IN THE MATTER OF

INTERNATIONAL CELLUCOTTON PRODUCTS COMPANY

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

Docket 5883. Complaint, May 24, 1951—Decision, Nov. 13, 1951

Where a corporation long engaged in the competitive interstate sale and distribution to wholesale and retail outlets of about seventy per cent of the sanitary napkins and about fifty per cent of the facial tissues purchased by the public in the United States; and through *del credere* arrangements or factory agreements with substantially all of the wholesale drug companies in the United States, and with many wholesale dry goods companies who retained 15 per cent on the single case selling price of the gross sales they made to retail outlets, and who were in competition with one another, as were many of their retail outlets—

Paid to said *del credere* agents or factors an additional special commission of 4⅓% semi-annually on all sales with the provisions that the factor, at respondent's request, conduct special promotions, including point of sale retail merchandising, and (a) furnish it with such information as it specified relating to the merchandising of products by the factor's customers, (b) permit attendance of its representatives at the factor's sales meetings, and (c) "to the extent that employees of Factor have received any special inducement in any form from Factor, or any other sources, for the sale or promotion of a commodity in competition with a product of [respondent] International provide an equivalent inducement to employees with International's competing product * * * hereunder";

With the result that its said factors, who were not required by it under said conditions to spend the entire amount of additional compensation thus received, and whose sales of said corporation's "Kotex" and "Kleenex" products to retail outlets were approximately three times as great as the combined sales of similar products of all of respondent's competitors, were reluctant to permit respondent's competitors to make promotional payments or inducements to said factors' employees, since that would require them to make equivalent payments or inducements to their own employees to promote respondent's products, not otherwise required, and, by reason of the ratio of respondent's sales to the sales of competing products, to expend approximately three times the amount granted to the factor or any of its employees for promoting the sanitary products of a competitor;

With tendency to prevent its said *del credere* agents or factors or any of their employees from promoting the sale of competitive sanitary products, and with effect of so doing in many cases:

Held, That such arrangements and agreements were all to the prejudice of the public; had a dangerous tendency to create a monopoly in said corporation in the sale and distribution of sanitary products in commerce; suppressed and lessened competition in the sale and distribution in commerce of such products; had a capacity and tendency to restrain unreasonably and did restrain unreasonably such commerce therein; and constituted an unfair method of competition in commerce.

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

Mr. Fletcher G. Cohn, *Mr. Robert F. Quinn* and *Mr. Paul H. LaRue* for the Commission.

Crowell & Leibman, of Chicago, Ill., 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 International Cellucotton Products Company has violated section 5 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, International Cellucotton Products Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 919 North Michigan Boulevard, Chicago, Illinois.

PAR. 2. Respondent is now, and for many years last past, has been engaged principally in the distribution and sale of sanitary napkins under the brand name "Kotex" and facial tissues under the trade name "Kleenex," which are commonly known as "sanitary products" and hereinafter referred to as such, and of related products. While the aforementioned products are not manufactured by the respondent, they are manufactured for it by various subsidiary corporations and by manufacturers of paper products which are located in various States of the United States.

Respondent distributes and sells its sanitary products to various retail outlets, which resell same to the consuming public, through and by means of consignment arrangements or "factor" agreements with substantially all of the wholesale drug companies in the United States, as well as many wholesale dry goods companies located in different States.

Under the terms of the said arrangements or agreements, the aforesaid wholesale drug and dry goods companies become del credere agents of the respondent. All of said agents, who are called "factors," receive a certain definite percentage, usually 15 percent, on the gross sales they make to the retail outlets, which they retain before remitting to respondent the proceeds of said sales. Many of said consignees or factors of the respondent, as well as many of the retail outlets for such products to whom said consignees sell same for purposes of

resale to the consuming public, are in competition in their respective lines of commerce in the sale and distribution of said sanitary products. The retail sales of Kotex for the year ending December 31, 1947, amounted to approximately $41,500,000, and for Kleenex approximately $32,000,000.

PAR. 3. In the course and conduct of its aforesaid business, respondent, for many years last past, has shipped or caused to be shipped, and now ships or causes to be shipped, across State lines and into the District of Columbia the aforesaid sanitary products from plants where they are manufactured to the aforesaid wholesale drug and dry goods companies as consigness or factors, the majority of whom are in States of the United States other than the States of origin of such shipments.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the aforementioned sanitary products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, in the manner hereinafter alleged, respondent, in the course and conduct of its said business has been, and is in competition with other corporations, individuals, partnerships and firms which were and are engaged in manufacturing, selling and distributing in "commerce," as commerce is defined by the Federal Trade Commission Act, sanitary products similar in composition and used for the same purposes as the sanitary products of the respondent.

PAR. 5. The following provisions appear in the aforesaid consignment or factor's agreements between respondent and its *del credere* consignees, agents or factors:

"9. *Special Promotions and Commission Therefor.*

Factor will exert Factor's best efforts to promote and increase the sales of products to retailers, and in connection therewith, at the request of International, which request shall not be made more than six times in any calendar year, Factor shall conduct special promotions of a character and at time specified by International, including point of sale retail merchandising; and shall: (a) furnish International with such information as International shall specify relating to the merchandising of products by Factor's customers; (b) permit attendance of International representatives at Factor's sales meetings, and (c) *to the extent that employees of Factor have received any special inducement in any form from Factor, or any other sources, for the sale or promotion of a commodity in competition with a product of International, provide an equivalent inducement to em-*

ployees with respect to International's competing product during International's next promotion hereunder. (Italics supplied.)

To reimburse Factor for such efforts and promotions, International will pay to Factor semi-annually after January 1 and July 1 of each year of all sales of products made during the preceding six months a special commission of 4⅓% computed upon Factor's single case selling prices in effect at the time of Factor's sales."

The purpose and intended effect of these provisions, especially of the above underscored clause, in the said arrangement or agreement, which respondent requires all of its consignees or factors to enter into, has been, and is to prevent said consignees or factors from promoting by any means or methods the sale by them, or similar sanitary products of respondent's competitors. Under the aforesaid provisions, to the extent that employees of a consignee or factor have received any special inducement in any form, including payments of money, either from the consignee or factor or from any other sources, including respondent's competitors, for the sale or promotion of products which compete with those of respondent, the consignee or factor must provide an equivalent inducement, in the form of money or otherwise to said employees with respect to respondent's products; said equivalent inducements must be paid or given during respondent's next promotion period.

PAR. 6. Furthermore, under the aforequoted provisions the consignee or factor is paid automatically by the respondent, semi-annually after January 1 and July 1 of each year on all sales of respondent's products made during the preceding six months, the aforesaid additional amount of 4⅓ percent.

From said additional amounts so paid, the consignees or factors reimburse themselves for expenditures made by them for the sale or promotion of respondent's products as well as for amounts they have had to pay their employees to match equivalently all inducements or allowances in any form which said employees received for selling or promoting competing products.

It is only to the extent that such expenditures and equivalent amounts or inducements are made or paid by a consignee or factor, that the aforesaid 4⅓ percent, the entire amount of which said consignee or factor receives from respondent, is affected. Since the respondent infrequently requires its consignees or factors to make expenditures for the sale or promotion of its products, and then only for small amounts, the aforesaid 4⅓ percent has been, and is to a very large extent, in the nature of extra compensation to the consignees or factors. For this reason, the consignees or factors have been, and are

reluctant to permit respondent's competitors to make promotional payments or inducements in any form to said consignees' or factors' employees, since they would have to make equivalent payments or inducements to the employees to promote respondent's products, which they otherwise would not do, or be required to do, were it not for the aforesaid provisions.

PAR. 7. The total purchases by the public of the respondent's sanitary products represent approximately 72 percent of the sanitary napkins and 66 percent of the facial tissues sold in the United States. The ratio of said consignees' or factors' sales of respondent's said products to retail outlets is approximately three times as great as their combined sales of similar products of all of respondent's competitors. Thus, under the aforequoted provisions, if such a consignee or factor, or any of its employees, is granted any amount by one of respondent's competitors for promoting the said sanitary products of a competitor, dependent on the amount sold, the consignee or factor would be required to expend approximately three times that amount for promoting respondent's products. These provisions and requirements have thus tended to prevent, and, in many cases, have prevented, respondent's consignees or *del credere* agents or factors or any of their employees from promoting the sale of similar sanitary products offered to the purchasing public in competition with those of respondent.

PAR. 8. The provisions, acts, practices, methods, arrangements and agreements, as herein set out and alleged, are all to the prejudice of the public; have a dangerous tendency to create a monopoly in respondent in the sale and distribution of sanitary products in commerce; have frustrated, hindered, suppressed and lessened competition in the sale and distribution in commerce of sanitary products within the meaning of the Federal Trade Commission Act; have a capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; and constitute unfair methods of competition in commerce within the intent and meaning of section 5 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 November 13, 1951, the initial decision in the instant matter of Trial Examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, TRIAL EXAMINER

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 on May 24, 1951, issued and subsequently served its complaint in this proceeding upon the respondent, International Cellucotton Products Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. On July 12, 1951, respondent filed its answer, in which answer it admitted all of the material allegations of facts set forth in said complaint, but denied that such fact as alleged were committed with the purpose or intended effect of preventing its customer *del credere* factors from promoting the sale by them of the products of respondent's competitors or that such acts have in fact resulted in such a culmination. Said answer further denied that respondent's acts are to the prejudice of the public; or have a dangerous tendency to create a monopoly in respondent in the sale of its products; or have hindered or lessened competition in the sale and distribution of sanitary products within the meaning of the Act; or have a capacity or tendency to restrain unreasonably, or have restrained unreasonably, commerce in such products; or that such acts constitute unfair methods of competition within the intent and meaning of section 5 of the Federal Trade Commission Act. Said answer contains certain reservations to the respondent not necessary to be here considered, and which do not affect the issues herein.

No hearings were held for the taking of testimony, but formal pretrial hearing was had at Chicago, Illinois, on July 1, 1951, before the above-named trial examiner, at which hearing certain evidence was received by stipulation and formal admissions made by counsel, all of which was necessary to clarify certain facts, circumstances and conditions at variance with the provable charges in the complaint and to supply or supplement certain deficiencies of the complaint, all of which were necessary to be of record to support the findings and conclusions hereinafter set forth. The proceedings had at this hearing, and the evidence received, were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto; the record of the proceedings as above stated; proposed findings and conclusions submitted by counsel for all parties, oral argument not having been

requested, and said trial examiner, having duly considered the entire record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, International Cellucotton Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 919 North Michigan Boulevard, Chicago, Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged principally in the distribution and sale of sanitary napkins under the brand name "Kotex," and of facial tissues under the trade name "Kleenex," which are commonly known as "sanitary products" and hereinafter referred to as such, and of related products. While the aforementioned products are not manufactured by the respondent, they are manufactured for it by various manufacturers of paper products which are located in various States of the United States.

Respondent distributes and sells its sanitary products to various wholesale and retail outlets, which resell same to the consuming public, and also through and by means of *del credere* arrangements or "factor" agreements with substantially all of the wholesale drug companies in the United States, as well as many wholesale dry goods companies located in different States.

Under the terms of the said arrangements or agreements, the aforesaid wholesale drug and dry goods companies become *del credere* agents of the respondent. All of said agents, who are called "factors," receive a certain definite percentage, namely 15 percent, on the single case selling price of the gross sales they make to the retail outlets, which percentage is retained before remitting to respondent the proceeds of said sales. Many of said factors of the respondent, as well as many of the retail outlets for such products to whom said factors sell same for purposes of resale to the consuming public, are in competition in their respective lines of commerce in the sale and distribution of said sanitary products.

Respondent's sales of Kotex for the year ending December 31, 1947, amounted to approximately $41,500,000.00, and of Kleenex, approximately $32,000,000.00, or a combined sales volume for that year amounting to $73,500,000.00. Combined sales of the two products have been $87,000,000.00 for the year 1948; $95,000,000.00 for the year 1949, and $102,000,000.00 for the year 1950.

PAR. 3. In the course and conduct of its aforesaid business, respondent, for many years last past, has shipped or caused to be shipped, and now ships or causes to be shipped, across State lines and into the District of Columbia, the aforesaid sanitary products from plants where they are manufactured, to the aforesaid wholesale drug and dry goods companies, as factors, the majority of whom are in States of the United States other than States of origin of such shipments.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the aforementioned sanitary products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, in the manner hereinafter set forth, respondent, in the course and conduct of its said business, has been and is in competition with other corporations, individuals, partnerships, and firms which were and are engaged in manufacturing, selling and distributing in commerce, as "commerce" is defined by the Federal Trade Commission Act, sanitary products similar in composition and used for the same or similar purposes as the sanitary products of the respondent.

PAR. 5. The following provisions appear in the aforesaid agreements between respondent and its *del credere* agents or factors:

"9. *Special Promotions and Commission Therefor.*

Factor will exert Factor's best efforts to promote and increase the sales of products to retailers, and in connection therewith, at the request of International, which request shall not be made more than six times in any calendar year, Factor shall conduct special promotions of a character and at times specified by International, including point of sale retail merchandising; and shall (a) furnish International with such information as International shall specify relating to the merchandising of products by Factor's customers; (b) permit attendance of International representatives at Factor's sales meetings, and (c) *to the extent that employees of Factor have received any special inducement in any form from Factor, or any other sources, for the sale or promotion of a commodity in competition with a product of International provide an equivalent inducement to employees with International's competing product during International's next promotion hereunder.* (Italics supplied.)

To reimburse Factor for such efforts and promotions, International will pay to Factor semiannually after January 1 and July 1 of each year on all sales of products made during the preceding six months a special commission of 4⅓% computed upon Factor's single case selling prices in effect at the time of Factor's sales."

The effect of the foregoing provisions (especially of the underscored clause), in the said arrangement or agreement, which respondent requires all of its factors to execute, has been and is to prevent said factors from promoting by any means or methods the sale by them of similar sanitary products of respondent's competitors, except under the disadvantages and penalties as hereinafter found to result as a necessary and inevitable consequence of said agreement. Under the aforesaid provisions, to the extent that employees of a factor have received any special inducement in any form, including payments of money, either from the factor or from any other sources, including respondent's competitors, for the sale or promotion of products which compete with those of respondent, the factor must provide an equivalent inducement, in the form of money or otherwise, to said employees with respect to the promotion of the sale of respondent's products; said equivalent inducement must be paid or given during respondent's next ensuing promotion period.

PAR. 6. Under the aforequoted provisions the factor is paid by the respondent, semiannually after January 1 and July 1 of each year on all sales of respondent's products made during the preceding six months, the aforesaid additional amount of 4⅓%.

From said additional amounts so paid by reason of the 4⅓% clause, the factors reimburse themselves for expenditures made by them for the sale or promotion of respondent's products, as well as for amounts they have, or may have, had to pay their employees to match equivalently all inducements or allowances in any form which said employees received for selling or promoting the sale of competing products.

It is only to the extent that such expenditures and equivalent amounts or inducements are made or paid by a factor, that the aforesaid 4⅓%, the entire amount of which said factor receives from respondent, is affected. Since the respondent does not require its factors to make expenditures for the sale or promotion of its products equal to the aforesaid entire 4⅓%, it has been and is, to a substantial extent, in the nature of extra compensation to the factors. Prior to the calendar year 1950 respondent's factors were not required to expend any specific amount for promotional purposes in order to be entitled to receive the 4⅓% promotional allowance. During the year 1950 respondent required its factors to expend 50% of the amount of the 4⅓% promotional allowance for the promotion of its products in order to be entitled to receive any part of the said promotional allowance. Respondent's factors are now required to expend 75% of the amount of the said 4⅓% promotional allowance in order to become eligible for said discount. For this reason the factors have been, and

are, reluctant to permit respondent's competitors to make promotional payments or inducements in any form to said factors' employees, because said factors would be required to make equivalent payments or inducements to their employees to promote respondent's products, which they otherwise would not do, or be required to do, were it not for the aforesaid contractual requirements.

PAR. 7. The total purchases by the public of the respondent's sanitary products represent approximately 70% of the sanitary napkins and approximately 50% of the facial tissues sold in the United States, thus placing respondent in an outstanding and dominant position in the industry. The ratio of said factors' sales of respondent's said products to retail outlets is approximately three times as great as their combined sales of similar products of all of respondent's competitors. Thus, under the aforequoted provisions, if such factor or any of its employees is granted any sum of money or other consideration by one of respondent's competitors for promoting the sanitary products of such competitor, dependent on the amount sold, the factor would be required to expend approximately three times such amount for promoting respondent's products, by reason of the ratio which the sale of respondent's products bears to the sale of competing products. These provisions and requirements have thus tended to prevent, and in many cases have prevented, respondent's *del credere* agents or factors, or any of their employees, from promoting the sale of similar sanitary products offered to the purchasing public in competition with those of respondent.

CONCLUSIONS

The provisions, acts, practices, methods, arrangements and agreements, as herein found to exist, are all to the prejudice of the public; have a dangerous tendency to create a monopoly in respondent in the sale and distribution of sanitary products in commerce; have frustrated, hindered, suppressed and lessened competition in the sale and distribution in commerce of sanitary products within the meaning of the Federal Trade Commission Act; have a capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; 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

It is ordered, That respondent, International Cellucotton Products Company, a corporation, its officers, representatives, agents and em-

ployees, directly or through any corporate or other device, in offering for sale, sale or distribution of sanitary products, now commonly known under the brand or trade names of "Kotex" and "Kleenex," or by any other name or designation, and of related products, in commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist:

From granting or paying any promotional allowance, in the form of money or otherwise, in connection with any requirement for a promotional activity by any consignee, factor, *del credere* factor or agent, agent or purchaser of said products, or by an employee or representative of any of them, upon terms or conditions made by respondent, which cause or tend to cause such consignee, factor, *del credere* factor or agent, agent or purchaser, or an employee or representative of any of them, to refrain or abstain from accepting or using promotional activities or allowances offered or paid by a competitor of respondent.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein 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 said declaratory decision and order of November 13, 1951).

IN THE MATTER OF

NORMAN L. ROTHSTEIN TRADING AS EUREKA WOOLEN MILLS, ETC. 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 5806. Complaint, Sept. 6, 1950—Decision, Nov. 15, 1951

Where an individual engaged in the sale and distribution of blankets, blanket robes, panting cloth and skirting cloth, along with two partners who acted as his sales agents and distributed blankets at wholesale—

(*a*) Represented through circulars, newspaper advertising and other advertising media that his said blankets and other products were 100 percent wool, when in fact they contained in part fibers other than wool;

(*b*) Misbranded certain blankets in violation of the Wool Products Labeling Act, through the use thereon of labels which stated in one place that they were "100% Wool"' and in another "30% New, 70% Re-Processed"; with effect of confusing and deceiving the purchasing public as to their fiber content, and with capacity and tendency so to do;

(*c*) Misbranded certain piece goods and blankets in that they failed to affix thereto the stamp, tag, label or other means of identification giving the information required by said Act;

(*d*) Sent out samples of swatches and specimens of their wool products to prospective customers without labels to show their fiber content and other information required by said Act; and

(*e*) Made use of the term "Virgin" as descriptive of wool products which were not composed wholly of Virgin wool which had never been used, or reclaimed, reworked, reprocessed or reused from any spun, woven, knitted, felted or manufactured or used product:

Held, That such acts, practices and methods, under the circumstances set forth, were in violation of said Wool Act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. John W. Addison*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mrs. Clarissa Shortall and *Mr. Richard C. Shortall*, of San Francisco, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Norman L. Rothstein, an individual trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills and

Humboldt Bay Woolen Co. and Edwin B. Schwinger and Richard N. Goldman, copartners trading and doing business as Goldman-Schwinger & Co., hereinafter referred to as respondents, have violated the provisions of said Acts and Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Norman L. Rothstein is an individual trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills, and Humboldt Bay Woolen Co., with his office and principal place of business located at Eureka, California.

Said respondent is now and for more than a year last past has been engaged in the distribution of blankets, blanket robes, panting cloth and skirting cloth.

Respondents Edwin B. Schwinger and Richard N. Goldman are individuals and copartners trading and doing business as Goldman-Schwinger & Co. with their office and principal place of business located at 24 California St., San Francisco, California. Said individuals are sales agents for respondent Norman L. Rothstein, trading as Eureka Woolen Mills, and are now and for more than a year last past have been engaged in the wholesale distribution of blankets.

PAR. 2. In the course and conduct of their aforesaid business, respondent Norman L. Rothstein, trading as above set forth and for the purpose of inducing the purchase of his blankets, panting cloth and skirting cloth has circulated and is now circulating among prospective purchasers throughout the United States by United States mails circulars, newspaper advertising, and other advertising media many statements and representations concerning his said products. Among and typical of such statements and representations disseminated as aforesaid are the following:

[Swatch] [Swatch]

FOR YOUR BLANKET NEEDS

For the first time we offer you our Standard Hotel Blanket direct from our Mill.

Specifications are as follows:

CONTENT	100% wool
MEASUREMENTS	double bed size 72" x 84"
WEIGHT	over 4 pounds
EDGES	whip stitched