen this proceeding for the purpose of altering in certain respects the order to cease and desist herein, an affidavit as to certain facts alleged in said motion, a reply opposing said motion by counsel for respondent and an affidavit by respondent to the matters set out in said reply; and the Commission having reconsidered the matter and being of the opinion that the order to cease and desist should be so modified, and having granted said motion to reopen and alter the order to cease and desist:

It is ordered, That the respondent, Alexander Auerbach, individually and trading in his own name or as Frank Corwin, Frank Corwin Company, David Demerer, or Hanover Wool Company, or trading under any other name, 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 fibrous stock composed in whole or in part of fibers reclaimed from woolen rags, clippings or other wool waste which have been reclaimed and reworked, do forthwith cease and desist from:

(1) Using the term "wool" to designate, describe or otherwise refer to such reclaimed or reworked fibers unless such fibers are "wool," as the term is defined in the Wool Products Labeling Act of 1939.

(2) Using the term "reprocessed wool" to designate, describe or otherwise refer to such reclaimed and reworked fibers unless such fibers are "reprocessed wool," as the term is defined in the Wool Products Labeling Act of 1939.

Provided, however, That nothing herein contained shall be construed as in any way restricting, enlarging or altering the applicability of the provisions of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder to respondent or his products.

(3) Representing, directly or by implication, that fibrous stock composed in whole or in part of fibers reclaimed from woolen rags, clippings, or other wool waste which have been reclaimed and reworked, is or may be described or identified as "wool" under the provisions of the Wool Products Labeling Act of 1939, except to the extent which it contains constituent fibers of "wool" as defined in said Act, or is or may be described as "reprocessed wool" except to the extent which it contains constituent fibers of "wool" as "reprocessed wool" as defined therein.

(4) Misrepresenting or concealing, through the use of fictitious names or otherwise, the identity of respondent or his business.

It is further ordered, That the respondent, Alexander Auerbach, individually and trading in his own name and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer, and Hanover Wool Stock Company, or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid Acts, do forthwith cease and desist from misbranding "shoddy" or other "wool products," as defined in and subject to the Wool Products

Labeling Act of 1939, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, by failing to securely affix to or place on each of such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

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

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

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

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

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

Order

IN THE MATTER OF

BORK MANUFACTURING CO., INC. AND ALVIN BORKIN

MODIFIED CEASE AND DESIST ORDER

Docket 5525. Order—June 2, 1952

Order modifying, in accordance with the final decree entered on February 5, 1952, by the Court of Appeals for the Ninth Circuit in *Bork Manufacturing Co., Inc. et al.* v. *Federal Trade Commission*, cease and desist order of October 24, 1950, 47 F. T. C. 518 at 525 which required respondents to cease and desist from selling, etc., in commerce, punch boards, push cards, or other lottery devices "which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme",—so as to delete therefrom the words "or may be used".

Before *Mr. W. W. Sheppard*, hearing examiner.

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

Mr. Maxwell Slote, of New York City, for respondents.

Battle, Fowler, Neaman, Stokes & Kheel and *Mr. Alvin Miller*, of New York City, also represented Alvin Bork.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondents' substituted answer (no brief having been filed by the respondents); and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, and having issued an order to cease and desist; and

Respondents Bork Manufacturing Co., Inc., a corporation, and Alvin Borkin, individually and as President of such corporation, having filed in the United States Court of Appeals for the Ninth Circuit their petition to review and set aside the order to cease and desist issued herein, and that Court having heard the matter on briefs and oral argument, having fully considered the matter, and having, thereafter, on February 5, 1952, entered its final decree modifying and affirming and enforcing, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on February 5, 1952; and

Thereafter, the Commission having reconsidered the matter, and being of the opinion that its order should be modified so as to accord with the aforesaid opinion and final decree of the United States Court of Appeals for the Ninth Circuit:

It is hereby ordered, That the respondents, Bork Manufacturing Co., Inc., a corporation, and Alvin Bork, individually and as President of such corporation, and their officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

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

It is further ordered, That within the period of time allowed by the aforesaid final decree of the United States Court of Appeals for the Ninth Circuit, the respondents shall 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

THE ELMO COMPANY, INC.

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

Docket 5959. Complaint, Feb. 28, 1952—Decision, June 10, 1952

Where a corporation engaged in the interstate sale and distribution to the public of a combination of drug preparations and a device referred to by it as "Home Treatment"; in advertisements in newspapers and periodicals and through circulars and other advertising media—

(a) Represented that use of its said preparations and device in combination, as directed, would cure or constitute an effective treatment for deafness and impaired hearing, and particularly deafness and impaired hearing with ear and head noises due to catarrh, including dry catarrh;

The facts being that such treatment would have no beneficial effect upon deafness not caused by catarrh, and no such effect upon deafness or impaired hearing, together with head or ear noises caused by discharging catarrh, in excess of affording temporary relief; in case of dry catarrh the benefits were limited to softening of the dried exudates, which would have to be removed by other means for relief;

(b) Falsely represented that its said method of treatment was based on the findings of accepted medical authorities specializing in the treatment of the eye, ear, nose and throat;

(c) Represented falsely that catarrh is the most common cause of deafness;

(d) Represented that said preparations and device might be used safely and without harm to the user; when in fact the directed procedure might cause infectious materials to be forced into the deeper structures of the ear, and might even result in injury to the ear drum;

(e) Failed to reveal that the cotton on which its product was used should not be pushed into the ear so far that it would not be easily removed with the fingers, and that when infection was present, the cotton pushed deeply into the ear might result in injury, including the extension of infection into the deeper ear structures; and

(f) Failed to reveal that use of aforesaid device might similarly result in extending infection into the deeper structures of the ear and in serious injury; and

(g) Represented falsely in sales literature advertising a booklet or circular entitled "Diet—Foods and Vitamins", which it sold, "that Vitamin A in proper quantities helps materially to prevent colds";

With tendency and capacity to deceive a substantial portion of the purchasing public into the mistaken belief that said statements and advertisements were true and to induce it because of such belief to purchase said products:

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.

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

Mr. John M. Russell and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Clinton Robb and *Mr. H. E. Manghum*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Elmo Company, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Elmo Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its principal place of business in Davenport, Iowa.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing to the public certain preparations containing drugs and a device as "drug" and "device" are defined in the Federal Trade Commission Act. The combination of the preparations and the device are referred to by respondent as "Home Treatment."

The designations used by respondent for its said preparations and the formulas and directions for use thereof and the designation, description and directions for use of its said device are as follows:

Designation: Elmo Ear Oil No. 1

Formula:

	Gal.	*Pts.*	*Ozs.*
Alcohol		1	4
Menthyl Salicylate U. S. P			2½
Oil Eucalyptus			2½
Chloroform (technical)		1	14
White Mineral Oil	2½		
Capsicum			1¾

Directions for use:

Put two or three drops of this oil on a small piece of absorbent cotton. Place well down in the ear canal with finger. Remove cotton in 10 to 15 minutes. Use night and morning.

Designation: Elmo Nasal Cleanser No. 2

Formula:

Sodium Chloride	95 lbs. 5 oz.
Powdered Sodium Borate	100 lbs.
Oil Eucalyptus	3 pts.

Menthyl Salicylate	2 pts.
Menthol approximately	8 ozs.
Aniline Pink #7264	1 gr. to each lb.
Potassium Iodide	6 lbs. 2 oz. 350 gr.
Sodium Salicylate	2 lbs. 1 oz. 146 gr.
Sodium Benzoate	2 lbs. 1 oz. 146 gr.

Elmo Nasal Cleanser No. 2 is applied by means of a U-shaped glass tube designated Elmo No. 7 Nasal Douche.

Directions for use:

Fill Nasal Douche three-fourths full with No. 2 solution. Insert tapered end in nose, holding head WELL FORWARD and DOWN. Snuff up contents of douche. Repeat in other nostril. Retain solution for a minute or two before gently blowing nose. Use twice daily, night and morning.

Designation: Elmo Throat Gargle No. 3

Formula:

To each ounce:

Salicylic Acid	2⅕ gr.
Carbolic Acid (Phenol U. S. P.)	9/20 gr.
Eucalyptol U. S. P	9/20 gr.
Menthol U. S. P	9/20 gr.
Thymol U. S. P	9/20 gr.
Zinc Sulphate	55 gr.
Boric Acid	378½ gr.

Directions for use:

Preparation No. 3 is to be placed in a clean pint bottle and filled with water that has been boiled and let cool, and used as a throat gargle, to help remove the catarrhal secretions of the throat. About a teaspoonful at a time of this preparation should be enough. Use twice a day.

Designation: Elmo Vapor Inhaler No. 4

Formula:

	Gal.	*Pts.*	*Ozs.*
Oil Peppermint	--	3	2
Oil Eucalyptus	--	5	--
Oil Mustard (synthetic)	--	--	2
White Mineral Oil	½	½	3

Directions for use:

Remove corks from both ends. Place tapered end into nostril, close other nostril tight with finger, then GENTLY inhale through tube. Repeat same operation in both nostrils several times a day. Keep inhaler tightly corked when not in use. See direction sheet for inflation of Eustachian tubes.

Designation: Elmo Massage Ointment No. 5

Formula:

Cream White Petrolatum	5 lbs.
Oil Capsicum	¾ oz.

Directions for use:

Apply small quantity behind, in front and below ears. Rub into the skin from ears downward to angle of jaw on throat to promote warm glow. Use twice daily.

Designation: Elmo Nasal Ointment No. 6

Formula:

Cream White Petrolatum	10 lbs.
32 oz. Oil Eucalyptus 20½ oz. Menthyl Salicylate 16½ oz. Oil Peppermint	20 oz. of this mixture
Oil of Pine Needles	1 oz.
Oil of Sassafras	1 oz.

Directions for use:

Place small quantity well up each nostril, spread over mucous membrane and snuff back. Use twice daily.

Designation: Elmo No. 8 Ear-Vibrator

Elmo No. 8 Ear-Vibrator is a glass tube device with a plunger or piston. The bulb which is at one end of this tube contains a small opening.

Directions for use:

Place glass bulb into hole in ear, holding so air cannot escape around bulb. Then draw piston slowly in and out ten or twelve times. Use once a day. When ear becomes accustomed to Ear-Vibrator, use morning and night. For indicated ear condition only. DO NOT USE IF EAR DISCHARGES.

Designation: Elmo Recharge Liquid No. 9.

Elmo Recharge Liquid No. 9 is the liquid used in the "Elmo Vaper Inhaler No. 4," and is sold for the purpose of recharging the Inhaler. The formula for this preparation is set out under the Inhaler.

PAR. 3. In the course and conduct of its said business respondent causes and has caused its said preparations and device, when sold, to be shipped from its said place of business in the State of Iowa to the purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said preparations and device in commerce between and among the various States of the United States. The volume of said business in such commerce is substantial.

PAR. 4. In the course and conduct of its business respondents, subsequent to March 21, 1938, has disseminated, and caused the dissemination of, certain advertisements concerning its said preparations and device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products, including but not limited to advertisements inserted in newspapers and periodicals and by means of circulars and other advertising media; and respondent has disseminated, and caused the dissemination of, advertisements concerning its said products by various means including, but not limited to, the media above referred to, for the purpose of inducing and which

were likely to induce, directly or indirectly, the purchase of its said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

THE ELMO HOME TREATMENT HAS HELPED TO IMPROVE OR RETURN THE HEARING OR REMOVE THE NERVE RACKING HEAD NOISES OF A GREAT MANY PEOPLE IN ONE OR MORE MONTHS TIME. Many have claimed one month was enough.

If you have Dry Catarrh you will need LONGER TREATMENT to try and help your hearing or head noises.

Catarrh is, by far, the most common cause of deafness and head noises.

My head noises are all gone now and my hearing is as good as it used to be before I had the Catarrh. I feel like I am well * *.

I have regained my hearing and the head noises have stopped. That was what I hoped for but also what I had never expected to have happen * *.

Only those who are hard of hearing know what a handicap it is to them in every day life—and these people should do everything they can to correct this condition.

Your hearing is to precious to keep on losing it, if there is a chance to improve or recover it.

Head Noise Misery?

Try this simple Home Treatment. Many people have written us that our home treatment brought them blessed relief from the miseries of Hard of Hearing and Head Noises due to catarrh of the head. Many were past 70. For proof of these amazing results, write us today. Nothing to wear. Treatment used right in your own home—easy and simple.

EAR NOISES

If you suffer from those miserable ear noises and are Hard of Hearing due to catarrh of the head, write us NOW for proof of the good results many people have reported after using our simple home treatment * * *.

DEAF
HARD OF HEARING?

HEAD NOISES? If you suffer from hard of hearing and those miserable head noises, due to catarrh of the head, write us NOW for proof of the good results our simple home treatment has accomplished for a great many people. Many past 70 report head noises gone and hearing fine. Nothing to wear. Send NOW for proof and 30 days trial offer. No obligation.

Different because our method is based on the findings of accepted medical authorities who specialize in the treatment of the eye, ear, nose and throat.

Nothing in the treatment to harm you * * *.

PAR. 6. Through the use of the aforesaid statements and others of the same import, respondent represented, directly and by implication, that the use of its said preparations and device in combination, as directed, will cure or constitute an effective treatment for deafness and

impaired hearing and particularly deafness and impaired hearing, together with ear and head noises due to catarrh, including dry catarrh; that the method of treatment including the use of its preparations and device is based on the findings of accepted medical authorities specializing in the treatment of the eye, ear, nose and throat; that catarrh is the most common cause of deafness and that said preparations and device may be used safely and without harm to the user.

PAR. 7. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of respondent's preparations, as directed or otherwise, will have no beneficial value whatsoever in cases of deafness and impaired hearing except when caused by catarrh, that is, a chronic inflammation of, and hypersecretion from, the membranes of the nose, ear or air passages. When deafness or impaired hearing, together with ear or head noises, result from discharging catarrh, the use of respondent's preparations, as directed or otherwise, will have no beneficial effect in the treatment of said conditions in excess of temporarily relieving the catarrhal condition and the resulting deafness or impaired hearing and ear and head noises. In cases of deafness or impaired hearing and head and ear noises resulting from so-called dry catarrh, the benefits derived from the use of said preparations, as directed or otherwise, are limited to the softening of the dried exudates. Respondent's treatment would not usually result in the removal of these exudates and, until removed by other means, the deafness or impaired hearing and head and ear noises due to these exudates would be expected to continue. The use of Elmo No. 8 Ear-Vibrator, as directed or otherwise, will have no beneficial effect in the treatment of deafness or impaired hearing or of ear or head noises due to catarrh. Respondent's method of treatment and the preparations and device employed is not based on the findings of any accepted medical authorities. Catarrh is not the most common cause of deafness. Respondent's Elmo Ear Oil No. 1 and Elmo No. 8 Ear-Vibrator are not safe to use and may cause injury to the user as is more fully set out hereinafter.

PAR. 8. The aforesaid advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act for the further reason that they fail to reveal facts material in the light of such representations and material with respect to the consequences which may result from the use of the preparation Elmo Ear Oil No. 1 and the device Elmo No. 8 Ear-Vibrator, to which the advertisements relate, under the conditions prescribed in said advertisements and the directions for use of said preparations and device, or under such conditions as may be

customary and usual. In truth and in fact, the directed procedure for the use of Elmo Ear Oil No. 1, when the ear is infected, might cause infectious material to be forced into the deeper structures of the ear with the resultant extension of a superficial infection in the external ear canal into the deeper portion of the ear such as the middle ear or even the internal ear. There is a further danger that part of the cotton might become detached during one application of the ear oil and remain in the ear canal and be pushed still farther inward when the next application of oil is made resulting in obstructing the discharge of infectious material and causing its extension into the deeper structures of the ear. The direction to place a small piece of absorbent cotton well down into the ear canal with the finger is particularly likely to result in injury for the reason that cotton saturated with oil and pushed into the ear canal with the finger could not be removed by means of the fingers but would have to be removed by tweezers or some other instrument. The use of such instrumentalities may result in trauma of the ear canal and ensuing infection and in inexperienced hands might even result in injury to the ear drum.

The use of respondent's Elmo No. 8 Ear-Vibrator in the manner directed will produce alternating positive and negative air pressure in the ear canal and in cases where there is infection of the external ear this procedure may force infectious material farther into the ear canal and thus extend the infection. Furthermore, where the ear drum has been punctured or ruptured, the infectious material may be forced into the middle or internal ear and the extension of the infection would further endanger the individual's hearing and might even endanger life itself. Infectious material may be present in the ear canal without discharge from the ear.

PAR. 9. Respondent, in the course and conduct of its business, also sells a booklet or circular entitled "Diet—Foods and Vitamins." It causes said booklet or circular, when sold, to be transported from its place of business in the State of Iowa to the purchasers thereof located in other States of the United States.

PAR. 10. In sales literature describing the benefits which may be expected by following the diet set forth in said booklet, respondent states "We have learned in recent years that Vitamin A in proper quantities helps materially to prevent colds. So from this pamphlet, you may select the foods you like containing high Vitamin A to further assist in our treatment toward good hearing by helping to prevent head colds."

Said statement is false, misleading and deceptive. In truth and in fact, Vitamin A, taken in any quantity, is not effective in preventing head colds.

PAR. 11. The use and dissemination by respondent of the foregoing false, misleading and deceptive advertisements, 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 advertisements and statements were true and that its preparation Elmo Ear Oil No. 1 and its device Elmo No. 8 Ear-Vibrator are safe and can be used without harm under the conditions prescribed in its advertisements and the directions for use and under such conditions as may be customary and usual and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase its said products.

PAR. 12. The acts and practices of respondent, as aforesaid, 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.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 28, 1952, issued and subsequently served its complaint on the respondent named in the caption hereof, charging it with the use of unfair and deceptive acts and practices in violation of the provisions of said Act.

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

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

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or deny-

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on June 10, 1952, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

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

ing that it has engaged in any of the acts or practices stated therein to be in violation of law.

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

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

FINDINGS AS TO THE FACTS

Respondent, The Elmo Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its principal place of business in Davenport, Iowa.

Respondent is now, and for several years last past has been, engaged in the business of selling and distributing to the public certain preparations containing drugs and a device as "drug" and "device" are defined in the Federal Trade Commission Act. The combination of the preparations and the device are referred to by respondent as "Home Treatment".

The designations used by respondent for its said preparations and the formulas and directions for use thereof and the designation, description and directions for use of its said device are as follows:

Designation: Elmo Ear Oil No. 1

Formula:

	Gal.	*Pts.*	*Ozs.*
Alcohol		1	4
Menthyl Salicylate U. S. P			2½
Oil Eucalyptus			2½
Chloroform (technical)		1	14
White Mineral Oil		2½	
Capsicum			1¾

Directions for use:

Put two or three drops of this oil on a small piece of absorbent cotton. Place well down in the ear canal with finger. Remove cotton in 10 to 15 minutes. Use night and morning.

Designation: Elmo Nasal Cleanser No. 2

Formula:

Sodium Chloride	95 lbs. 5 oz.
Powdered Sodium Borate	100 lbs.
Oil Eucalyptus	3 pts.
Menthyl Salicylate	2 pts.
Menthol approximately	8 ozs.
Aniline Pink #7264	1 gr. to each lb.
Potassium Iodide	6 lbs. 2 oz. 350 gr.

Sodium Salicylate---------- 2 lbs. 1 oz. 146 gr.
Sodium Benzoate---------- 2 lbs. 1 oz. 146 gr.

Elmo Nasal Cleanser No. 2 is applied by means of a U-shaped glass tube designated Elmo No. 7 Nasal Douche.

Directions for use:

Fill Nasal Douche three-fourths full with No. 2 solution. Insert tapered end in nose, holding head WELL FORWARD and DOWN. Snuff up contents of douche. Repeat in other nostril. Retain solution for a minute or two before gently blowing nose. Use twice daily, night and morning.

Designation: Elmo Throat Gargle No. 3

Formula:

To each ounce:

Salicylic Acid---------- 2⅕ gr.
Carbolic Acid (Phenol U. S. P.)---------- 9/20 gr.
Eucalyptol U. S. P---------- 9/20 gr.
Menthol U. S. P---------- 9/20 gr.
Thymol (U. S. P.)---------- 9/20 gr.
Zinc Sulphate---------- 55 gr.
Boric Acid---------- 378½ gr.

Directions for use:

Preparation No. 3 is to be placed in a clean pint bottle and filled with water that has been boiled and let cool, and used as a throat gargle, to help remove the catarrhal secretions of the throat. About a teaspoonful at a time of this preparation should be enough. Use twice a day.

Designation: Elmo Vapor Inhaler No. 4

Formula:

	Gal.	*Pts.*	*Ozs.*
Oil Peppermint		3	2
Oil Eucalyptus		5	
Oil Mustard (synthetic)			2
White Mineral Oil	½	½	3

Directions for Use:

Remove corks from both ends. Place tapered end into nostril, close other nostril tight with finger, then GENTLY inhale through tube. Repeat same operation in both nostrils several times a day. Keep inhaler tightly corked when not in use. See direction sheet for inflation of Eustachian tubes.

Designation: Elmo Massage Ointment No. 5

Formula:

Cream White Petrolatum---------- 5 lbs.
Oil Capsicum---------- ¾ oz.

Directions for use:

Apply small quantity behind, in front and below ears. Rub into the skin from ears downward to angle of jaw on throat to promote warm glow. Use twice daily.

Designation: Elmo Nasal Ointment No. 6

Formula:

Cream White Petrolatum---------- 10 lbs.
32 oz. Oil Eucalpytus----------
20½ oz. Menthyl Salicylate---------- 20 oz. of this mixture
16½ oz. Oil Peppermint----------
Oil of Pine Needles---------- 1 oz.
Oil of Sassafras---------- 1 oz.

Directions for use:

Place small quantity well up each nostril, spread over mucous membrane and snuff back. Use twice daily.

Designation: Elmo No. 8 Ear-Vibrator

Elmo No. 8 Ear-Vibrator is a glass tube device with a plunger or piston. The bulb which is at one end of this tube contains a small opening.

Directions for use:

Place glass bulb into hole in ear, holding so air cannot escape around bulb. Then draw piston slowly in and out ten or twelve times. Use once a day. When ear becomes accustomed to Ear-Vibrator, use morning and night. For indicated ear condition only. DO NOT USE IF EAR DISCHARGES.

Designation: Elmo Recharge Liquid No. 9.

Elmo Recharge Liquid No. 9 is the liquid used in the "Elmo Vaper Inhaler No. 4", and is sold for the purpose of recharging the Inhaler. The formula for this preparation is set out under the Inhaler.

In the course and conduct of its said business, respondent causes and has caused its said preparations and device, when sold, to be shipped from its said place of business in the State of Iowa to the purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said preparations and device in commerce between and among the various States of the United States. The volume of said business in such commerce is substantial.

In the course and conduct of its business respondents, subsequent to March 21, 1938, has disseminated, and caused the dissemination of, certain advertisements concerning its said preparations and device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products, including but not limited to advertisements inserted in newspapers and periodicals and by means of circulars and other advertising media; and respondent has disseminated, and caused the dissemination of, advertisements concerning its said products by various means, including, but not limited to, the media above referred to, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

THE ELMO HOME TREATMENT HAS HELPED TO IMPROVE OR RETURN THE HEARING OR REMOVE THE NERVE RACKING HEAD NOISES OF A GREAT MANY PEOPLE IN ONE OR MORE MONTHS TIME. Many have claimed one month was enough.

If you have Dry Catarrh you will need LONGER TREATMENT to try and help your hearing or head noises.

Catarrh is, by far, the most common cause of deafness and head noises.

My head noises are all gone now and my hearing is as good as it used to be before I had the Catarrh. I feel like I am well * * *.

I have regained my hearing and the head noises have stopped. That was what I hoped for but also what I had never expected to have happen * * *.

Only those who are hard of hearing know what a handicap it is to them in every day life—and these people should do everything they can to correct this condition.

Your hearing is too precious to keep on losing it, if there is a chance to improve or recover it.

Head Noise Misery?

Try this simple Home Treatment. Many people have written us that our home treatment brought them blessed relief from the miseries of Hard of Hearing and Head Noises due to catarrh of the head. Many were past 70. For proof of these amazing results, write us today. Nothing to wear. Treatment used right in your own home—easy and simple.

EAR NOISES

If you suffer from those miserable ear noises and are Hard of Hearing due to catarrh of the head, write us NOW for proof of the good results many people have reported after using our simple home treatment * * *

DEAF

HARD OF HEARING

HEAD NOISES? If you suffer from hard of hearing and those miserable head noises, due to catarrh of the head, write us NOW for proof of the good results our simple home treatment has accomplished for a great many people. Many past 70 report head noises gone and hearing fine. Nothing to wear. Send NOW for proof and 30 days trial offer. No obligation.

Different because our method is based on the findings of accepted medical authorities who specialize in the treatment of the eye, ear, nose and throat.

Nothing in the treatment to harm you * * *.

Through the use of the aforesaid statements and others of the same import, respondent represented, directly and by implication, that the use of its said preparations and device in combination, as directed, will cure or constitute an effective treatment for deafness and impaired hearing and particularly deafness and impaired hearing, together with ear and head noises due to catarrh, including dry catarrh; that the method of treatment, including the use of its preparations and device, is based on the findings of accepted medical authorities specializing in the treatment of the eye, ear, nose and throat; that catarrh is the most common cause of deafness and that the said preparations and device may be used safely and without harm to the user.

The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of respondent's preparations, as directed or otherwise, will have no beneficial value whatsoever in cases of deafness and impaired hearing except when caused by catarrh, that is, a chronic inflammation of, and hypersecretion from, the membranes of the nose, ear or air passages. When deafness or impaired hearing, together with ear or head noises, result from discharging catarrh, the use of respondent's preparations, as directed or otherwise, will have no beneficial effect in the treatment of said conditions in excess of temporarily relieving the catarrhal condition and the resulting deafness or impaired hearing and ear and head noises. In cases of deafness or impaired hearing and head and ear noises resulting from so-called dry catarrh, the benefits derived from the use of said preparations, as directed or otherwise, are limited to the softening of the dried exudates. Respondent's treatment would not usually result in the removal of these exudates from the ear canal and, until removed by other means, the deafness or impaired hearing and head and ear noises due to these exudates would be expected to continue. The use of Elmo No. 8 Ear-Vibrator, as directed or otherwise, will have no beneficial effect in the treatment of deafness or impaired hearing or of ear or head noises due to catarrh. Respondent's method of treatment and the preparations and device employed is not based on the findings of any accepted medical authorities. Catarrh is not the most common cause of deafness. Respondent's Elmo Ear Oil No. 1 and Elmo No. 8 Ear-Vibrator are not safe to use and may cause injury to the user as is more fully set out hereinafter.

The aforesaid advertisements are misleading in material respects, and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act for the further reason that they fail to reveal facts material in the light of such representations and material with respect to the consequences which may result from the use of the preparation Elmo Ear Oil No. 1, and the device Elmo No. 8 Ear-Vibrator, to which the advertisements relate, under the conditions prescribed in said advertisements, and the directions for use of said preparations and device, or under such conditions as may be customary and usual. In truth and in fact, the directed procedure for the use of Elmo Ear Oil No. 1, when the ear is infected, might cause infectious material to be forced into the deeper structures of the ear with the resultant extension of a superficial infection in the external ear canal into the deeper portion of the ear such as the middle ear, or even the internal ear. There is a further danger that part of the cotton might

become detached during one application of the ear oil, and remain in the ear canal, and be pushed still farther inward when the next application of oil is made, resulting in obstructing the discharge of infectious material and causing its extension into the deeper structures of the ear. The direction to place a small piece of absorbent cotton well down into the ear canal with the finger is particularly likely to result in injury for the reason that cotton saturated with oil and pushed into the ear canal with the finger could not be removed by means of the fingers, but would have to be removed by tweezers or some other instrument. The use of such instrumentalities may result in trauma of the ear canal and ensuing infection and in inexperienced hands, might even result in injury to the ear drum.

The use of respondent's Elmo No. 8 Ear-Vibrator in the manner directed will produce alternating positive and negative air pressure in the ear canal and in cases where there is infection of the external ear, this procedure may force infectious material farther into the ear canal and thus extend the infection. Furthermore, where the ear drum has been punctured or ruptured, the infectious material may be forced into the middle or internal ear and the extension of the infection would further endanger the individual's hearing, and might even endanger life itself. Infectious material may be present in the ear canal without discharge from the ear.

Respondent, in the course and conduct of its business, also sells a booklet or circular entitled "Diet—Foods and Vitamins". It causes said booklet or circular, when sold, to be transported from its place of business in the State of Iowa, to the purchasers thereof located in other States of the United States.

In sales literature describing the benefits which may be expected by following the diet set forth in said booklet, respondent states "We have learned in recent years that Vitamin A in proper quantities helps materially to prevent colds. So from this pamphlet, you may select the foods you like containing high Vitamin A to further assist in our treatment toward good hearing by helping to prevent head colds".

Said statement is false, misleading and deceptive. In truth and in fact, Vitamin A, taken in any quantity, is not effective in preventing head colds.

The use and dissemination by respondent of the foregoing false, misleading and deceptive advertisements, 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 advertisements and statements were true and that its preparation Elmo Ear Oil No. 1 and its device Elmo No. 8 Ear-Vibrator are safe and can be used without harm under the conditions

prescribed in its advertisements and the directions for use and under such conditions as may be customary and usual and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase its said products.

CONCLUSION

The acts and practices of respondent, as aforesaid, 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

It is ordered, That the respondent, The Elmo Company, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its preparations known as Elmo Ear Oil No. 1, Elmo Nasal Cleanser No. 2, Elmo Throat Gargle No. 3, Elmo Vapor Inhaler No. 4, Elmo Massage Ointment No. 5, Elmo Nasal Ointment No. 6, Elmo Recharge Liquid No. 9, or any preparations of substantially similar composition or possessing substantially similar properties, and Elmo No. 8 Ear-Vibrator, or any device of substantially similar construction and operation whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly,

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparations and device, which advertisement represents, directly or through inference:

(a) That the use of its preparations and device, singly or in combination, as directed, or otherwise, will have any beneficial effect upon deafness not caused by a catarrhal condition of the nose, ear or air passages.

(b) That the use of its preparations and device, singly or in combination, as directed, or otherwise, will have any beneficial effect in the treatment of deafness, impaired hearing, or head or ear noises caused by discharging catarrh, in excess of affording temporary relief therefrom.

(c) That the effects of its preparations in the treatment of deafness or impaired hearing or head or ear noises due to dry catarrh is in excess of softening of the dry exudates, or that any benefit can be

expected by reason of this action of respondent's preparations in the treatment of conditions caused by dry catarrh of the ear canal unless the softened exudates are removed by other means.

(d) That said preparations and device constitute a method of treatment based upon the findings of accepted medical authorities.

(e) That catarrh is the most common cause of deafness.

(f) That Elmo Ear Oil No. 1 or Elmo No. 8 Ear-Vibrator are harmless or may be used without ill effects.

2. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondent's aforesaid Elmo Ear Oil No. 1, which advertisement fails to reveal that the cotton on which the product is used should not be pushed into the ear so far that it cannot be easily removed with the fingers, and that when infection is present, the use of cotton in connection with said product when pushed deeply into the ear may result in injury to the ear, including the extension of any infection therein present into the deeper structures of the ear.

3. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of Elmo No. 8 Ear-Vibrator, which advertisement fails to reveal that, when infection is present in the ear, the use of this device may result in extending such infection into the deeper structures of the ear and in serious injury.

4. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparations and device in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirement set forth in paragraphs 2 and 3 hereof.

It is further ordered, That respondent, The Elmo Company, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the booklet "Diet—Vitamins and Minerals" in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that head colds may be prevented by selecting and eating foods which are listed in said booklet as being high in Vitamin A content.

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

THE ELMO COMPANY, INC.
(S) P. E. COFFEE,
President.
(S) CLINTON ROBB,
By (S) H. E. MANGHUM,
Counsel.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 10th day of June, 1952.

GAMBLE-SKOGMO, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5575. Complaint July 15, 1948—Decision, June 11, 1952

Where a corporation which in the course of the years and as a result of various transactions had come to be engaged in the competitive interstate sale of a great variety of merchandise, including automotive accessories and parts, wearing apparel and other soft goods, major appliances, building supplies and equipment, housewares, farm equipment and parts, and food and confections; sold at retail through some 484 "company-owned" retail stores located in twenty-three Mid-west, Northwestern and far Western states, and 35 such stores in four Western Canadian provinces and Hawaii; and sold at wholesale to 1,735 independently owned retail or "dealer" stores in localities where it had no company owned stores, ranging mostly from five to five thousand in population; and certain responsible officers thereof;

Following the early inauguration of its dealer store program, under which its wholesale business with its "dealer" stores was developed—

(a) Entered into written and verbal agreements with its "dealer" stores whereby dealers were required to purchase from and deal in merchandise sold by or through said corporation to the exclusion of merchandise sold by competitors;

(b) Offered to pay and paid bonuses to those dealer stores who complied literally or substantially therewith, and refused bonuses to those who did not make substantial compliance;

(c) Checked periodically stocks in dealers' stores to discover violations, by means of its representatives who duly reported to it the presence of foreign merchandise;

(d) In some instances exacted promises that merchandise theretofore procured from other sources would be disposed of within a stated period;

(e) Cancelled and threatened to cancel, contracts with dealer stores for failure to deal exclusively or substantially, in its merchandise;

(f) Held meetings of representatives of dealer stores at which it advised the dealers, expressly or by implication, that they were required to purchase all of their merchandise from it;

(g) Implemented its exclusive dealing policies by instructions to its suppliers advising them that orders should be handled and price quotations given out only through its office, and that it would not be responsible for orders placed by dealers direct to a source of supply; and

(h) Required an applicant for a contract to purchase its merchandise at wholesale, to fill out a questionnaire in which he agreed to conduct his store "according to the proven policies of the company";

With the result that many of said dealers adhered to and complied with such exclusive dealing understandings and agreements; many independent jobbers and manufacturers who distributed similar merchandise in commerce were consequently unable to sell their products in substantial quantities to said corporation's dealers; and

With the effect (1) that said sales and contracts for sales might substantially lessen competition and tend to create a monopoly in it in the line of com-

merce in which it was engaged; and (2) that said acts and practices hindered and prevented competition in the sale in interstate commerce of the aforesaid categories of merchandise:

Held, That such acts and practices constituted a violation of Sec. 3 of the Clayton Act, and unfair methods of competition in violation of Sec. 5 of the Federal Trade Commission Act.

As respects respondents' contention that the acts and practices involved in the instant case were not unlawful for the reason, among others, that they affected only an insignificant segment of the total volume of business conducted at wholesale in the entire area of twenty-five states in which said dealers purchased from the corporate respondent, respondents urging, in such connection, that in nineteen states in which the majority of said stores were situated, corporate respondent's business, derived from its dealers, constituted about three-fourths of one per cent of the aggregate volume of wholesale sales by all manufacturers and distributors in the categories of merchandise concerned:

The Commission was of the opinion, assuming without deciding the accuracy of said figure, that the controlling fact in appraising the impact of respondent's practices on competition was the circumstance that corporate respondent's share of the business was a consequential and substantial one in the more than 1600 small communities where it distributed and sold merchandise to dealer stores, and that the area of commerce foreclosed to its competitiors by the acts and practices engaged in was a substantial one.

Before *Mr. Randolph Preston* and *Mr. Webster Ballinger*, hearing examiners.

Mr. W. C. Kern, *Mr. William H. Smith* and *Mr. A. C. Goodhope* for the Commission.

Mr. W. P. Berghuis, of Minneapolis, Minn., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that Gamble-Skogmo, Inc., a corporation, and Bert C. Gamble, Philip W. Skogmo, M. O. Wieby, H. R. Baker, Samuel Mills, and R. C. Teuscher, individually and as officers of said corporate respondent, hereinafter designated and referred to as respondents, have violated the provisions of section 3 of said Act, and pursuant also 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 said respondents, Gamble-Skogmo, Inc., a corporation, and Bert C. Gamble, Philip W. Skogmo, M. O. Wieby, H. R. Baker, Samuel Mills, and R. C. Teuscher, 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, the Commission hereby issues its complaint stating its charges in such respects as follows:

Count I

PARAGRAPH 1. Each of the parties hereinafter described as a respondent is hereby named and made a party respondent in this proceeding. The respondent, Gamble-Skogmo, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 15 North 8th Street, Minneapolis, Minnesota, and branch offices and warehouses located at Denver, Colorado, Chicago, Illinois, Marshalltown, Iowa, Salina, Kansas, Owasso, Michigan, Minneapolis and Moorehead, Minnesota, Billings, Montana, Fremont, Nebraska, Sioux Falls, South Dakota, and Fond du Lac, Wisconsin. Respondent, Bert C. Gamble, is the chairman of the board of directors of corporate respondent; respondent, Philip W. Skogmo, is the president; respondents M. O. Wieby and H. R. Baker are the vice presidents; respondent Samuel Mills is the secretary, and respondent R. C. Teuscher is the treasurer of the corporate respondent, all of whom have their offices for corporate purposes at the same place of business as said corporation. Respondents H. R. Baker and Samuel Mills reside in the city of Los Angeles, State of California. The individual respondents direct and control the sales policies and business activities of the corporate respondent and all of said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Corporate respondent acting under the direction of the individual respondents is now, and for many years last past has been, engaged in the sale of various items of goods and merchandise, principally automobile supplies, electrical appliances, radios, light hardware, sporting goods, paints and ready-to-wear clothing. Corporate respondent likewise manufactures batteries, paints and varnishes, and other items of merchandise through Solar Corporation, a wholly owned subsidiary corporation organized and existing under the laws of the State of Wisconsin, a substantial part of such items of goods and merchandise, together with the other above described goods and merchandise which it acquires from other manufacturers, it sells to some 1,600 retail customers for resale by said retail stores within the several States of the United States, and territories thereof, and in the District of Columbia and Canada. Corporate respondent has a regular form of contract with its dealer stores to which it sells merchandise, said contract being denominated "Contract For Sale of Mer-

chandise at Wholesale," and the said dealer stores executing said contracts being denominated therein as "Authorized Dealer Gamble Stores." The rapid growth of corporate respondent and the size of its business is evidenced by the fact that corporate respondent's net sales totaled $48,969,434 for the year ending December 31, 1945, and totaled $97,060,657 for the year ending December 31, 1946, a substantial portion of which sales being made to said authorized Gamble dealer stores above described. In the course and conduct of its business, corporate respondent transports the said products or causes the same to be transported from the State and place of their manufacture and/or the State and place where respondent maintains its warehouses as above described to its customers and purchasers thereof located in States other than the place of manufacture or warehousing of said products, and there is now, and has been for many years last past, a constant current of trade and commerce in said products between and among the various States of the United States, the territories thereof, and in the District of Columbia and Canada.

PAR. 3. In the course and conduct of its said business as herein described corporate respondent has been for many years last past, or would have been except for the restrictive conditions, agreements and understandings hereinafter described in Paragraph Four hereof, in substantial competition in the sale of automobile supplies, electrical appliances, radios, light hardware, sporting goods, paints, ready-to-wear clothing and other goods, wares and merchandise in commerce between and among the various States of the United States, the territories thereof, and in the District of Columbia, and Canada, with other corporations and with persons, firms and partnerships.

PAR. 4. In the course and conduct of the business of corporate respondent described in Paragraphs One, Two and Three hereof, corporate respondent, acting under the direction of the individual respondents, in the course of such commerce has made sales and contracts for sale and is still making sales and contracts for the sale of automobile supplies, electrical appliances, radios, light hardware, sporting goods, paints, ready-to-wear clothing and other goods, wares and merchandise, on the conditions, agreements, and understandings that the purchasers thereof shall not use or deal in similar merchandise including automobile supplies, electrical appliances, sporting goods, radios, light hardware, paints, ready-to-wear clothing, or other goods, wares, merchandise, machinery supplies or other commodities of a competitor or competitors of the corporate respondent.

PAR. 5. The effect of said sales and contracts for sale on such conditions, agreements and understandings may be, has been, and still is, to substantially lessen competition; and to injure, destroy and pre-

vent competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers and purchasers of respondent are engaged; and tends to create, and has created, a monopoly in respondent in the commerce aforesaid, of automobile supplies, electrical appliances, radios, light hardware, sporting goods, paints, ready-to-wear clothing, and other goods, wares and merchandise, in the sale of which corporate respondent has been and now is engaged.

PAR. 6. The aforesaid acts of said respondents Gamble-Skogmo, Inc., Bert C. Gamble, Philip W. Skogmo, M. O. Wieby, H. R. Baker, Samuel Mills, and R. C. Teuscher, constitute a violation of the provisions of section 3 of the hereinabove-mentioned 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).

Count II

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in Paragraph One of Count One of this complaint to the same extent and as though the allegations of said Paragraph One of said Count One were set out in full herein, and said Paragraph One of said Count One is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in Paragraph Two of Count One of this complaint to the same extent and as though the allegations of said Paragraph Two of said Count One were set out in full herein, and said Paragraph Two of said Count One is incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in Paragraph Three of Count One of this complaint to the same extent and as though the allegations of said Paragraph Three of said Count One were set out in full herein, and said Paragraph Three of said Count One is incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in Paragraph Four of Count One of this complaint to the same extent and as though the allegations of said Paragraph Four of said Count One were set out in full herein, and said Paragraph Four of said Count

One is incorporated herein by reference and made a part of the allegations of this count.

PAR. 5. In the course and conduct of the business of corporate respondent as hereinbefore described, and in pursuance of the acts and practices alleged in Paragraph Four hereof, corporate respondent, acting under the direction of the individual respondents, for more than three years last past, has employed and now employs the following methods, acts, and practices in competition in commerce, to-wit:

(a) Corporate respondent's regular form of contract entered into with the retail stores to which it sells its merchandise, said contract being denominated as "Contract For Sale of Merchandise At Wholesale" provides in part as follows:

"It is agreed that unless otherwise authorized in writing, the Retailer shall order, and obtain, his merchandise from the Wholesaler's Store or Warehouse at _____ and shall pay for the same cash on delivery."

At periodic meetings with retail store owners with whom corporate respondent has executed such a "Contract For Sale of Merchandise At Wholesale," such retail owners being denominated in such contracts as "Authorized Dealer Gamble Stores," corporate respondent's officials and representatives in attendance at such meetings have advised, and now advise the said retailers that corporate respondent's policy requires that all merchandise handled by such retailers be purchased of corporate respondent to the exclusion of merchandise sold by persons, firms and corporations other than corporate respondent.

(b) In addition to the coercion, pressure and intimidation of the retail store owners with whom it has contracts through the method of periodic meetings attended by corporate respondent's officials and representatives as aforesaid, corporate respondent, acting under the direction of the individual respondents and through its sales officials or field representatives, has demanded and now demands that the retail store owners with whom it has contracts deal exclusively with corporate respondent and has demanded and now demands that such retail store owners shall not deal in or sell the merchandise of competitors of corporate respondent; in some cases demand is even made that such retail store owners shall not deal in or sell a certain line of products of competitors of respondent even though such products are in scarce supply and cannot be supplied by corporate respondent. Corporate respondent, acting under the direction of the individual respondents, maintains a large force of field representatives who periodically call on all "Authorized Dealer Gamble Stores" and who are instructed to, and who do on such visits, check such retail store owners' stock for the purpose of ascertaining whether such retail stores are using or dealing in the merchandise of competitors of cor-

porate respondent and such field representatives are required to, and do, make reports of any competitor's merchandise found in the stock of such retail stores. That such field representatives of corporate respondent as well as home office officials of corporate respondent threaten retail store owners with cancellation of their contracts with corporate respondent unless all competitors' merchandise is immediately disposed of and unless such retail store owners confine their purchases exclusively to the merchandise procured from corporate respondent. That corporate respondent acting under the direction of the individual respondents, in fact has cancelled some of its contracts with retail stores for no other cause than that they were dealing in merchandise other than that supplied by corporate respondent. That as a result of such threats, intimidation and coercion on the part of respondents, the conditions, agreements and understandings relative to exclusive dealings, as alleged in Paragraph Four hereof, have been and now are being implemented and rigidly policed and enforced by respondents.

(c) Corporate respondent, acting under the direction of the individual respondents, has for many years last past maintained, and now does maintain, an annual bonus system applicable to the retail store owners with whom it has contracts known as "Authorized Dealer Gamble Stores." Under such bonus system an annual bonus of 1 percent of total purchases is paid by corporate respondent to such retail store owners providing such retail store owners comply with certain conditions among which is listed as "giving proper cooperation." Many retail store owners have been threatened with the loss of such annual bonus and such bonuses have been diminished from the full amount of 1 percent or cut off entirely in some cases by reason of the alleged failure of said retail store owners to give proper cooperation for the sole reason that they were purchasing merchandise from sources other than corporate respondent. That the monetary loss inflicted upon such retail store owners by corporate respondent or the threat of such monetary loss due to its interpretation of the condition "giving proper cooperation" contained in its bonus system has not only deprived such retail store owners of bonus payments to which they were properly entitled but has further implemented and enforced the conditions, understandings and agreements to deal exclusively with corporate respondent as described in Paragraph Four hereof.

PAR. 6. The acts and practices of respondents as herein alleged are all to the injury and prejudice of competitors of respondent corporation and of the public; have a tendency to and have actually hindered and prevented competition in the sale of merchandise sold by

corporate respondent as described in Paragraph Two hereof including automobile supplies, electrical appliances, radios, light hardware, paints, sporting goods, ready-to-wear clothing, and other merchandise in commerce within the intent and meaning of the Federal Trade Commission Act; have a tendency to and have obstructed and restrained such commerce in such merchandise, and constitute unfair methods of competition in commerce within the intent and meaning, and in violation of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of 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), and the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 15, 1948, issued and subsequently served its complaint in this proceeding upon respondent Gamble-Skogmo, Inc., a corporation, and respondents Bert C. Gamble, Philip W. Skogmo, M. O. Weiby, Samuel Miles and R. C. Teuscher, charging the respondents named in the complaint with having made sales and contracts for the sale of merchandise on the condition, agreement or understanding that the purchasers thereof should not use or deal in similar merchandise of a competitor or competitors of the respondent Gamble-Skogmo, Inc., in violation of the provisions of Section 3 of said Clayton Act, and with the use of unfair methods of competition in commerce in the distribution and sale of merchandise in violation of the provisions of the Federal Trade Commission Act. After the issuance of said complaint and the filing of joint answer thereto by all the parties named in the caption hereof except H. R. Baker, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission, theretofore designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding came on for final hearing before the Commission on the said complaint, answer, testimony and other evidence, recommended decision of the substitute hearing examiner, theretofore designated by the Commission to act in the place and stead of the original hearing examiner, respondents' exceptions to the recommended decision, briefs in support of and in opposition to the complaint, and oral arguments 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 Gamble-Skogmo, Inc., is a corporation incorporated on May 25, 1928, under the laws of the State of Delaware, with its principal office and place of business at 15 North Eighth Street, Minneapolis, Minnesota. Respondent Bert C. Gamble is chairman of the board of the corporate respondent. Respondent M. O. Weiby, erroneously named in the complaint as M. O. Wieby, is a vice president of the corporate respondent, respondent R. C. Teuscher is treasurer, and respondent Samuel Miles, erroneously named in the complaint as Samuel Mills, served as secretary until his resignation on March 1, 1948. Philip W. Skogmo was president of corporate respondent from 1928 until his death on December 31, 1949, and H. R. Baker, named in the complaint also as a respondent herein, died on January 20, 1948, prior to the commencement of this proceeding. Respondents Bert C. Gamble, M. O. Weiby and R. C. Teuscher are members of the board of directors of the corporate respondent, as were Philip W. Skogmo and H. R. Baker prior to and until their deaths, and as was respondent Samuel Miles until the time of his resignation, and these individuals managed, directed and controlled the sales policies and business activities of the respondent corporation.

PAR. 2. The respondent corporation is engaged in the business of selling merchandise ranging from thimbles to farm tractors. The principal merchandise groups are: automotive, including accessories and parts, tires and tubes, batteries, and lubrication items; wearing apparel and other soft goods, including men's, women's and children's clothing and accessories, shoes, bedding, linens and draperies, and notions and piece goods; major appliances, including radios and accessories, refrigerators, washing machines, ironers, vacuum cleaners, electric ranges, and stoves and heaters; sporting goods, wheel goods, toys, and other items; building supplies and equipment, including materials, paints, and varnishes, hardware, and plumbing and heating equipment; housewares, including small electrical goods, crockery, glassware, furniture and floor coverings; farm equipment and parts, farm supplies, and lawn and garden equipment; and foods and confections. The merchandise handled by respondent company is purchased from approximately 300 manufacturers and suppliers with the exception of storage batteries, washing machines, some insulation and paints which products are manufactured by a wholly owned subsidiary, Solar Corporation. The number of items of merchandise handled by the corporate respondent in its hard lines and furniture department ranges from 7,300 to 12,000, which figures do not include the soft lines, such as men's, women's and children's clothing.

Findings

PAR. 3. Respondent Gamble-Skogmo, Inc., has at all times mentioned herein marketed its merchandise at retail through retail stores owned, directly or by a corporate affiliate, and operated by it or its affiliates, hereinafter referred to as "company-owned stores", and at wholesale to independently-owned retail stores, hereinafter referred to as "dealer stores".

Following the incorporation of the respondent company in 1928, it acquired from respondents Gamble and Skogmo title, through the exchange of stock or by purchase, to 55 retail stores located in five states. Prior to and during a part of the year 1946, the company acquired additional interests in stores, the business being operated generally as a single enterprise, but through a number of interrelated corporations, and in that year a general merger of the corporate interests was effected, together with the acquisition by merger of the business then conducted by a corporation known as Western Auto Supply Company, a California corporation, then operating retail stores and conducting wholesale operations in the far West. As a result of the mergers, the respondent corporation in 1948 owned and operated 484 retail stores located in 23 Middle Western, Northwestern and far Western States, and 35 located in 4 western Canadian provinces and Hawaii. The company-owned stores in the United States located east of the Rocky Mountains are operated principally under the name "Gambles"; in the far West, principally under the name "Western Auto Supply Company"; and in Canada, under the name "Macleod's."

In 1933, the respondent company inaugurated a dealer store program under which a wholesale business was developed, which increased until in February 1948 it was selling merchandise at wholesale to 1,735 dealer stores in localities where the respondent company had no company-owned store. The states and the number of towns in which the stores were located are as follows:

States:	*Independently operated dealer stores*
Arizona	14
Arkansas	1
California	120
Colorado	59
Idaho	37
Illinois	81
Indiana	35
Iowa	146
Kansas	87
Michigan	107
Minnesota	260
Missouri	46
Montana	64
Nebraska	130
Nevada	2

States:	*Independently operated dealer stores*
New Mexico	18
North Dakota	108
Ohio	14
Oregon	42
South Dakota	107
Texas	1
Utah	16
Washington	53
Wisconsin	164
Wyoming	23
Total	1,735

Of the dealer stores, 297 operating under the name "Western Auto Supply Company Dealers" in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming became dealers of respondent company on November 1, 1946, as a result of the merger in 1946 above referred to. Total sales of the respondent corporation through its company-owned retail stores and to the dealer stores were approximately $145,000,000 in 1947. It is respondents' acts and practices in the conduct of their business with said dealer stores which are the subjects of this proceeding.

PAR. 4. Respondent Gamble-Skogmo, Inc., transports its merchandise or causes the same to be transported from the factories located in various states of the United States in which it is made, across state lines directly, in some instances, to the purchasers thereof or in other instances to the company-owned stores located in other and different states but usually to warehouses maintained by respondent company at Denver, Colo., Chicago, Ill., Marshalltown, Iowa, Salina, Kans., Minneapolis and Morehead, Minn., Billings, Mont., Fremont, Nebr., Sioux Falls, S. D., Portland, Oreg., Ogden, Utah, and Los Angeles and Stockton, Calif. From these warehouses, the merchandise is transported by respondent company to the company-owned stores and to the dealer stores, some of the dealer stores being located in states other than the states where its warehouses are located, and during its corporate existence respondent company has carried on a constant current of trade and commerce in said merchandise between and among the various states of the United States and the Territory of Hawaii.

PAR. 5. The respondent company in the conduct of its business has had, and now has, many competitors selling similar merchandise in interstate commerce at both the manufacturing and wholesale levels.

PAR. 6. The aggregate annual dollar volume of corporate respondent's sales of merchandise to the dealer stores, the number of dealer stores and the average dollar value of the merchandise sold each dealer store during the years 1941 to and including 1947 were as follows:

Year	Aggregate sales to dealer stores	Number of units	Average sales
1941	$20,475,082	1472	$13,910
1942	19,349,175	1316	14,703
1943	18,240,918	1218	14,976
1944	19,602,530	1271	15,423
1945	25,605,160	1292	19,818
1946	47,348,889	1418	33,391
1947	61,071,225	1735	35,200

The substantial increase in the company's wholesale sales in the years 1946 and 1947 was due in part to the acquisition of the additional stores resulting from the reorganization in 1946, in part to the greater availability of merchandise which was not available during the war period and to a lesser extent to the enlargement of the lines of merchandise sold by respondent company and an increase in the dollar volume due to a raise in prices following the lifting of governmental price controls.

PAR. 7. The respondent corporation entered into contracts or had verbal agreements with each of the 1,735 dealer stores situated over an area of 25 states, 1,609 of which stores, upon the basis of census data for the year 1940, were located in hamlets and towns ranging from 5 to 5,000 in population. According to these data, approximately 40 of such stores were located in cities the populations of which exceeded 10,000. Between September 1939 and April 1946 all written contracts were on one form and continued in effect until cancelled, of which there are now 1,088 in force. During the period from April 1946 to March 1948, all contracts entered into by the corporate respondent with dealer stores were on another form which continued in force until cancelled, of which there are now 374 in force. Subsequent to March 1948, a slightly different form was used, of which there are now 97 in force. This respondent has dealt and now deals with those remaining dealer stores located in Colorado, Montana, Idaho and Utah, under verbal agreements but upon the same terms and conditions as it deals with those stores with which it has written contracts, the only difference being the absence of a written contract.

The form of contract used from April 1946 to March 1948 contains, among others, the following provisions:

That whereas, The Wholesaler for many years has been selling merchandise at retail through a large number of stores owned by the Wholesaler and known as Gamble Stores and in addition thereto the Wholesaler for many years has sold merchandise at Wholesale to individuals who own and operate their individual business under the name of Gamble Dealer Stores and through the sale of such merchandise and the establishment of its trade names and good will the Wholesaler has built up a large demand for its merchandise; and

Whereas, The Retailer has established or will establish a store at_____ _____ for the sale at retail of the merchandise of the kinds offered by the Wholesaler or sources approved by the Wholesaler. In order to secure the benefits of selling merchandise for which the Wholesaler has created customer demand and good will, and of purchasing the same on the advantageous basis granted to Retailers by the Wholesaler, the Retailer desires to purchase merchandise from the Wholesaler for resale in said store, and the Wholesaler is willing to sell such merchandise on the terms and conditions herein stated.

Witnesseth, That in consideration of the agreements herein contained, the parties hereto mutually agree as follows:

1. The Wholesaler agrees to sell to the Retailer, and the Retailer agrees to purchase from the Wholesaler, at prices to be established from time to time by the Wholesaler, such merchandise as the Wholesaler regularly carries for sale in its own stores. The Wholesaler will use its best efforts to fill orders from the Retailer, but shall not be liable to the Retailer for any loss or damage occasioned by the Wholesaler's failure to deliver any merchandise ordered.

2. To enable the Wholesaler to determine the quantity of stock to be carried on hand from time to time for filling orders of the Retailer, it is agreed that unless otherwise authorized in writing, the Retailer shall order, and obtain, his merchandise from the Wholesaler's Store or Warehouse at _____ and shall pay for the same cash on delivery. If merchandise is shipped direct from other sources authorized by the Wholesaler, the Retailer will pay therefor cash in advance before shipment.

* * *

7. The Wholesaler will furnish and the Retailer will use the display material, advertising, and merchandising services including but not limited to the following items and services for the purpose of assisting the Retailer in the promotion and sale of merchandise purchased by the Retailer from the Wholesaler; retail circulars; retail catalogs; retail radio advertising; retail newspaper mat service; retail display material; national advertising display material; Planning Guide; window photographs; display photographs; merchandise listing sheets; wholesale catalogs; printed order forms; a stock control system; bookkeeping forms; monthly report forms; a store manual; educational material; a Company magazine; merchandising bulletins; store operation bulletins; the personal assistance of a field representative; dealership certificate of authorization; personal advisory service, either by mail or at the Home Office of the Wholesaler on all problems of the Retailer or his business; local newspaper advertising at the Wholesaler's expense in accordance with the schedules established from time to time by the Wholesaler. All of the above to be paid for and used by the Retailer in accordance with the prices and policies as established by the Wholesaler from time to time, it being the intent of the Wholesaler to provide to the Retailer all of the necessary advertising, counsel and assistance to assist him in the profitable operation of his own business.

7a. The Wholesaler will pay the retailer an annual bonus out of the net profit, if any, of the Wholesaler, in an amount to be determined by the Wholesaler in accordance with its "Dealer Bonus Plan" as may be approved by its Board of Directors from time to time.

The recitations of the preamble of the foregoing contract appear also in the form adopted for use subsequent to March 1948 but are absent from the form of contract first used. The first numbered para-

graph contained in the two forms employed later contains departures from the form employed in the earliest contracts. Among other differences, the mandatory provisions of the paragraphs numbered 4 and 7 are permissive under the form of contract earliest used and a provision similar to Paragraph 7 (a) is absent from both of the other forms.

PAR. 8. As construed by respondents in the general course and conduct of corporate respondent's business relations with dealer customers, these contractual accords have required the dealers to purchase from and deal in merchandise sold by or through the respondent company to the exclusion of merchandise sold by competitors. Compliance with respondent company's exclusive dealing policy has been insisted upon, bonuses have been paid to those dealer stores who complied literally or made substantial compliance therewith and bonuses have been refused to those who have not made substantial compliance. Stocks in dealer stores have been checked periodically by corporate respondent's representatives to discover violations and the presence of foreign merchandise duly reported to the corporate respondent. Respondent corporation, as a condition to continuing the sale of its merchandise to dealers, in instances has exacted promises that merchandise theretofore procured from other sources would be disposed of within a stated period and contracts with dealer stores have been cancelled by this respondent for failure on the part of such retail merchants to deal exclusively, or substantially so, in its merchandise.

PAR. 9. Among the acts and statements of respondents disclosed by the record which furnish bases for the foregoing conclusions are statements appearing in certain instructions disseminated to the dealer stores. Under date of October 13, 1934, approximately one year after the corporate respondent inaugurated its dealer-store program, it forwarded to the dealer stores a mimeographed paper entitled "Special Agency Store Memo to Agency Stores" admonishing the dealer stores in substance that loyalty to the corporate respondent's program necessitated the purchase of its merchandise exclusively, one paragraph being as follows:

BIG NEWS—We are going to reward those who have the proper loyalty by giving a bonus at the end of the year based on purchases for the entire year, but this will be done only to those who carry out our program from this date on in 100% manner. Conflicting merchandise now in stock must be disposed of immediately. Any violations will necessitate the cancellation of contract and the forfeiture of the bonus.

The policy of the respondent corporation in its dealings with the dealer stores, as set forth in the document above referred to, was reaffirmed in a bulletin entitled "LOYALTY", dated December 24, 1938,

and sent to all dealer stores. Provision for payment, under certain conditions, of the bonus appears in 374 existing contracts although no payments have been in fact made since 1946. The bonus paid consisted of an amount equal to ¾ of 1% of the total annual purchases by the dealer, except for one year when it was 1%. The terms and conditions upon which a dealer store was eligible to receive the bonus is stated in the respondent company's announcement of the policy. Failure of the dealer stores to substantially comply with the plan and purchase all, or substantially all, merchandise from the respondent company resulted in denial of the bonus in many cases with resultant financial loss.

Expressions of company policy also occurred at dealers' meetings. During the period covered in the testimony, respondent company called and held meetings of the representatives of the dealer stores at convenient places in various parts of the United States in which the dealer stores were located, at some of which its president was present and at all or substantially all of which it had a representative who addressed the dealers and who advised them, either expressly or by implication, that they were required to purchase all of their merchandise from respondent company.

Respondents' policies were implemented by instructions to corporate respondent's suppliers. In a form letter dated April 4, 1947, sent to some 300 manufacturers from whom the respondent company purchased merchandise, the manufacturers were advised, in part, as follows:

> Validation of orders: Any orders received direct from Gamble Stores Authorized Dealers should be mailed to this office without honoring them. We cannot be responsible for orders placed by Authorized Dealers direct to a source of supply. Our plan of operation requires Dealers to place orders either with the Warehouse or with the Minneapolis Home Office.
>
> Price Quotations: No price quotation should be given out to Gamble Stores, Associate Gamble Stores, Gamble Stores Authorized Dealer or Dealer Warehouses. Any request for such information should be forwarded to Gamble-Skogmo, Inc., 700 North Washington Ave., Minneapolis, Minn.

PAR. 10. Adherence or loyalty to corporate respondent's exclusive dealing policies was continuously investigated. Applicants for contracts to purchase at wholesale the merchandise sold by the respondent company were required to fill out a questionnaire on a form furnished by the respondent company headed "APPLICATION FOR GAMBLE AUTHORIZED DEALER STORE." Among the inquiries contained in such application was: "Do you agree to conduct a Gamble Dealer Store according to the proven policies of the company?" Following the applicant's answers to the questions under the heading "INFORMATION TO BE FILLED IN COMPLETELY

BY GAMBLE REPRESENTATIVE", the representative was required to answer, among others, the following questions: "Have you discussed the plan completely and read the contract thoroughly with applicant?" "Do you believe that he will be cooperative and conform to the various policies that have been factors in the success of our company?"

The respondent corporation has established zones for the dealer stores, each zone comprising from twenty to thirty dealer stores. It maintains representatives known as "Superintendents", who visit the dealer stores and, among other things, interpret the company's policies to the dealers. It also maintains about 60 representatives known as "Zone Superintendents" or "field men", who operate in the separate zones and periodically visit the dealer stores. Until within a few months before the complaint in this proceeding issued, the field men worked under the direction of the head of the dealer department in the home office. A change then was made whereby a part of the field men worked under, and reported to, an intermediary known as a "Wholesale Sales Manager." The field men were required to and did check the stock in the dealer stores to ascertain whether competitive merchandise was present, and, if any such merchandise was found, made written report to the home office or an intermediate office.

When visiting the stores of dealers, the field men have threatened dealers with cancellation of their contracts unless competitive merchandise was promptly disposed of and future purchases confined to the products of corporate respondent. The record clearly demonstrates that dealers' desire to handle competitive merchandise has been the reason for cancellation by corporate respondent. Dealing in, or the announced intention to deal in, competitive merchandise has resulted in cancellation by respondents of corporate respondent's contracts with a substantial number of dealers. A number of its letters of cancellation have assigned as reasons therefor the fact that the merchants have been "desirous of representing others in the sale of merchandise." In one instance, corporate respondent's termination of the contract was preceded by less than a year and a half by another letter commending the dealer for the manner in which he was operating the business, and in another case moreover, some time prior to cancellation, the merchant received a certificate designating him as an outstanding dealer and was otherwise commended by representatives of corporate respondent for his competence.

PAR. 11. Many of corporate respondent's dealers have adhered to and complied with the conditions, understandings and agreements imposed by it with respect to exclusive dealing. In instances where dealers have bought from sources other than corporate respondent,

its insistence on exclusive dealing has caused the greater volume of purchases to be restricted to it. Many independent jobbers and manufacturers distributing similar merchandise in commerce have been unable to sell their products in substantial quantities to Gamble dealers and dealers in declining to purchase from representatives of competing distributors have assigned as reason therefor the fact that they were required by their contractual arrangement or corporate respondent's policy to limit their dealings to it.

Respondents contend that the acts and practices here under consideration are not unlawful for the reason, among others, that it should be concluded that they affect only an insignificant segment of the total volume of business conducted at wholesale in the entire area of 25 states where dealer stores purchasing from corporate respondent are located. In this connection, it is urged that that portion of the business derived by corporate respondent from its dealers in an area of 19 states in which the majority of such dealer stores are situated constitutes approximately ¾ of 1% of the aggregate volume of wholesale sales by all manufacturers and distributors there made in the categories of merchandise handled by it. Assuming without, however, deciding that this percentage accurately reflects corporate respondent's share of that volume in the aggregate, it is apparent that this circumstance serves in no way to portray the competitive situation prevailing in those localities where the dealer stores are situated and in which any influence stemming from respondents' practices would be directly exerted.

Omitting from consideration entirely corporate respondent's commercial status incident to its operation in the continental United States of 484 company-owned stores, it is shown by the record that this company's annual sales at wholesale to dealers ranged during the period of 1941 through 1947 from a low of approximately $18,000,000 to slightly over $61,000,000. Average sales to dealer stores in 1947 represented $35,200, and accentuating the significance of this fact is the circumstance that over 1,600 of such business places were located in hamlets and towns ranging from 5 to 5,000 in population, and that the cities where many others were located did not greatly exceed this larger figure. That established outlets for merchandise in communities of this size ordinarily are restricted in number is obvious. The Commission is of the opinion that controlling here, in appraising the impact of respondents' practices on competition, is the circumstance that corporate respondent's share of the business is a consequential and substantial one in the numerous communities where it distributes and sells merchandise to dealer stores and that the area of commerce foreclosed to competitors of corporate respondent by the acts and practices engaged in is a substantial one.

PAR. 12. The effect of respondents' sales as aforesaid and contracts for sale may be and has been to substantially lessen competition in the line of commerce in which the respondent corporation is engaged and has a tendency to create a monopoly in respondent corporation in the commerce aforesaid of automotive supplies, electrical appliances, radios, light hardware, sporting goods, paints, ready-to-wear clothing, and other goods, wares and merchandise in the sale of which the corporate respondent has engaged. Respondents' acts and practices have had a tendency to and have actually hindered and prevented competition in the sale in interstate commerce of those categories of merchandise sold by corporate respondent, and have had a tendency to restrain and obstruct such commerce therein.

CONCLUSION

The acts and practices of respondents Gamble-Skogmo, Inc., Bert C. Gamble, M. O. Weiby, Samuel Miles, and R. C. Teuscher, as hereinabove set out, constitute a violation of Section 3 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) and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 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 joint answer thereto, testimony and other evidence taken before a hearing examiner of the Commission, theretofore duly designated by it, the recommended decision of the substitute hearing examiner duly designated to act in the place and stead of the original hearing examiner, and the exceptions to the recommended decision filed by respondents, briefs in support of and in opposition to the allegations of the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents there designated have violated the provisions of Section 3 of that Act of the Congress of the United States, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), and the provisions of Section 5 of the Federal Trade Commission Act:

I. *It is ordered*, That respondents Gamble-Skogmo, Inc., a corporation and its officers, and respondents Bert C. Gamble, M. O. Weiby, R. C. Teuscher, and Samuel Miles, and said respondents' agents, repre-

sentatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(a) Selling or making any contracts or agreements for the sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use or deal in or sell the merchandise of a competitor or competitors of corporate respondent.

(b) Enforcing or continuing in operation or effect any condition, agreement or understanding in, or in connection with, any existing sales contract which condition, agreement or understanding is to the effect that the purchaser of said products shall not use or deal in the merchandise of a competitor or competitors of the corporate respondent.

II. *It is further ordered*, That respondent Gamble-Skogmo, Inc., a corporation, and its officers, and respondents Bert C. Gamble, M. O. Weiby, R. C. Teuscher, and Samuel Miles, 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Selling or making any contract or agreement for sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use or deal in or sell the merchandise of a competitor or competitors of the corporate respondent.

(b) Enforcing or continuing in operation or effect any condition, agreement or understanding in, or in connection with, any existing sales contract or agreement which condition, agreement or understanding is to the effect that the purchaser of said products shall not use or deal in the merchandise of a competitor or competitors of the corporate respondent.

(c) Offering a cash bonus or any other inducement to corporate respondent's independent dealers or other purchasers or prospective purchasers on the condition, agreement or understanding that such independent dealers or other purchasers or prospective purchasers shall not use or deal in the merchandise of a competitor or competitors of the corporate respondent.

(d) Cancelling, or directly or by implication threatening the cancellation of, any contract or franchise or selling agreement with corporate respondent's independent dealers or other customers for the sale of said products because of the failure or refusal of such pur-

chasers to purchase or deal exclusively in the merchandise sold and distributed by the corporate respondent.

(e) The performance of any act of intimidation or coercion either through statements, oral or written, made by representatives of corporate respondent at independent dealer field meetings or during the course of calls made upon independent dealers at their stores or at any other place, or the use of any system or practice, plan, or method of doing business, for the purpose or having the effect of intimidating or coercing such corporate respondent's independent dealers or other purchasers to purchase their merchandise requirements exclusively from corporate respondent.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Philip W. Skogmo and H. R. Baker, both deceased.

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

IN THE MATTER OF

ENCYCLOPAEDIA BRITANNICA, INC.

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

Docket 5384. Complaint, Sept. 28, 1945—Decision, June 12, 1952

Where a corporation engaged in the interstate sale and distribution of its "Britannica Junior" encyclopedia under its "15 for 1" plan, pursuant to which its sales agents contacted the superintendent or principal of a school to obtain the names of pupils and their parents and called upon the latter to sell them the books, and the school received a set of said encyclopedia for each fifteen sets sold, or proportionate credit or some other book such as an atlas or dictionary if fewer than fifteen were sold—

(a) Erroneously and misleadingly represented through the use of the expression "School Advancement Program", that the plan was designed primarily for the benefit and improvement of the school; the facts being that while the schools derived incidental benefit through obtaining the books, the program was essentially a sales plan or campaign for the sale of books to the public;

(b) Unwarrantedly and misleadingly represented in a substantial number of instances, through statements of its sales agents, that the local school or the superintendent or some other official was sponsoring the sale of the books; when the school's only connection with the matter was that it had supplied the names and addresses of the pupils and parents;

(c) Erroneously and misleadingly represented through its agents that the books were essential or indispensable to the proper preparation by pupils of their homework; and

(d) Erroneously and misleadingly represented, as aforesaid, that the price at which the books were offered under said sales plan were special or reduced, applicable for a limited time only; when in fact they were the regular prices;

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

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

As respects interlocutory orders of the Commission, no requirement exists that hearing examiners subsequently adopt, verbatim, in the preparation of initial decisions, such language relevant to the matters to be stated as may have appeared in the Commission's own orders.

As respects exceptions by counsel supporting the complaint in the aforesaid matter, which challenged, among other things, the hearing examiner's use of various words and terms such as "erroneous", "inherently erroneous and misleading", and "unwarranted and misleading", to characterize certain of the representations which occurred during respondent's house-to-house sales presentations to the public, counsel urging that they should instead be characterized as false, so that any findings which might issue would not be susceptible to an interpretation that there were but a few misrepresen-

tations, or that they represented inadvertent, unintentional mistakes on the part of respondent and its representatives:

The Commission was of the opinion that no error was presented through use of the expressions in question in the particular contexts in which they occurred or by reason of the examiner's failure to additionally characterize respondent's misrepresentations as false.

Certain other exceptions also rejected were directed to use of the word "unquestionable" in connection with the value of the program to the schools; to use of the word "already" in noting the discontinuance of the designation "School Advancement Program"; to the omission from the initial decision of a detailed narration of the statements made by respondent's salesmen; to the grouping of three of the charges of the complaint, for lack of proper emphasis; and to the examiner's failure to find certain specific misrepresentation of alleged savings growing out of the price misrepresentation;

The Commission, among other things, holding the use of said words neither inappropriate, nor unwarranted; and noting, as respects salesmen's statements, that neither the conclusions characterizing such representations were challenged as erroneous nor the prohibitions inadequate; and, as respects said last exception, the absence of any indication of resulting error in the findings, substantively; or deficiency in the order.

Before *Mr. Arthur F. Thomas* and *Mr. William L. Pack*, hearing examiners.

Mr. John M. Russell and *Mr. William L. Pencke* for the Commission.

Mr. H. J. Joy, of Chicago, Ill., and *Davies, Richberg, Tydings, Beebe & Landa* and *Mr. L. A. Scholl*, of Washington, D. C., for respondent.

Mr. Otto T. Englehart, of Washington, D. C., and *Mr. Lorentz B. Knouff*, of Chicago, Ill., for F. E. Compton & Co., intervenor.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Encyclopaedia Britannica, Inc., 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 complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Encyclopaedia Britannica, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent's office and principal place of business is located at 20 North Wacker Drive, Chicago, Illinois.

PAR. 2. Respondent Encyclopaedia Britannica, Inc., now is, and for over two years last past has been, engaged in the business of publishing and of selling and distributing books, including encyclopaedia sets called Britannica Junior. Respondent causes its Britannica Junior sets, when sold, to be transported from its 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said encyclopaedia sets 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 its said business in connection with the sale and distribution of its Britannica Junior encyclopaedia sets and as an inducement for the purchase thereof by members of the purchasing public, respondent adopted in or about the fall of 1941, a so-called "15 for 1 Plan" for selling its said sets and thereafter used such plan, representing that it is a "Britannica Junior School Advancement Program" plan, especially designed for those neighborhoods where a school or library is unable to buy an initial or additional set or sets of Britannica Junior for the use of the children in the school. The said plan operates as follows:

One of the respondent's representatives calls on the superintendent or other official of the school and explains that the Encyclopaedia Britannica, Inc., desires to initiate a "School Advancement Program" in their community which affords the school an opportunity to receive a set of Britannica Junior "free" providing the school official furnishes the representative with a card stating the name, age, and grade of each pupil, the teacher's name and the name and address and occupation of the pupil's parents thereon: that the requirement of a letter of endorsement or approval of the Britannica set by such school official is optional; and provided further that the sale of fifteen similar sets of said encyclopaedia is effected by said representative of Encyclopaedia Britannica, Inc., among the parents having children attending the school. Assurance is given that the names of the "loyal parents of 15 of your students" who purchase the sets will appear on a presentation page attached to the inside front cover of Volume I of the set of Britannica Junior they "wish to give to the school."

Respondent's representative thereafter contacts the parents or parent of the children of the school and represents:

That he is working through or cooperating with the school on a "School Advancement Program" whereby the school will receive a set of Britannica Junior free if and when he sells 15 similar sets to the parents having children attending said school;

That the school superintendent or other official has furnished him with the parents' names and the said information concerning their child or children and their teacher, in order that they could be afforded an opportunity to participate in the School Advancement Program by buying a set of Britannica Junior encyclopaedia for their child or children;

That the school is sponsoring the program and its superintendent or other person in authority is recommending that the parents buy the books;

That the parents by buying the set through the school receive a special price because the company is very desirous of having these books in their community;

That the school superintendent or other official highly recommended these sets for use by the children in preparing their work for school;

That people in that community were offered an opportunity to buy a set of Britannica Junior at a reduced cost because of the "School Advancement Program" his company is backing;

That a special price was being quoted but that this would be for only a limited time;

That the children of parents who bought the books would have a definite advantage over the other children who did not have a set of these books to be used in connection with their school work;

That the superintendent or other official of the school personally endorsed these books and was recommending them to the parents as being indispensable for use by their children;

That if the parents purchased this set of books they would not have to buy any other books because the information contained in Britannica Junior was full and complete;

That the school endorsed the books and was recommending them to the parents as being indispensable for their children in preparing their school work;

That the books were being sold through the school;

That the school superintendent or other official was desirous of having the children in the school own a set of Britannica Junior in order that they could do their home work;

That he lacked only one set of having sold the required number for the school to receive a free set;

That he was selling only a limited number of these books in the vicinity;

That the parents he is calling on had been selected to participate in the School Advancement Program;

That he was working through the school which was sponsoring the program and recommending that the parents buy the set of Britannica Junior;

That the parents would be saving $120.00 by purchasing the Britannica Junior set through the school;

That the superintendent or other official of the school has furnished him with her name, together with the names of her children in order that she could be given an opportunity to purchase a set of these books to be used by her children in preparing their school home work;

That only the people recommended by the superintendent or other official of the school would have an opportunity to purchase a set;

That the parents by buying the books through the "School Advancement Program" sale would receive a yearbook free for ten years.

PAR. 4. Through the use of the expression "School Advancement Program" and the aforesaid statements and others similar thereto

not specifically set out herein, in connection with the offering for sale and sale of their Britannica Junior encyclopaedia under said so-called "School Advancement Program" or "15 for 1 Plan" respondent directly or by implication represents to the parents of the children in a school that the "School Advancement Program" is designed for the benefit and improvement of the school; that its Britannica Junior encyclopaedia has been adopted by the school authorities for study or reference as part of the school curriculum; that the superintendent or other school authorities are sponsoring the sale of Britannica Junior to the parents; that by purchasing through the school the parents would be securing said books at a special or reduced price; that he could only sell the set at that price for a limited time; that all, or practically all, of the school work is, or would be, taken therefrom or based on the material contained in said books; that the school and its superintendent or other official have endorsed Britannica Junior and are recommending that the parents buy a set as being indispensable to their children in doing their school work; that it is essential to their children's home library in order for them to prepare their school home work; that it is so full and complete as to make the parents' further purchase of school books unnecessary; that respondent's representative is only allowed to sell a limited number of sets of these books through the school or in their community; that he could only sell a set to those parents whom the superintendent or other school authorities had recommended be offered the privilege or opportunity of purchasing same; that the parents would be saving $120.00 by purchasing the set through the school; that if the parents purchase a set through the school they would receive a yearbook free for ten years.

Respondent's representative further states to the parents in selling its Britannica Junior encyclopedia that he only lacks one set of having sold the required number for the school to receive a free set, when this is not a fact; that the school is sponsoring the "Britannica Junior School Advancement Program" sale and its superintendent or other official has recommended that the parents buy a set, when he has expressly requested respondent's representative not to mention the school or his name in selling said sets and respondent's representative has asured him that he would not do so.

PAR. 5. The statements and representations used and disseminated by the respondent in the manner above described are deceptive, false and misleading. Respondent's so-called "School Advancement Program" is not designed for the benefit or improvement of the school, but only for the sale of its Britannica Junior sets; the Britannica Junior encyclopedia has not been adopted for study or reference as a part of the school curriculum; none of the school authorities are

sponsoring said alleged "Britannica Junior School Advancement Program" sale; by purchasing said set of books from respondent's representative the parents would not be securing it through the school or at a special or reduced price, but only at its usual retail price; the time of respondent's representative is not limited to sell said sets at that price; the school work is not and will not be based on or taken from the material contained in said set of books; none of the school authorities has endorsed or is recommending that the parents buy Britannica Junior as being indispensable to their children in doing their school work; it is not essential to their children in preparing their school home work; it is not so full or complete as to make the parents' further purchase of school books unnecessary; respondent's representative is allowed to sell as many of said sets as he is able to, to anyone, and anywhere at the price he is offering a set to the parents; by purchasing a Britannica Junior set in this so-called "School Advancement Program" sale, the parents will not receive any yearbook free.

PAR. 6. In truth and in fact, respondent's so-called "School Advancement Program" or "15 to 1 Plan" is not a plan for the advancement of the school, but only a clever scheme through which the respondent's representative obtains entry into the homes of the parents of the children in a school to sell respondent's books by stating that the parents have been selected by the superintendent or other authorities of the school to be given the opportunity or privilege of buying a Britannica Junior encyclopedia, which the school has adopted for study or reference as part of the school curriculum and is recommending that the parents buy. Thereafter, by making said further false and misleading statements and representations, and others similar thereto, respondent's representative brings great pressure to bear on the parents to buy said set of books, giving them the impression that their children must have same in order to complete their school courses. Many of the parents buy said books who cannot afford to and would not do so except for being deceived and misled by respondent's representative as aforesaid, especially since, as respondent states, it only uses said plan in selling its Britannica Junior encyclopedia in communities where the school or library is unable to purchase a set or a further set or sets thereof.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true, and induces a substantial portion of the purchasing public to purchase respondent's Britannica Junior sets

because of such erroneous and mistaken belief, engendered as above set forth, thereby unfairly diverting trade to the respondent from its competitors in said commerce who truthfully represent their products.

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

ORDERS AND DECISION OF THE COMMISSION

Order denying appeal of counsel supporting complaint from initial decision of the hearing examiner and decision of the Commission and order to file report of compliance, Docket 5384, June 12, 1952, follows:

This matter came on to be heard by the Commission upon the appeal of counsel supporting the complaint from the initial decision of the hearing examiner herein and upon the briefs submitted in support of and in opposition to said appeal.

Counsel supporting the complaint under the first, third, fourth and fifth of his exceptions challenges, among other things, the hearing examiner's use of various words and terms such as "erroneous", "inherently erroneous and misleading", and "unwarranted and misleading" to characterize certain of the representations occurring during respondent's house-to-house sales presentations to the public and, in urging that they instead should be characterized as false, contends, in effect, that this is necessary and proper in order that any findings as to the facts issuing herein be not susceptible to an interpretation that the instances of misrepresentation disclosed by the record are but few in number or that they represent inadvertent, unintentional mistakes on the part of respondent and its representatives. Counsel asserts also that supporting his contentions of error in this respect is the fact that the order of the Commission, dated April 25, 1951, ruling upon respondent's previously filed motion to dismiss contained recitations in detail of various representations and statements which the testimony indicated had been used by salesmen in respondent's sales presentations.

With respect to the circumstance last referred to, namely, the wording of the order of April 25, 1951, no requirement exists that hearing examiners subsequently adopt, verbatim, in the preparation of initial decisions such language relevant to the matters to be stated as may have appeared in the Commission's own interlocutory orders. The Commission, moreover, does not share the view that the state-

ments to which counsel's objections are interposed may be interpreted reasonably as an expression that the misrepresentation heretofore engaged in has occurred only in isolated instances or is attributable to inadvertent or unintentional error. The Commission is of the opinion that no error is presented by reason of the hearing examiner's use of the expressions excepted to in the particular contexts in which they occur or by reason of his failure, in such connection, to additionally characterize respondent's misrepresentations as false.

Under counsel's third exception, additional objection is directed to the words "unquestionably" and "already" appearing in Paragraph Four of the initial decision, counsel alleging in such connection that they have "significantly enthusiastic and complimentary implications." This position is untenable and it is deemed appropriate by the Commission for a hearing examiner to make reference to the circumstance that a party to a proceeding previously or already has discontinued a practice as the hearing examiner has done in the instant case in reference to respondent's former use of the term "School Advancement Program" to designate its sales plan, and it is noted in passing, in this connection also, that he properly concluded, in effect, that the public interest now requires a prohibition against any resumption of its use. In reference to the objection interposed to the word "unquestionably", counsel has advanced no reason why the value of reference books, as distinguished from their essentiality, in the preparation of student home work, should be regarded as questionable.

Counsel interposes objection in his second exception to the omission from the initial decision of a detailed narration of the statements made by respondent's salesmen in the course of those sales presentations which the hearing examiner deems to have been misrepresentative. Counsel does not urge, however, that the conclusions appearing in the initial decision characterizing the representations made by respondent as deceptive in import are erroneous conclusions nor does he contend that the prohibitions contained in the order are inadequate or not responsive to the record, and this exception clearly is without merit.

As a sixth ground for appeal, counsel supporting the complaint objects to the form of Paragraph Six of the hearing examiner's findings and, among other things, contends that, by there grouping together for discussion three of the charges of the complaint, the greater relative gravity which counsel feels adheres in one of such charges becomes obscured. It does not appear to the Commission that the recitations of this paragraph are characterized by a lack of proper emphasis or are erroneous otherwise, and this exception is not being granted.

213840—54——93

The hearing examiner found that respondent has represented, contrary to fact, that its customary and usual prices were special or reduced prices and applicable only for a limited period of time, and the last of counsel's exceptions expresses objection to the hearing examiner's failure to find that sales agents falsely represented that savings of $120.00, in one instance, and of $60.00, in another instance, would be afforded to purchasers buying these reference books under the sales promotion being conducted locally. It does not appear that the hearing examiner failed to give consideration to the testimony to which this exception relates nor are any reasons advanced as bases for concluding that the omission of these matters from the findings as to the facts renders them erroneous substantively or that the order contained in the initial decision is deficient, and this exception is accordingly rejected.

The Commission, therefore, being of the opinion that counsel's appeal is without merit and that the initial decision of the hearing examiner constitutes an adequate and appropriate disposition of this proceeding:

It is ordered, That the aforesaid appeal from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall, on the 12th day of June, 1952, become the decision of the Commission.

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 the order to cease and desist.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 28, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Encyclopaedia Britannica, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondent of its answer to the complaint, hearings were held at which testimony and other evidence in support of the allegations of the complaint were introduced before the above named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. At the conclusion of the reception of such evidence in

support of the complaint, counsel for respondent filed with the Commission a motion to dismiss the complaint for failure of proof. Such motion was granted by the Commission as to certain charges in the complaint but denied as to certain other charges. Counsel for respondent elected to introduce no evidence in opposition to the charges remaining in the complaint, and the proceeding was thereupon closed by the hearing examiner insofar as the reception of evidence was concerned. Subsequently, the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, testimony and other evidence with respect to those charges remaining in the complaint, and proposed findings and conclusions submitted by counsel supporting the complaint (counsel for respondent having elected not to submit such proposals, and oral argument not having been requested), and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Encyclopaedia Britannica, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 20 North Wacker Drive, Chicago, Illinois. Respondent is now, and for a number of years last past has been, engaged in the business of publishing and selling books, including an encyclopaedia designated by respondent as Britannica Junior.

PAR. 2. Respondent causes its Britannica Junior encyclopaedias, when sold, to be transported from its place of business in the State of Illinois to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in such encyclopaedias in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. This proceeding involves certain representations alleged to have been made by respondent in connection with sales of its Britannica Junior encyclopaedia under a certain sales plan designated by respondent as its "15 for 1" plan. Under this plan respondent's sales agents contact the superintendent or principal of a school and seek to obtain the names of the pupils in the school, together with the names and addresses of the parents. Upon obtaining such names and addresses, the agent proceeds to call upon the parents and to undertake to sell them the books. For its assistance in supplying the names and addresses, the school receives without cost a set of Britannica Junior

for each fifteen sets sold to the patrons of the school. While a letter recommending the books is desired from the school official, this is not required. If fewer than fifteen sets are sold, the school receives a proportionate credit on the purchase of a set of the books or it receives some other book, such as an atlas or dictionary.

PAR. 4. In addition to the term "15 for 1," respondent has also used the expression "School Advancement Program" to designate this sales plan, and the first issue raised by the complaint concerns the use of this expression. The expression as used by respondent is inherently erroneous and misleading, in that it constitutes a representation that the sales plan is designed primarily for the benefit and improvement of the school. While the schools do unquestionably derive benefit from the sales program through the obtaining of the books, such benefit is incidental. The program is essentially a sales plan or campaign which has as its primary purpose the sale of books to the public. The use of the designation in question has already been discontinued by respondent.

PAR. 5. Respondent's sales agents have in a substantial number of instances represented to prospective purchasers that the local school or the superintendent or some other official of the school was sponsoring the sale of the books, when in fact the only connection which the school had with the matter was that it had supplied the names and addresses of the pupils and parents. This representation was made in various ways, including statements to the effect that the books were being sold through the school, that the school was working with the agent in the sale of the books, that the agent had been sent by the school or principal to see the parent, and that the agent was running a school program or a program through the school. The mere fact that the school had supplied the names and addresses of prospective purchasers did not constitute sponsorship of the sale of the books, and it is therefore concluded and found that these representations were unwarranted and misleading.

PAR. 6. Other representations made by respondent's sales agents to prospective purchasers were that the books were essential or indispensable to the proper preparation by pupils of their school homework, and that the prices at which the books were offered under this particular sales plan were special or reduced prices, applicable for a limited time only. These representations were likewise erroneous and misleading. While a set of reference books may be very helpful to a pupil in the preparation of his school homework, such books cannot be regarded as essential or indispensable. The prices at which the books were offered were not special or reduced prices nor were they applicable for a limited time only, but were in fact the customary

and usual prices at which such books were sold by respondent in regular and normal course of business.

PAR. 7. The acts and practices of respondent as set forth above have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's books, and the tendency and capacity to cause such portion of the public to purchase such books as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER

It is ordered, That the respondent, Encyclopaedia Britannica, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's books designated Britannica Junior, or any substantially similar books, by whatever name designated, do forthwith cease and desist from:

1. Using the words "School Advancement Program" or any words of similar import to designate, describe or refer to respondent's sales plan known as the "15 for 1" plan, or any substantially similar plan; or otherwise representing, directly or by implication, that any such sales plan is designed primarily for the benefit or improvement of schools or of any particular school.

2. Representing, directly or by implication, that the sale of books under respondent's sales plan known as the "15 for 1" plan, or under any substantially similar plan, is being sponsored by any school or school official, unless the school or official referred to is in fact sponsoring such sale.

3. Representing, directly or by implication, that the prices at which said books are offered for sale are special or reduced prices or are applicable for a limited time only, when such prices are in fact the customary and usual prices at which said books are sold by respondent in its regular and normal course of business.

4. Representing, directly or by implication, that said books are essential or indispensable to the proper preparation by pupils of their school homework.

ORDER TO FILE REPORT OF COMPLIANCE

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 the order to cease and desist [as required by aforesaid order and decision of the Commission].

IN THE MATTER OF

BERZEE SPORTSWEAR, INC. ET AL.

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

Docket 5856. Complaint, Mar. 5, 1951—Decision, June 12, 1952

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of sportswear made from cloth labeled as 100% wool when purchased, but stated by the vendor actually to contain 45% wool and 55% rayon; in violation of the Wool Products Labeling Act and Rules and Regulations promulgated thereunder—

(a) Misbranded said sportswear in that they labeled it in accordance with the aforesaid advice, when the cloth composing it did not in fact contain 45% wool and 55% rayon, but was composed of about 38% wool, in large part reprocessed, and rayon, nylon and other fibers;

(b) Further misbranded said products in that the constituent fibers and percentages thereof were not shown on the tags and labels, as required by said Act and Rules and Regulations; and

(c) Further misbranded certain of said products in that the legal name of the manufacturer or other person authorized by said Act to affix stamps, etc., was not shown on the attached labels, or, in lieu thereof, a registered identification number, as permitted by said Rules and Regulations:

Held, That such acts, practices and methods, under the circumstances set forth, were in violation of Secs. 3 and 4 of said Wool Products Labeling Act, and of Rule 3 of the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

As respects respondents' mislabeling of their products as a result of their reliance upon oral information from the vendor, as set out above: the assurance received by them from said vendor as to fiber content of the cloth from which they made their misbranded sportswear, did not comply with the exculpatory provisions of Sec. 9 of the Wool Products Labeling Act, it appearing that they neither demanded nor received from said vendor any written guaranty, specific or continuing, that said cloth was not misbranded under the provisions of the Wool Products Labeling Act, or any written guaranty as to its fiber content.

Before *Mr. Frank Hier*, hearing examiner.
Mr. Jesse D. Kash for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Berzee Sportswear, Inc., a corporation, and Harry Zimmerman and Walter Bernstein, individually and as

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

PARAGRAPH 1. Respondent Berzee Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 261 West 35th Street, New York, N. Y.

Respondents Harry Zimmerman and Walter Bernstein are President and Secretary-Treasurer respectively of corporate respondent and in such capacities they formulate and execute its policies and practices. Their business address is the same as that of corporate respondent.

PAR. 2. Subsequent to July 15, 1941 respondents have introduced into commerce, manufactured for introduction and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of said Act and Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled 45% wool and 55% rayon, whereas in truth and in fact said products did not contain 45% wool and 55% rayon but contained approximately 38% woolen fibers, the large proportion of which was reprocessed wool, and the balance rayon fiber and other fibers. The said wool products so labeled were further misbranded in that the constituent fibers and the percentages thereof were not shown on the tags or labels as required by said Act, in the manner and form as required by the said Rules and Regulations.

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

PAR. 4. The aforesaid acts and practices and methods of respondents as alleged were and are in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939 and Rule 3 of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 12, 1952, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on March 5, 1951, issued and subsequently served its complaint in this proceeding upon the respondents, Berzee Sportswear, Inc., a corporation, and Harry Zimmerman and Walter Bernstein, individually and as officers of such corporation, charging said respondents, with the use of unfair and deceptive acts and practices in commerce, in violation of those Acts. No answer to the complaint was filed by respondents and no appearance of counsel for them was made. Thereafter, a hearing was held at which respondents were present and testimony and other evidence in support of and in opposition to the complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, testimony and other evidence and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Berzee Sportswear, Inc., is a corporation organized in April 1950, and since then existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 261 West 35th Street, New York, N. Y.

Respondent Harry Zimmerman has been and is President of corporate respondent and since February 15, 1951, has been its sole stockholder and in sole charge of its operations.

Respondent Walter Bernstein from April 1950 until February 15, 1951, was Secretary-Treasurer of Berzee Sportswear, Inc., and together with respondent Harry Zimmerman formulated and executed its policies and practices during that period. On February 15, 1951, respondent Walter Bernstein sold all his interest in and severed all connections with the corporate respondent, and since that date has had no connection therewith.

PAR. 2. Since April 1950, respondents have introduced into commerce, manufactured for introduction into commerce, and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, wool products, as "wool products" are defined in said Wool Products Labeling Act.

PAR. 3. Some of said wool products were misbranded within the intent and meaning of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled 45% wool and 55% rayon, whereas in truth and in fact said products did not contain 45% wool and 55% rayon but contained instead approximately 38% woolen fibers, the large part of which was reprocessed wool and the remainder rayon, nylon and other fibers.

PAR. 4. Said products so labeled were further misbranded in that the constituent fibers and the percentages thereof were not shown on the tags and labels, as required by said Wool Products Labeling Act, in the manner and form as required by the said Rules and Regulations.

PAR. 5. Some of respondents' products were misbranded in that the legal name of the manufacturer thereof, or of a person required or authorized by said Wool Products Labeling Act to affix stamps, tags or labels or other means of identification thereto, was not shown on the labels attached to such products as required by said Wool Products Labeling Act, and in the manner and form required by said Rules and Regulations, nor was there so shown in lieu thereof a registered identification number as permitted by said Rules and Regulations.

PAR. 6. Respondents purchased the cloth from which they made the sportswear, misbranded as found in Paragraphs Three, Four and Five above, from the Strand Woolen Company, 251 West 39th Street, New York, N. Y., which cloth was labeled when purchased as 100% wool. Because the price paid was too low for an all-wool cloth, respondents believed the labeling erroneous and contacted the Strand Woolen Company to check its accuracy. The latter informed respondent that the cloth was 45% wool, 55% rayon and respondents, relying on such advice, labeled their products, made from that cloth,

45% wool, 55% rayon. The invoices from Strand Woolen Company covering the sale of such cloth to respondents contain no statement of fiber content and respondents neither demanded nor received from Strand Woolen Company any written guaranty, specific or continuing, that said cloth was not misbranded under the provisions of the said Wool Products Labeling Act, nor any written guaranty as to the fiber content of the cloth purchased, other than the oral assurance that it contained 45% wool, 55% rayon.

CONCLUSIONS

1. The assurance as to fiber content of the cloth from which respondents made their sportswear, herein found to be misbranded, received by them from their vendor, does not comply with the exculpatory provisions of section 9 of the Wool Products Labeling Act of 1939.

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

3. The acts, practices and methods of respondents, herein found to be violations of law, took place during the time when respondent Walter Bernstein was a stockholder, Secretary-Treasurer and active in the management of the corporate respondent and before he severed all his connections therewith, hence he is legally responsible therefor.

ORDER

It is ordered, That respondents Berzee Sportswear, Inc., a corporation, its officers, and Harry Zimmerman and Walter Bernstein, individually and as officers of said corporation, their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid Acts, of wool sportswear or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing, "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Wool Products Labeling Act, do forthwith cease and desist from misbranding such sportswear or other wool products:

1. By falsely or deceptively stamping, tagging, labeling or otherwise identifying such products;

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

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

(b) The maximum percentage of the total weight of the wool product, of any non-fibrous loading, filling, or adulterating matter;

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

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of June 12, 1952].

Syllabus

IN THE MATTER OF

STANDARD DISTRIBUTORS, INC. ET AL.

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

Docket 5580. Complaint, Aug. 30, 1948—Decision, June 13, 1952

As respects the offer and sale by a seller of its product through salesmen who made oral representations in conflict with those in the contract to purchasers who frequently did not read it and whose intelligent reading thereof, at least on occasion, was hindered by the salesmen: the Commission is of the opinion that if misrepresentations are made by a seller, he must himself remove their effect, and he may not assume to place upon the buyer the obligation of discovering them, even though he furnished the buyer with something from which such misrepresentations could be discovered.

Those who sell in interstate commerce by oral persuasion of their agents have an unavoidable obligation to see that such agents do not deceive the public, and an employer's unsuccessful attempt to meet the obligation does not absolve him from violation of the statutory prohibition against the use of unfair and deceptive acts and practices in commerce, or immunize him against corrective action by the Commission, his amenability thereto being determined by what the agents actually do and not necessarily by what he wants them to do.

Where a corporation and its president, engaged in the interstate sale and distribution of the "New Standard Encyclopedia" and the "Quarterly Loose Leaf Extension Service Supplement"; by means of its book agents, in a substantial number of instances—

(a) Represented falsely that said New Standard Encyclopedia was an entirely new encyclopedia not yet on the market; when in fact it had been republished yearly and sold for several decades;

(b) Represented falsely that the person approached had been selected to receive a ten volume set of the encyclopedia free, or at a nominal price, before it was offered to the public, on the sole condition that within a specified time after receiving the set, he would furnish the corporation with a letter of recommendation or his opinion thereof; and

(c) Represented falsely that in order to receive the encyclopedia free, the prospect would have to purchase the supplement for ten years at a price varying with the binding, and that he was buying and paying only for the supplement;

The facts being that prospects received nothing free but paid for everything secured, including the encyclopedia and all the books enumerated in the purchase contract; and while said oral representations were in conflict with the terms of the contract, said purchasers frequently did not read the contract and intelligent reading thereof was, on occasion, hindered by the saleman;

(d) Represented that the encyclopedia was composed of paper, printed illustrations and binding the same as or equal to that of the prospectus exhibited; when in a number of instances, purchasers received encyclopedias, the paper, printing and bindings of which were inferior to those in the prospectus; and

(e) Represented that the regular price of the encyclopedia and supplement for ten years, when offered for sale to the public, would be $100 or some other price far above that at which it was offered to the prospect; the facts being the price for the combination offer varied from $39.50 to $79.50, and at no time reached or exceeded $100.

With capacity and tendency to mislead and deceive members of the public into the erroneous belief that said representations were true, and into the purchase of a substantial number of said books by reason thereof:

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

As respects respondents' efforts to prevent their salemen from making the misrepresentations which they were found to have made in the instant matter, including investigation of each saleman when employed, training and instructions by respondents' sales supervisors, the signing by the salesman of a pledge that he would not, under penalty of discharge, make such misrepresentations as are herein involved, the sending out of printed instruction to its salesmen each year to the same effect, and other steps: while there was nothing in the record to indicate that respondents' efforts were not earnest and honest, it did appear that the public had not been fully protected, and consequently that respondents' obligation to see that their agents did not deceive the public, had not been met.

As respects certain other issues which concerned representations relative to the conducting of an education survey, the sale of an educational plan, the "acceptance" or "selection" of prospective purchasers upon a basis of prominence or influence, the up-to-dateness of the New Standard Encyclopedia, its equality and comparability to the best reference works and its endorsement or approval by a Board of Education, the book agents not being salesmen, the offer being open only for a limited time and to a limited number of people in the particular community, and also the alleged failure to reveal certain delivery charges in addition to the contract price:

The Commission considered said issues and concluded that the allegations concerning them had not been approved.

Before *Mr. Frank Hier*, hearing examiner.

Mr. John M. Russell and *Mr. William L. Pencke* for the Commission.

Mr. Henry Ward Beer, of New York City, and *Anderson & Roche*, 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 Standard Distributors, Inc., a corporation, LeRoy S. Bimstein, David Tuttle, and A. J. Noreus, individually and as officers of Standard Distributors, Inc., a corporation hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Standard Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and respondents LeRoy S. Bimstein, David Tuttle and A. J. Noreus, individuals, are President, Vice President, and Secretary and Treasurer respectively thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent and all of said respondents have cooperated with each other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' principal office and place of business is at 188 West Randolph Street, Chicago, Illinois.

PAR. 2. Respondents are now and have been for more than seven years last past engaged in the sale and distribution in a combination offer, of 10 volume sets of the New Standard Encyclopedia, the Quarterly Loose Leaf Extension Service supplements thereto published under the name of World Progress and also of Webster's Unabridged Dictionary, Young Folks Library, History of the World, and other books. Respondents cause said Encyclopedia, Supplements, and other books, when sold, to be shipped from the place where the former are printed, in Columbia, Missouri, or respondent's aforesaid place of business, to the purchasers thereof at their respective residences located in States other than those from which such shipments are made and in the District of Columbia.

There is now and has been at all times mentioned herein a constant course of trade in said books sold by respondents between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in said books in commerce is and has been substantial.

PAR. 3. In the course and conduct of respondents' business in connection with the sale and distribution of the said Encyclopedia, supplement and other books, and as an inducement for the purchase thereof by members of the public, the respondents, ever since about 1940 have been using a plan or scheme for selling same substantially as follows:

Respondents' agents contact business men or heads of families, stating and representing that, preliminary to instituting a campaign for the sale of the New Standard Encyclopedia, an entirely new and up-to-date Encyclopedia not yet on the market, they are conducting an educational research or survey or that they are promoting an educational plan, under the direction or with the approval of some Board of Education and that the New Standard Encyclopedia and quarterly

Loose Leaf Extension Service Supplement thereto have been endorsed or approved thereby; that they are contacting prominent and influential persons in their city or community from whom the Standard Distributors, Inc., or the Standard Education Society will "select" or "accept" a certain number to be given ten volume sets of the new encyclopedia free or at a nominal price before it is offered for sale to the public; that this is being done solely to promote the sale of the encyclopedia without incurring the expense of a national advertising campaign.

These agents of the respondents secure information from the persons contacted with reference to the number of children in the family in school and as to whether there is an encyclopedia or other reference book in the home, for the purpose of finding out if they are likely prospects for the purchase of respondent's Encyclopedia and Extension Service Supplement. This information is recorded on cards on which the agent usually gets the prospect's signature by stating, that the card will be turned in to his company and if prospect signs it, he may be one of those "selected" or "accepted" to receive a set of the Encyclopedia free.

About ten days thereafter another of the respondents' agents calls on the prospect, exhibits the card prospect has signed and informs him that he has been "selected" or "accepted" as one of the few outstanding persons in his city or community to whom the agent's company has decided to give a set of the New Standard Encyclopedia free; that the only condition is that the prospect will within sixty days or some other specified time after he receives the set, furnish corporate respondent with a letter of recommendation or the prospect's opinion thereof. It is further explained that the agent is not a salesman but that to comply with legal requirements or governmental regulations in order to make the gift binding the company will have to charge prospect $1.00 for the Encyclopedia. If the prospect agrees the agent then states that because the Encyclopedia will be an exhibit set, subject to inspection by the prospect's friends and neighbors, the company wants it kept up-to-date; the agent then informs the prospect that in order for him to secure the set of New Standard Encyclopedia free, it will be necessary, for him to purchase, the Quarterly Loose Leaf Extension Service Supplement thereto at only $3.95 to $8.95 per year, depending on the type of binding, to keep it up-to-date for ten years.

The agent usually has with him what purports to be sample pages of the Encyclopedia and Supplement, including illustrations and pictures with superior printing on excellent paper, which he exhibits

to the prospect. He also usually has and similarly exhibits to prospect a folder showing the size of the books and the different types of bindings supposed to be available. The agent represents that they will be delivered to the prospect composed of paper, pictures, printing and binding the same as or equal to said sample pages and folder. That the New Standard Encyclopedia and quarterly Loose Leaf Extension Service Supplement comprise an up-to-date set of reference books equal to and in every way comparable to the best reference books available. That the said offer is open for only a limited time and to only a certain few selected persons in any given community. That the purchaser is only buying or paying for the Loose Leaf Extension Service Supplement. That no further charge beyond said $39.50 to $89.50 will be made to prospect for said Encyclopedia, Loose Leaf Extension Service Supplement and other book or books or for the mailing or delivery thereof, to the purchaser, by failing to state otherwise. That the regular price of the New Standard Encyclopedia and Supplement thereto for ten years, when they are offered for sale to the public, will be $100.00 or some other price far above the price at which they are being offered to the prospect.

In closing the contract, the agent usually offers to make another alleged "gift" of one or more extra books if the prospect will agree to pay, within a few months said $39.50 or other specified amount. If prospect does not so agree, thereafter corporate respondent offers other so-called "gifts" to the subscriber if he or she will pay the amount designated in the contract at some early date before it is due pursuant thereto.

PAR. 4. The statements and representations used and disseminated by the respondents in the manner above described are false, deceptive and misleading. In truth and in fact the New Standard Encyclopedia is not a new or up-to-date encyclopedia, but has been previously published and sold to the public for a number of years. Respondents or their agents are not conducting any educational research or survey, or promoting any educational plan. They are not acting under the direction or with the approval of any Board of Education, and neither the New Standard Encyclopedia nor said Quarterly Loose Leaf Extension Service Supplement has been endorsed or approved thereby. Their said agents are salesmen and they do not give or sell a set of the New Standard Encyclopedia free or at a nominal or reduced price or for any letter of recommendation or prospect's opinion thereof, but sell it to prospect at the regular price they charge therefor, to anyone they can induce to buy same. The price of the encyclopedia and of the other books and gifts alleged to be offered to prospect free are

included in the purported charge for the Loose Leaf Extension Service Supplement for ten years, or in said charge therefor, plus the alleged charge of $1.00 for the Encyclopedia. There is no legal requirement making it necessary for corporate respondent to charge anything or impose any condition in order for it to give the New Standard Encyclopedia or any book or books to prospect or anyone. The paper, printing and bindings of which said New Standard Encyclopedia is composed are not the same as or equal, but inferior in quality, to the paper, printing and bindings in the samples or specimens, shown to prospect. The pictures therein, if any, are not the same as or equal to or as many as those in said samples or specimens. The New Standard Encyclopedia does not comprise a set of reference books equal or comparable to the best reference books available, but is an inferior reference work. The said offer is not open for only a limited time or to only a certain number of persons in any given community but to any persons, anywhere whom they can induce to accept same and pay said regular prices therefor. The purchaser is not only buying or paying for the Loose Leaf Extension Service Supplement, but for the encyclopedia supplement and other book or books in said combination offer at the regular price respondents charge therefor. The $39.50 to $89.50 is not the only charge respondents make for said combination offer, but there is an extra charge of $1.00 per year for ten years for mailing said Quarterly Loose Leaf Extension Service Supplement to the purchasers or for some other alleged reason, which charge, they fail to disclose to prospect until after he or she has signed the contract.

PAR. 5. Respondents also make said false and misleading representations or some of them in service guarantee certificates circulars, brochures, contract forms, form letters and testimonials usually contained in the sales kits of their said agents.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 30, 1948, issued and thereafter caused to be served upon the respondents named in the caption hereof, other than David Tuttle, its complaint in this proceeding, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing by respondents, other than David Tuttle, of their answer thereto, testimony and other evidence in support of and in opposition to the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon said complaint, the respondents' answer thereto, the testimony and other evidence, the hearing examiner's recommended decision and certain exceptions thereto, the respondents' exceptions to certain rulings of the hearing examiner, briefs in support of and in opposition to the complaint and oral arguments of counsel; and the Commission, having issued its orders disposing of the exceptions to the recommended decision and to the rulings of the hearing examiner 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, Standard Distributors, 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 at 188 West Randolph Street, Chicago, Illinois. This respondent is sometimes hereinafter referred to as "corporate respondent."

PAR. 2. Respondent, LeRoy S. Bimstein, is president of respondent Standard Distributors, Inc., and as such has directed its advertising policies and business activities. Respondent, A. J. Noreus, is secretary and treasurer of respondent Standard Distributors, Inc., but there is no substantial evidence that this individual took an active or controlling part in the acts or practices herein found.

PAR. 3. Respondent, David Tuttle, formerly was vice-president of the corporate respondent, but has not been an officer of respondent corporation for more than three years last past. Service upon him as provided by law of notice of these proceedings and a copy of the

complaint herein was never accomplished. There is no evidence in the record showing that this respondent had any connection with or responsibility for any of the acts or practices attacked or involved in this proceeding.

PAR. 4. Respondent, Standard Distributors, Inc., through its officers, agents and employees, for more than seven years last past has been engaged in the sale and distribution of books, including ten volume sets of the New Standard Encyclopedia (hereinafter referred to as the encyclopedia), the Quarterly Loose Leaf Extension Service Supplement (hereinafter referred to as the supplement) under the name of World Progress, Young Folks Library and Webster's Unabridged Dictionary. Said books, when sold, are shipped from the place of publication or printing, which is Columbia, Missouri, in the case of the encyclopedia and supplement, or from respondent corporation's place of business in Chicago, Illinois, to purchasers thereof at their respective residences, located in States other than the States from which such shipments are made and in the District of Columbia. For a number of years there has been a constant course of trade and commerce in said books sold by Standard Distributors, Inc., between and among the various States of the United States and in the District of Columbia in substantial volume.

PAR. 5. New Standard Encyclopedia and its supplement are complied, edited and published by Standard Education Society, of 130 North Wells Street, Chicago, Illinois. The encyclopedia is republished each year. The supplement is published quarterly each year. Standard Education Society sells the encyclopedia to fifteen distributors throughout the United States, of which respondent Standard Distributors, Inc. is one, for consumer resale. The former contracts with corporate respondent to supply the supplement for ten years to each purchaser to whom Standard Distributors, Inc., sells a set of the encyclopedia. Standard Education Society does not own any part of respondent Standard Distributors, Inc., or any of its other distributors.

PAR. 6. For the purpose of inducing sales, corporate respondent's book agents, over a substantial period of time, over a representative area, and in a substantial number of instances, have represented that:

a. The New Standard Encyclopedia is an entirely new encyclopedia not yet on the market, a brand new piece of merchandise, a new project, not presented to the public before.

b. The person approached has been selected to receive a ten volume set of the encyclopedia free, or at a nominal price, before it is offered for sale to the public on the sole condition that within a specified time

after receiving the set, he will furnish corporate respondent with a letter of recommendation or the prospect's opinion thereof.

c. In order to receive the encyclopedia free, the prospect will have to purchase the supplement thereto for ten years at a price varying with the binding, and that the purchaser is buying and paying only for the supplement.

d. The encyclopedia is composed of paper, printing, illustrations and binding the same as or equal to that of the illustrative prospectus exhibited to the prospect.

e. The regular price of the New Standard Encyclopedia and supplement for ten years, when offered for sale to the public, will be $100 or some other price far above that at which it is offered to the prospect.

PAR. 7. The said representations were either false or misleading and deceptive, or both, wholly or in part. In truth and in fact:

a. The New Standard Encyclopedia has been republished yearly and sold for several decades, and the encyclopedia concerning which the representations referred to herein were made was not a new encyclopedia.

b. Corporate respondent does not give free, or at a nominal price, the encyclopedia or any other book on the sole condition that the prospect will furnish it a letter of recommendation or of opinion thereof. No prospect or purchaser receives anything free from the corporate respondent—if he buys anything, he pays for everything he gets.

c. No purchaser from corporate respondent secures the encyclopedia free by buying the supplement, or otherwise, but each purchaser buys and pays for all of the books enumerated in the purchase contract, including the encyclopedia.

d. In a number of instances, purchasers received encyclopedias, the paper, printing and bindings of which were inferior to those shown in the illustrative prospectus which was exhibited to them.

e. Corporate respondent's price for its combination offer of books has varied from 1942 to 1946 from $39.50 to $79.50. At no time has it reached or exceeded $100.00. During those years it has been offered to the public at the current prices as indicated above.

PAR. 8. Respondent corporation's contract which each purchaser must sign reads on the front as follows:

STANDARD DISTRIBUTORS, INC.
188 West Randolph Street
Chicago 1, Ill.
Distributors of
NEW STANDARD ENCYCLOPEDIA
And
Quarterly Loose-Leaf Extension Service

---------- 19____

Findings

Please enter my order for the following, and ship charges collect:

(1) The NEW STANDARD ENCYCLOPEDIA, Pictorial Edition, in ten volumes, medallion artcraft binding
(2) The QUARTERLY LOOSE LEAF EXTENSION SERVICE, fully indexed and illustrated, for a period of 10 years, including annual loose leaf binders to match ------59.50
(3) ---
To be delivered upon receipt of final payment.

For this entire combination, I promise to pay as follows: $_____ herewith, $_____, plus postage, on delivery of the Encyclopedia, and $_____ each month thereafter until the total amount of $59.50 is paid. No further charge will be made except $1.00 each year for delivery of the Quarterly Extension Service and Binder.

* It is understood that nothing in this offer is free and that the price of the Encyclopedia is included in the above total. The agreement is unconditional, not subject to cancellation, and will not be affected by any agreement not endorsed hereon.

READ CAREFULLY BEFORE SIGNING. KEEP A COPY

Name ---
Resident Address ---

Business Position ---
Name of Firm ---
Business Address ---

And on the back as follows:

This memorandum must be filled out and signed by representative

Subscriber's Name ---
(Print name and prefix Mr., Mrs., Miss or correct title)
Ship books to: ---

Send Mail to: Business Address ☐ Residence Address ☐
Special Remarks:
Credit Ref.
Name ---
Address ---
Personal Ref.
Name ---
Address ---

I hereby certify, that this contract and the information appended contains all of the arrangements made with the subscriber. Nothing has been done or said that violates any Governmental Regulation or any of your instructions to me. The subscriber understands that nothing in this offer is free and that the price of the Encyclopedia is included. No attempt has been made to allocate how much is for the Encyclopedia alone or any other one item, the various items being all grouped together at the total combination price. I believe this subscriber's qualifications to be acceptable in accordance with your standards, but no claim has been made regarding the number of sets expected to be placed in any given

*This sentence is in heavy type.

area, and nothing has been misrepresented in any way. I have left the subscriber an exact duplicate of this agreement, and the signature is genuine.
Check ☐
Currency ☐ for the first payment of $_____ is hereby acknowledged.

_____
Representative.

Standard Distributors, Inc. guarantees its publication to be equal in every respect to samples shown; hence no representative is authorized to take orders subject to approval.

The purchaser signs the front; the salesman, the back.

PAR. 9. In connection with the representations set forth in Paragraph Six b. and c., the effect of the corporate respondent's form of contract is to be considered. It is apparent that one who reads the contract would either be aware that all the books were to be paid for in cash or be confused by the conflict between the terms of the contract and the oral representations that the ten volume set was free or was given in return for a letter of recommendation or opinion. Thus, it is unlikely that any individual who actually read the contract executed it affirmatively believing that the oral representations were true. The evidence is, however, and the Commission finds, that purchasers frequently did not read the contract and that at least on occasion an intelligent reading of it was hindered by the respondents' salesman. In that situation the likely effect of the oral misrepresentations is obvious. The Commission is of the opinion that if misrepresentations are made by a seller, he must himself remove their effect, and he may not assume to place upon the buyer the obligation of discovering them, even though he furnishes the buyer with something from which they could be discovered.

PAR. 10. Each salesman, when employed, is investigated by corporate respondent, is trained by respondents' sales supervisors by instruction and demonstration and by being taken by the supervisor into prospects' homes where the supervisor attempts to sell the books. Each salesman is required to sign a pledge that he will not, under penalty of discharge for violation, represent:

a. That the encyclopedia or other books are free.

b. That the customer is paying only for the revision (supplement) or other services.

c. That the offer is open only to a certain specified number of people in any given area or community.

d. That only a certain few are chosen or selected to receive the offer.

e. That the regular or usual price of the books or combination of books and services is greater than the prices at which they are being sold when such is not the fact.

f. That the encyclopedia or other publication is an entirely new work.

In addition, corporate respondent several times each year sends out printed instructions to its salesmen to the same effect. Each salesman, in addition, is instructed to hand to a prospect a copy of corporate respondent's contract, to read it over to the prospect or have him read it over, and to answer any questions with reference thereto before it is signed by the prospective purchaser. In addition to a fixed commission salesmen receive $4.00 as a bonus for each sale of the encyclopedia and supplement service fully paid for, but are penalized that bonus and the bonus on two other paid-up sales for each sale which is cancelled. On the average, one sale is made out of every three attempts.

PAR. 11. There is nothing in the record to indicate that respondents' efforts to prevent their salesmen from making the misrepresentations which they are found to have made were not earnest and honest. The record does show, however, that the public has not been fully protected. Those who sell in interstate commerce by oral persuasion of their agents have the obligation to see that such agents do not deceive the public. This obligation is one which cannot be avoided or evaded, and an unsuccessful attempt to meet it by the employer does not absolve him from violation of the statutory prohibition against the use of unfair and deceptive practices in commerce or immunize him against corrective action by the Commission. His amenability to action by the Commission is determined by what the agents actually do and not necessarily by what he wants them to do.

PAR. 12. The foregoing statements and representations used by respondents, other than Noreus and Tuttle, in connection with the offering for sale, sale and distribution of their books, have had the capacity and tendency to mislead and deceive members of the public into the erroneous and mistaken belief that said statements and representations were true, and into the purchase of a substantial number of said books by reason of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of respondents, other than Noreus and Tuttle, as hereinabove found, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The Commission has considered the other issues presented by the pleadings, and the evidence and record with respect thereto, and has concluded that the allegations concerning these issues have not been proved.

These issues concerned representations relative to: the conducting of an educational survey; the sale of an educational plan; the "acceptance" or "selection" of prospective purchasers upon a basis of prominence or influence; the up-to-dateness of the New Standard Encyclopedia, its equality and comparability to the best reference works and its endorsement or approval by a Board of Education; the book agents not being salesmen; the offer being open only for a limited time and to a limited number of people in the particular community, and also concerned the alleged failure to reveal certain delivery charges in addition to the contract price.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents (other than David Tuttle), testimony and other evidence in support of and in opposition to the complaint introduced before a hearing examiner of the Commission theretofore duly designated by it, the hearing examiner's recommended decision and certain exceptions thereto, respondents' exceptions to certain rulings of the hearing examiner, and briefs and oral arguments of counsel, and the Commission having issued its orders disposing of the exceptions to the recommended decision and to the rulings of the hearing examiner and having made its findings as to the facts and its conclusion that Standard Distributors, Inc., a corporation, and LeRoy S. Bimstein, individually and as an officer of said corporation, have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Standard Distributors, Inc., a corporation, and its officers, and the respondent, LeRoy S. Bimstein, individually and as an officer of said corporation, 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 the New Standard Encyclopedia and its supplement, World Progress, edited and published by Standard Education Society, or of any other book or books, do forthwith cease and desist from:

(1) Representing, directly or by implication:

(a) That the New Standard Encyclopedia is a new encyclopedia;

(b) That one may obtain a set of the New Standard Encyclopedia or a reduction in the price thereof merely by writing a letter of recommendation therefor or an opinion thereon; or that any of the

books sold by the respondents may be obtained by any means other than by payment of the full purchase price;

(c) That purchasers of a combination of books pay only for a part thereof;

(d) That the price at which any book or combination of books is offered is less than the price at which it will be offered later, contrary to the fact;

(e) That the quality of the binding, printing, paper or illustrations of any book, as delivered, will be equal in such respects to samples thereof exhibited to prospective purchasers, contrary to the fact;

(2) Exhibiting to prospective purchasers samples of the binding, printing, paper or illustrations of such encyclopedia, supplement or any other book, which are superior in quality to the binding, printing, paper or illustrations of such books as delivered to purchasers thereof.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to the respondents, David Tuttle and A. J. Noreus.

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

IN THE MATTER OF

NOEL'S GAY GAMES, INC. ET AL.

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

Docket 5554. Complaint, May 24, 1948—Decision, June 17, 1952

Where a corporation and its president-treasurer, engaged in the manufacture and interstate sale of various kinds of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed for and used only in the sale of merchandise to the consuming public through means of games of chance, under plans whereby purchasers who, by chance, selected certain specified numbers, received articles of merchandise without additional cost at prices which were much less than the normal retail price thereof, others receiving nothing for their money other than the privilege of a push or punch—

Sold and distributed such devices to manufacturers of and dealers in merchandise, including candy, cigarettes, clocks, razors, cosmetics, clothing and other articles, assortments of which, along with said device, made up by dealers, were exposed and sold by the direct or indirect retailer purchasers to the purchasing public in accordance with aforesaid sales plans, involving a game of chance or the sale of a chance to procure articles at much less than their normal retail prices; and,

Thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government, in the violation of which they assisted and participated;

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

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

Before *Mr. Frank Hier*, hearing examiner.
Mr. J. W. Brookfield, Jr. 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 Noel's Gay Games, Inc., a corporation, and Guy E. Noel, an individual and officer of Noel's Gay Games, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commis-

sion that a proceeding by it in regard thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Noel's Gay Games, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 422 East Howard Street, Muncie, Indiana. Respondent Guy E. Noel is President and Treasurer of respondent corporation, Noel's Gay Games, Inc., and said corporation is owned, dominated, controlled and directed by said individual respondent Guy E. Noel. Both of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

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

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

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

Many of said push cards and punch boards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punch boards vary in accordance with

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

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

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

thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 24, 1948, issued and subsequently served its complaint in this proceeding upon respondent Gay Games, Inc., a corporation (erroneously named in the complaint herein as Noel's Gay Games, Inc.) and respondent Guy E. Noel, an individual, charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it. Thereafter, upon permission granted by said hearing examiner, respondents withdrew their said answer to the complaint and filed a new answer which, subject to the condition that the Commission take no action herein until its final determination of the matter of Superior Products Company, Inc., Docket No. 5561, ad-

mitted all of the material allegations of fact in said complaint and waived all intervening procedure, including the filing of a recommended decision by the hearing examiner, but which expressly reserved respondents' right of appeal from any decision of the Commission herein. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint and respondents' answer admitting all of the material allegations of fact therein (the Commission in the meantime having issued its order to cease and desist in the matter of Superior Products Company, Inc.); 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, Gay Games, Inc. (erroneously named in the complaint as Noel's Gay Games, Inc.) is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 422 East Howard Street, Muncie, Indiana. Respondent Guy E. Noel is president and treasurer of respondent corporation, Gay Games, Inc., and said corporation is owned, dominated, controlled and directed by said individual respondent Guy E. Noel. Both of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter found.

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

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

PAR. 2. In the course and conduct of their said business, as described in Paragraph One hereof, respondents sell and distribute to said manufacturers of and dealers in merchandise, push cards and punch-

boards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

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

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

PAR. 3. Many persons, firms and corporations who sell and distribute candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase respondents' said push cards and punchboard devices, and pack and assemble assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers

who purchase said assortments either directly or indirectly expose the same to the purchasing public and sell and distribute said articles of merchandise to the public through the use of said push cards and punchboards by means of the use of lot or chance. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards many members of the purchasing public have been induced to trade with retail dealers selling or distributing said merchandise by means thereof. As a result, many retail dealers have been induced to trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of such devices in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public.

The sale or distribution of said push cards and punchboard devices by the respondents, as hereinabove found, supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The sale of merchandise by and through the use of a game of chance, gift enterprise or lottery scheme is a practice which is in contravention of an established public policy of the Government of the United States and these respondents, through the supplying of such means of selling merchandise, have assisted and participated in the violation of said policy.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondents' answer admitting all of the material allegations of fact therein and waiving all intervening procedure, 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 Gay Games, Inc., a corporation, and its officers, and the respondent Guy E. Noel, an individual, and

their respective agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

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

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