IN THE MATTER OF

ROBERT O. BENNETT DOING BUSINESS AS NATIONAL SERVICE BUREAU AND LILLIE K. BENNETT

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

Docket 5745. Complaint, Mar. 1, 1950—Decision, Jan. 31, 1952

Where two individuals engaged under a Washington, D. C. mailing address in securing and selling to credit bureaus, retail stores, collection agencies and other customers in various states information relating to delinquent debtors, principally, and, as thus engaged in mailing out large numbers of letters and receiving replies thereto;

In attempting to secure desired information, for their said customers with respect to the addresses, employment, etc., of delinquent debtors, pursuant to arrangements whereby they were authorized by their customers to send a check for 10 cents to each replying delinquent, as below set forth, and to deposit such an amount to said person's credit in respondents' bank at the expense of the customer, and through the means of certain form letters, together with blanks for supplying the desired information as to the delinquent and, a self-addressed return envelope—

(a) Falsely represented through the use of the name "National Service Bureau" in said form letters, and particularly as employed with the words "Disbursement Office" and "Disbursement Officer", that they were a part of or connected in some manner with the Veterans Administration or some other part or agency of the United States Government; and,

(b) Falsely represented through the use of the words "If you will fill in the enclosed blank giving the requested information we will forward to you a check for a small sum of money deposited with us for that purpose", that a small but significant sum of money to which the recipient of the letter was entitled, had been deposited with them and would be forwarded to the recipient upon his furnishing information which would identify him as the person entitled thereto;

The facts being that they were not connected with the United States Government in any respect; and the sending by them of such a check for 10 cents did not justify their statement that a small sum of money had been deposited with them for forwarding, and constituted a transparent scheme to mislead and conceal the purpose for which the information was sought;

With effect of misleading a substantial portion of the public into the mistaken belief that their misleading representations were true, and with capacity and tendency so to do, and thereby induce a substantial number of the public to give information which they would not otherwise have supplied:

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. Webster Ballinger*, hearing examiner.

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

Reilly & Neumann and *Byrne & Byrne*, of Washington, D. C., for respondents.

COMPLAINT [1]

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 Robert O. Bennett, an individual trading and doing business as National Service Bureau and Lillie K. Bennett, an individual, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Robert O. Bennett is an individual trading and doing business under the name National Service Bureau. Both respondents, Robert O. Bennett and Lillie K. Bennett, live and carry on their business at 504 Aspen Street, N. W., in the City of Washington, D. C., but the mailing address used by National Service Bureau is 505 Colorado Building, Washington, D. C. Respondents Robert O. Bennett and Lillie K. Bennett cooperate and act together in performing the acts and practices hereinafter alleged.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the business of locating delinquent debtors and in selling information as to these debtors to their clients. Certain of respondents' clients cause goods and other property to be transported from their places of business in various States of the United States to purchasers thereof in other States of the United States and

[1] The complaint is published as amended by an order granting motion to amend complaint to conform to proof dated December 29, 1950, as follows:

This matter coming before the Commission upon motion of counsel supporting the complaint to amend the complaint herein to conform to the proof, and it appearing counsel for the respondents have acknowledged receipt of copy of said motion and have waived the filing of an answer and further notice and the Commission having duly considered the matter, and the record, and being now fully advised in the premises:

It is ordered, That the motion to amend the complaint to conform to the proof be, and the same hereby is, granted.

It is further ordered, That the complaint heretofore issued be amended as follows:

By striking that portion of Paragraph Five which reads as follows:

> "Through the use of the name 'National Service Bureau' and the phraseology 'Disbursement Officer' and 'Disbursement Office,' "

and inserting in lieu thereof the following:

> Through the use of the name "National Service Bureau," and also through the use of the phrase "Disbursement Officer" and also the phrase "Disbursement Office," in connection with the name "National Service Bureau."

It is further ordered, That the evidence heretofore taken be, and the same hereby is, adopted as evidence in connection with the complaint as herein amended to the same extent and to the same effect as if such evidence had been originally taken under the complaint as herein amended.

maintain and at all times mentioned herein have maintained courses of trade in such goods and property in commerce between and among the United States. Some of respondents' clients are located in Chicago, Illinois; Cincinnati, Ohio; New York, New York and other cities and States throughout the United States. The course and conduct of respondents' said business involves intercourse of a commercial and business nature between them and their clients and the persons from whom information is sought who are located in the various States of the United States.

PAR. 3. In the course and conduct of respondents' said business of obtaining information concerning other persons, respondents use certain form letters substantially in the following form:

THE NATIONAL SERVICE BUREAU,
Colorado Building, Washington 5, D. C.

Office of
R. O. Bennett
Room 505

DEAR MADAM: If you will fill in the inclosed blank giving the requested information we will forward you a check for a small sum of money deposited with us for you for that purpose.

Very truly yours,

(S) ROBERT BENNETT, *Disbursement Officer.*

Enclosed with the above-mentioned letter is a reply form for the recipient to fill in the information desired by respondents. This form is headed:

DISBURSEMENT OFFICE
THE NATIONAL SERVICE BUREAU
505 COLORADO BUILDING
WASHINGTON 5, D. C.

followed by lines showing the information requested and also bears the following statement:

CLAIM NUMBER 18241101.

Fill in and return this blank within 30 days. Allow two weeks for mailing the check.

PLEASE TYPE OR PRINT INFORMATION
GIVE COMPLETE INFORMATION TO EXPEDITE MAILING OF CHECK

PAR. 4. Respondents mail the said form letters to the persons concerning whom information is sought at their last known addresses together with an envelope addressed to "The National Service Bureau, Colorado Building, Washington, D. C., Disbursement Office, Room 505," for the return of said form letters. Many of the persons to whom said form letters and return envelopes are sent are located in the various states of the United States outside of the District of Columbia.

PAR. 5. Through the use of the name "National Service Bureau" and also through the use of the phrase "Disbursement Officer" and also the phrase "Disbursement Office," in connection with the name "National Service Bureau." Respondents represent that National Service Bureau is an agency of the United States government or has some connection with one of the governmental agencies. Said representations are false and misleading. In truth and in fact respondents are in no way connected with the Federal Government, but conduct the said business as a private enterprise for the receiving of fees for information concerning allegedly delinquent debtors.

Through the use of the said form letters, respondents represent directly and by implication that certain funds have been deposited with them for the persons to whom the letters are sent and cause the recipients of said letters to furnish them information in the false belief that they, the recipients, are to receive substantial sums of money.

In truth and in fact respondents have not received money to be deposited for these persons and they receive nothing except a check for ten cents which is sent by respondents upon receipt of the information.

PAR. 6. The use as hereinabove set forth of the foregoing false and misleading statements, representations and designations has, and has had, the capacity and tendency to mislead and deceive, and has misled and deceived, many persons to whom the said form letters were sent into the erroneous and mistaken belief that the said statements and representations were true; and that the trade name used by respondents indicated the true nature of respondents' business; and induce the recipients thereof to give information to respondents which otherwise they would not have supplied.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 1, 1950, issued and subsequently served its complaint in this proceeding upon respondents Robert O. Bennett, an individual trading and doing business as National Service Bureau, and Lillie K. Bennett, an individual, charging them with the use of unfair and deceptive acts and practices in com-

merce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, and said hearing examiner, on January 30, 1951, filed his initial decision.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Robert O. Bennett is an individual trading as and doing business under the name The National Service Bureau. Both respondents, Robert O. Bennett and Lillie K. Bennett, live and carry on said business at 504 Aspen Street, N. W., in the city of Washington, D. C., and use as a business and mailing address 706 Thirteenth Street, N. W., Washington, D. C., where an office is maintained and used primarily as an address for the receipt of mail. Respondents formerly maintained an office at 505 Colorado Building, Washington, D. C. Respondents Robert O. Bennett and Lillie K. Bennett cooperate and act together in performing the acts and practices hereinafter described.

PAR. 2. Respondents are now and for more than four years last past have been engaged in the business of securing and selling to their customers information relating to delinquent debtors, extension of credit and for other purposes; their principal business being that of locating delinquent debtors. Their customers consist of credit bureaus maintained by business and professional organizations, retail stores, collection agencies, attorneys, and finance companies, desiring information principally with reference to delinquent accounts.

Their customers and the persons about whom information is sought are located throughout the various States of the United States and in the District of Columbia. Respondents' business is principally conducted by mail. They weekly transmit approximately 2,100 letters seeking the above-described information and receive approximately 700 replies thereto. The conduct of respondents' business constitutes intercourse of a commercial nature between them and the persons from whom information is sought in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent Robert O. Bennett has been in the collection business for more than 15 years. About five years ago he conceived and put into practice a plan involving the use of a mail skip tracer to secure credit information from delinquent debtors, which plan respondents have used ever since and are now using. A pamphlet issued by respondents contains the following description of a mail skip tracer:

1. WHAT IS A MAIL SKIP TRACER?

A mail skip tracer is a piece of mail which offers an inducement for its recipient to reveal his address, employment, phone number, and other pertinent information which may be used by his creditor in obtaining payment of money due.

2. IN WHAT CASES SHOULD A MAIL SKIP TRACER BE USED?

a. If you send mail to an address, and it is not returned to you, you know that this person is getting his mail at this address or it is being forwarded by the Post Office to him. Neither the Postmaster nor any one connected with the Post Office may give you this information as to where your skip is and only by using an inducement such as a mail skip tracer can you find him.

b. When your mail is delivered and you know the person is at the given address, but you do not know where he works or banks, and this information would be valuable to you, the inducement offered in the mail skip tracer will more than likely get this information for you.

3. WHAT MAKES A MAIL TRACER ILLEGAL?

Any piece of mail which obtains information by the use of subterfuge is illegal. THE NATIONAL SERVICE BUREAU does NOT use subterfuge.

PAR. 4. In the course and conduct of their business of securing credit information by the use of a mail skip tracer, respondents receive from each of their customers an authorization, bearing the signature of the customer, on the following form supplied by respondents:

PLEASE TYPE OR PRINT ALL NAMES AND ADDRESSES

THE NATIONAL SERVICE BUREAU,
706 13th Street NW., *Washington 5, D. C.*

GENTLEMEN: Please attempt to obtain all information you can from the following persons from whom mail has not been returned. Please send a check

for 10¢ to each person listed below sending you the information you request in payment for this information. Please deposit 10¢ to this person's credit in your bank and charge this 10¢ to our account and credit our account with all deposits not paid out by you at the end of each month. We agree to pay you the sum of 25¢ for an address; 50¢ for an address, a phone number, and/or one or more relatives or references; $1.00 for employment and/or bank. In the case of a bank and no employment, you are to refund us 50¢ upon being notified the bank was of no use to us. We also agree to pay a charge of 10¢ for all returned mail, proof to be furnished to us. We understand that your maximum charge for any one locate is $1.00 plus the 10¢ deposit fee. We agree to keep all information confidential.

(Please use both sides of this sheet)

SEND NO MONEY—YOU WILL BE BILLED MONTHLY

NO RESULTS—NO CHARGE

Name_____
Street_____
City_____ State_____
Zone
By_____

Upon receipt of such authorization respondents mailed to each of the persons listed at the address furnished the following form letter:

THE NATIONAL SERVICE BUREAU
WASHINGTON 5, D. C.

DISBURSEMENT OFFICE

If you will fill in the inclosed blank giving the requested information we will forward you a check for a small sum of money deposited with us for you for that purpose.

Very truly yours,

(S) ROBERT BENNETT, *Disbursement Officer.*

A self-addressed return envelope with the words "Disbursement Office" appearing in the left hand corner, and a questionnaire were enclosed with the letter, the questionnaire being as follows:

Disbursement Office
The National Service Bureau
Washington, D. C.

Below is the required information.
Please send the check.

Fill in and return blank within 30 days.
Allow two weeks for mailing check.

Check will not be sent unless all information is given below.

DO NOT WRITE
IN THIS SPACE

Claim _____

Bureau _____

File _____

OK By _____

Date _____

TYPE OR PRINT ALL INFORMATION.

NAME _____
NO. AND STREET_____

CITY _____ STATE _____
OCCUPATION _____
EMPLOYED BY _____
EMPLOYER'S ADDRESS _____
HUSBAND OR WIFE'S NAME _____
EMPLOYED BY _____
ADDRESS _____
HOME PHONE _____ BUSINESS PHONE _____
BANK WITH _____
ADDRESS _____
REFERENCE _____
ADDRESS _____
REFERENCE _____
ADDRESS _____

Upon receipt of each form of questionnaire filled in by the person to whom it was sent, respondents mail their check for ten cents to that person. Each questionnaire when filled in and returned to respondents is forwarded by them to the customer requesting the information, together with an itemized bill for the information secured and including a charge for the ten cents paid out. No charge is made if no reply is received.

After the issuance of the complaint, respondents eliminated the words "Disbursement Officer," appearing after the signature of "Robert Bennett" on said form letter, and the words "Disbursement Office" from the questionnaire and from the return envelopes.

PAR. 5. Through the use of the name "The National Service Bureau" alone and more particularly when used together with the words "Disbursement Office" or "Disbursement Officer" in the manner hereinabove described, respondents have represented that they were a part of or connected in some manner with the Veterans Administration or some other part or agency of the United States Government.

Through the use of their form letter stating "If you will fill in the inclosed blank giving the requested information we will forward to you a check for a small sum of money deposited with us for that purpose," together with the enclosed blank as above described, respondents have represented that a small but significant sum of money to which the recipient of the letter is entitled has been deposited with respondents and that this money will be forwarded to the recipient of the letter upon his furnishing sufficient information by means of which he can be identified as the person entitled to the money.

PAR. 6. In fact respondents are not connected with the United States Government in any respect. No sum of money to which any recipient of these letters is entitled has been deposited with respondents and no sum of money has been forwarded by respondents other than respond-

ents' check for ten cents which is sent to each person furnishing the requested information. This payment of ten cents does not justify respondents' statement that a small sum of money has been deposited with them for forwarding. This practice is a transparent scheme to mislead and conceal the purpose for which the information is sought.

PAR. 7. The use by the respondents of the name "The National Service Bureau" and their use of the other false, misleading and deceptive statements and representations as herein above described have the tendency and capacity to and did mislead a substantial portion of the public into the erroneous and mistaken belief that respondents are connected with or are an agency of the United States Government and that their other said false, misleading and deceptive statements and representations are true and to induce a substantial number of the public, because of such mistaken and erroneous belief, to give respondents information concerning their present location, employment and financial condition which they would otherwise not have supplied.

CONCLUSION

The aforesaid acts and practices of respondents as hereinbefore 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 Robert O. Bennett and Lillie K. Bennett, individuals, trading as The National Service Bureau or trading under any other name or trade designation, jointly or severally, their representatives, agents and employees, directly or through any corporate or other device, in connection with the business of obtaining and selling information concerning delinquent debtors or other credit information in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the name "The National Service Bureau" or any other words of similar import to designate, describe or refer to respondents' business, or otherwise representing, directly or by implication, that respondents are connected with or are an agency of the United States Government or that their business is other than that of obtaining and selling credit information.

(2) Representing, directly or by implication, that money has been deposited with them for persons from whom information is requested, unless or until the money has in fact been so deposited, and then only when the amount so deposited is clearly and expressly stated.

(3) Using any forms, letters, questionnaires, or other material, printed or written, which does not clearly and expressly state that the information requested is to be used for credit purposes.

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

IN THE MATTER OF

HASTINGS POTATO GROWERS ASSOCIATION

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

Docket 5921. Complaint, Sept. 10, 1951—Decision, Jan. 31, 1952

Where a cooperative corporation engaged in selling potatoes and other vegetables produced in Florida by its members, (1) to buyers who usually purchased in small volumes, through brokers to whom it paid brokerage fees varying from three to ten cents per hundredweight; (2) to some of such brokers who also purchased for their own accounts for resale; and (3) directly to other buyers, including some chain-store organizations who usually purchased in larger volumes for use or resale—

(a) Paid a fee as brokerage to buying brokers in connection with the sale of potatoes to them in the same manner as it paid them a fee for effecting sales, as its agents, to small buyers, and in the same amounts, through invoicing them at the same prices as they charged small buyers and paying bills rendered to the association for brokerage fees in connection with sales made to said brokers for their own account for resale, as well as for fees earned for effecting sales as the association's agent to small buyers;

(b) Paid such a fee also to buying brokers in connection with other sales of potatoes through the practice of charging them prices which were lower than those charged small buyers by the amount of the brokerage fees that it paid them for effecting sales to the small buyers—in some of such transactions, invoicing buying brokers at such lower prices, and in other transactions invoicing the buying brokers the same prices as those charged small buyers but permitting them to deduct the necessary discount for allowances; and

(c) Charged direct buyers, including some chain-store organizations lower prices than it charged small buyers, through either invoicing such buyers at prices which were lower by the amount of the brokerage fees or invoicing them at the same prices charged small buyers and permitting them to make the necessary deduction:

Held, That said association, in making such payments of fees as brokerage and such charging of lower prices, paid or granted something of value as a commission, brokerage or other compensation in lieu thereof, in connection with the sale of vegetables, to the other parties to such transactions or to their agents, etc., who were acting in their behalf, and that such acts and practices violated subsection (c) of Sec. 2 of the Clayton Act as amended.

Before *Mr. Frank Hier*, trial examiner.

Mr. Peter J. Dias and *Mr. Richard E. Ely* for the Commission.

Mr. Counts Johnson, of Tampa, Fla., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent, named in the caption hereof, and hereinafter more particularly designated and described, has been and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. Title 15, section 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Hastings Potato Growers Association, hereinafter sometimes referred to as the Association, is a cooperative corporation, organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Hastings, Florida.

PAR. 2. The Association is now, and continuously for many years last past has been engaged in the business of selling potatoes and other vegetables produced in Florida by its members to three principal kinds of buyers.

The Association employs brokers who, as its agents, sell such vegetables to most buyers (hereinafter sometimes referred to as small buyers) who usually purchase in smaller volumes. As compensation for services rendered in effecting such sales to small buyers, the Association pays such brokers a brokerage fee. Such brokerage fees vary from about three cents to ten cents per hundredweight.

In addition to selling such vegetables to small buyers as agents of the Association, some of such brokers (hereinafter sometimes referred to as "buying brokers") also purchase such vegetables from the Association for their own accounts for resale.

The Association also sells vegetables directly to other buyers, including some chain-store organizations (hereinafter sometimes referred to as direct buyers) who usually purchase in larger volumes for their own account for use or resale.

PAR. 3. In the course and conduct of such business, the Association causes such vegetables so sold to be transported from its place of business or from elsewhere in Florida to the places of business of such buyers, some of which are located in Florida and some of which are located elsewhere in the United States. All sales of vegetables by the Association hereinafter referred to involved such transportation from Florida to such buyers with places of business located elsewhere and occurred during approximately the three or four years last past.

PAR. 4. (A) The Association pays a fee as brokerage to buying brokers in connection with the sale of potatoes to them in the same manner as it pays a brokerage fee to them and other brokers for ef-

fecting sales, as its agents, to small buyers, and in the same or substantially the same amounts. In these transactions the Association invoices buying brokers, and they remit to the Association, at prices which are the same as those charged small buyers; but the buying brokers render to the Association, and the Association pays, bills which set forth, in addition to brokerage fees earned for effecting sales, as it agents, to small buyers, fees as brokerage in connection with such sales made to them for their own account for resale or which set forth only the latter.

(B) In connection with other sales of potatoes to buying brokers, instead of the Association making the payments of fees as brokerage alleged in subparagraph (A) above, it charges them prices which are lower than those charged small buyers. The prices are lower by amounts which are the same or substantially the same as the brokerage fees that the Association pays to its brokers for effecting sales, as its agents, to small buyers.

In some of these transactions, the Association invoices buying brokers, and they remit to the Association, at such lower prices. When this has been done, the Association sometimes indicates the fact by a notation on the invoice that the price is "net."

In other of these transactions, the Association invoices buying brokers at prices which are the same as those charged small buyers but the buying brokers remit to the Association at such lower prices, being permitted by the Association to deduct the necessary discount or allowance. When this is to be done, the Association sometimes indicates the fact by omitting the notation "net" on the invoice.

(C) In connection with sales of potatoes to direct buyers, instead of the Association making the payments of fees as brokerage alleged in subparagraph (A) above, it charges them prices which are lower than those charged small buyers. The prices are lower by amounts which are same or substantially the same as the brokerage fees that the Association pays to its brokers for effecting sales, as its agents, to small buyers.

Such lower prices are charged direct buyers in the same manner as they are charged buying brokers as alleged in subparagraph (B) above.

PAR. 5. In making payments of fees as brokerage, as alleged in Paragraph Four (A), and in charging lower prices, as alleged in Paragraps Four (B) and Four (C), the Association paid or granted, in the course and conduct of its business in commerce, something of value as a commission, brokerage, or other compensation, and allowances and discounts in lieu thereof, in connection with the sale of vegetables, to the other parties to such transactions, or to their agents, representa-

tives or other intermediaries therein who were acting in fact for or in behalf, or subject to the direct or indirect control, of such other parties.

PAR. 6. The acts and practices of the respondent as above alleged violate subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, Section 13).

CONSENT SETTLEMENT [1]

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), as amended by an Act of Congress approved June 19, 1936, (the Robinson-Patman Act) the Federal Trade Commission, on September 10, 1951, issued and subsequently served its complaint on the respondent named in the caption hereof, charging it with violation of subsection (c) of Section 2 of said Clayton Act as amended.

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 the 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 allegations set forth in the complaint.

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

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on January 31, 1952, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order to cease and desist.

It is accordingly ordered, That the respondent, Hastings Potato Growers Association, a corporation, shall, within sixty (60) days after service upon it of this notice and 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 contained in the consent settlement entered in disposition of this proceeding.

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

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Hastings Potato Growers Association, hereinafter sometimes referred to as the Association, is a cooperative corporation, organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Hastings, Florida.

PAR. 2. The Association is now, and continuously for many years last past has been engaged in the business of selling potatoes and other vegetables produced in Florida by its members to three principal kinds of buyers.

The Association employs brokers who, as its agents, sell such vegetables to most buyers (hereinafter sometimes referred to as small buyers) who usually purchase in smaller volumes. As compensation for services rendered in effecting such sales to small buyers, the Association pays such brokers a brokerage fee. Such brokerage fees vary from about three cents to ten cents per hundredweight.

In addition to selling such vegetables to small buyers as agents of the Association, some of such brokers (hereinafter sometimes referred to as "buying brokers") also purchase such vegetables from the Association for their own accounts for resale.

The Association also sells vegetables directly to other buyers, including some chain store organizations (hereinafter sometimes referred to as direct buyers) who usually purchase in larger volumes for their own account for use or resale.

PAR. 3. In the course and conduct of such business, the Association causes such vegetables so sold to be transported from its place of business or from elsewhere in Florida to the places of business of such buyers, some of which are located in Florida and some of which are located elsewhere in the United States. All sales of vegetables by the Association hereinafter referred to involved such transportation from Florida to such buyers with places of business located elsewhere and occurred during approximately the three or four years last past.

PAR. 4. (A) The Association pays a fee as brokerage to buying brokers in connection with the sale of potatoes to them in the same

manner as it pays a brokerage fee to them and other brokers for effecting sales, as its agents, to small buyers, and in the same or substantially the same amounts. In these transactions the Association invoices buying brokers, and they remit to the Association, at prices which are the same as those charged small buyers; but the buying brokers render to the Association, and the Association pays, bills which set forth, in addition to brokerage fees earned for effecting sales, as its agents, to small buyers, fees as brokerage in connection with such sales made to them for their own account for resale or which set forth only the latter.

(B) In connection with other sales of potatoes to buying brokers, instead of the Association making the payments of fees as brokerage alleged in subparagraph (A) above, it charges them prices which are lower than those charged small buyers. The prices are lower by amounts which are the same or substantially the same as the brokerage fees that the Association pays to its brokers for effecting sales, as its agents, to small buyers.

In some of these transactions, the Association invoices buying brokers, and they remit to the Association, at such lower prices. When this has been done, the Association sometimes indicates the fact by a notation on the invoice that the price is "net."

In other of these transactions, the Association invoices buying brokers at prices which are the same as those charged small buyers but the buying brokers remit to the Association at such lower prices, being permitted by the Association to deduct the necessary discount or allowance. When this is to be done, the Association sometimes indicates the fact by omitting the notation "net" on the invoice.

(C) In connection with sales of potatoes to direct buyers, instead of the Association making the payments of fees as brokerage alleged in subparagraph (A) above, it charges them prices which are lower than those charged small buyers. The prices are lower by amounts which are the same or substantially the same as the brokerage fees that the Association pays to its brokers for effecting sales, as its agents, to small buyers.

Such lower prices are charged direct buyers in the same manner as they are charged buying brokers as alleged in subparagraph (B) above.

PAR. 5. In making payments of fees as brokerage, as alleged in Paragraph Four (A), and in charging lower prices, as alleged in Paragraphs Four (B) and Four (C), the Association paid or granted, in the course and conduct of its business in commerce, something of value as a commission, brokerage, or other compensation, and allowances and discounts in lieu thereof, in connection with the sale of vege-

tables, to the other parties to such transactions, or to their agents, representatives or other intermediaries therein who were acting in fact for or in behalf, or subject to the direct or indirect control, of such other parties.

CONCLUSION

The acts and practices of the respondent as above found violate subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, Section 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent Hastings Potato Growers Association, a corporation, and its officers, directors, agents or employees, directly or through any corporate or any other device, in connection with the sale of potatoes or any other vegetable in interstate commerce, do forthwith cease and desist from:

1. Making payments to brokers on purchases for their own accounts in amounts which are the same as the amounts of brokerage fees paid to brokers effecting sales, as agents, to other purchasers, or in any other amounts which are also paid as brokerage, whether such payments are made upon being billed therefor or otherwise;

2. Granting a discount or allowance to any purchaser which makes the price to such purchaser lower than the prices at which sales are made to other purchasers, by any amount which is the same as the amount of brokerage fees paid to brokers effecting sales, as agents, to such other purchasers, or lower in any other amounts which are also in lieu of brokerage, whether such lower prices are charged by invoicing at "net" prices, or by permitting the purchasers to make a deduction from invoiced prices in remitting payment, or by any other device;

3. Paying or granting anything of value as a commission, brokerage or other compensation or allowance or discount in lieu thereof to the other parties to such transactions, or to their agents, representatives or other intermediaries therein who in fact act for or in behalf, or are subject to the direct or indirect control, of such other parties.

(sgd) HASTINGS POTATO GROWERS ASSOCIATION,
Hastings Potato Growers Association,
By (sgd) COUNTS JOHNSON, *Its Attorney.*

[Date] *November 20, 1951.*

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 31st day of January 1952.

Complaint

IN THE MATTER OF

ALBERT COHN AND IRVING AND LOUIS KURASH DOING BUSINESS AS PROFESSIONAL REMINDER SERVICE

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

Docket 5762. Complaint, Apr. 7, 1950—Decision, Feb. 11, 1952

Judicial notice is taken of the fact that the words "engraving" and "engraved", when used in connection with or descriptive of business or social stationery, have specific meanings. *Federal Trade Commission* v. *Benton Announcements, Inc.*, 130 F. (2d) 254; 35 F. T. C. 941; 3 S. & D. 495.

Where three partners engaged in the printing of greeting cards and in the interstate sale and distribution thereof—

Represented through statements in circulars, in which were included the terms "plateless engraved" and "plateless engraving", that their greeting cards were engraved by some process in which a plate was not used;

The facts being that said cards were not engraved but were printed by the thermographic process in which, following regular printing, the wet ink is dusted with a powdered chemical and baked, with resulting raised letter effect resembling engraving;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that said cards were engraved, and of inducing its purchase thereof in such belief; and with capacity and tendency so to do:

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. Edward F. Downs 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 Albert Cohn, Irving Kurash, and Louis Kurash doing business as Professional Reminder Service, a copartnership, 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. Respondents Albert Cohn, Irving Kurash and Louis Kurash are copartners doing business under the name of Professional Reminder Service with their principal office and place of business at 42 East 23d Street, New York, New York.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the printing of greeting cards and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause said cards, when sold, to be transported from their said place of business in the State of New York to the purchasers thereof, many of whom were and are located in States of the United States other than the State of New York and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said greeting cards in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents have printed and circulated throughout the several States to prospective customers a circular containing, among other things, the following statement:

Our rates are reasonable. All cards are plateless engraved on white vellum paper as per enclosed sample.

The bottom portion of this circular is an order blank to be detached from the upper portion and filled in as per the desired order, and the enclosed sample referred to in the circular is a sample of respondents' greeting cards with the lettering thereon having a raised appearance.

PAR. 4. Respondents, through the use of the term "plateless engraved" represented that their greeting cards were engraved by some process in which a plate was not used.

Said representation was false, misleading and deceptive. Respondents' cards were not engraved but were printed by what is known as the thermographic process. This process consists of regular printing, after which the wet ink is dusted with a chemical in powdered form and then baked, which causes the chemical to melt, fuse with ink, become solid and present a raised letter effect having the appearance of engraving.

PAR. 5. The use by respondents of the term "plateless engraved" as aforesaid had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said greeting cards were engraved and because of such erroneous and mistaken belief to purchase respondents' said greeting cards.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 February 11, 1952, the initial decision in the instant matter of Hearing Examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 7, 1950, issued and subsequently served its complaint in this proceeding upon respondents Albert Cohn, Irving Kurash and Louis Kurash, doing business as Professional Reminder Service, a copartnership, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After respondents filed their answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents Albert Cohn, Irving Kurash and Louis Kurash and Edward F. Downs, counsel supporting the complaint, for the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that the said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, without presentation of proposed findings and conclusions or oral argument. Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission, said stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer, and stipulation, said stipulation having been approved by the hearing examiner, who, after duly considering 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. Respondents Albert Cohn, Irving Kurash and Louis Kurash are copartners doing business under the name of Professional Reminder Service, with their principal office and place of business at 42 East 23rd Street, New York, New York.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the printing of greeting cards and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause said cards, when sold, to be transported from their said place of business in the State of New York to the purchasers thereof, many of whom were and are located in States of the United States other than the State of New York and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their said greeting cards in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents have printed and circulated throughout the United States to prospective customers a circular containing, among other things, the following statement:

Our rates are reasonable. All cards are plateless engraved on white vellum paper as per enclosed sample.

The bottom portion of this circular bears an order blank to be detached from the upper portion and filled in as per the desired order. The enclosed sample referred to in the circular is one of respondents' greeting cards with the lettering thereon having a raised appearance.

Since December 1948 respondents have issued the circulars containing the statement quoted above with an asterisk following the term "plateless engraved." This asterisk refers to a footnote contained in the circular, which reads as follows:

Plateless engraving is a modern printing process without special plates or dies which is called by various names but is also commonly known as the thermographic process. It creates engraved effects which make it indistinguishable from engraving from special plates or dies except to an expert in the field.

PAR. 4. The respondents through the use of these statements and especially through the use of the terms "plateless engraved" and "plateless engraving" having represented that their greeting cards were and are engraved by some process in which a plate is not used.

PAR. 5. Said representations are false, misleading and deceptive. Respondents' cards are not engraved but are printed by what is known as the thermographic process. This process consists of regular printing, after which the wet ink is dusted with a chemical in powdered form and then baked, which causes the chemical to melt, fuse with the ink, become solid and present a raised letter effect having the appearance of engraving.

PAR. 6. The use by respondents of the statements set forth above and especially of the terms "plateless engraved" and "plateless engraving" had, and now has, the tendency and capacity to, and did, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said greeting cards are engraved and because of such erroneous and mistaken belief to purchase respondents' said greeting cards.

PAR. 7. Judicial notice is taken of the fact that the words "engraving" and "engraved," when used in connection with or descriptive of, business or social stationery, have specific meanings:

The word "engraving," as it is used in the graphic arts, may be applied either to an engraved intaglio plate upon which letters, words, or designs have been incised or cut or to the impressions made from such a plate. Such plates are cut or incised by hand, by machine, by etching with acid, by a transfer from other engraving, and by other means, but in all cases the letters, words or designs so to be produced upon stationery are cut below the surface of the plate. To make impressions from such a plate, the ink is applied to the plate, then the plate is wiped so that the ink remains only in the lines cut below the surface. The inked plate is then put upon a piece of stationery or article to be engraved, and pressure is applied sufficient to force the surface of the stationery into the lines cut in the plate, causing the ink in such lines to adhere to the paper on which the impression is to be made.

The words "engraving" and "engraved," when used in connection with, or descriptive of, business or social stationery, mean, and the trade and consuming public understand, and for many years have understood them to mean, that the stationery products so being referred to or described contain letters, words, or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application, under pressure, of metal plates which have been specially engraved, cut or carved for, and are used in, the production of such stationery by the process more particularly described in the foregoing paragraph. (*Federal Trade Commission* v. *Benton Announcements, Inc.*, 31 F. T. C. 882, affirmed 130 F. (2d) 254, CCA 2d Circuit, July 6, 1942.)

CONCLUSION

The aforesaid acts and practices of 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 respondents, Albert Cohn, Irving Kurash and Louis Kurash, individually and as partners, doing business as Professional Reminder Service, their representatives, agents and employees, directly or indirectly, through any corporate or other device, in connection with the offering for sale, sale, and distribution of stationery

products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the words "engraved" or "engraving," either alone or in conjunction with any other word or words, to designate, describe or refer to stationery products on which the lettering, inscriptions or designs have been printed from inked type faces and have been given a raised effect by an embossing process in which no plates have been used and the embossing effect has been procured by the application of powders to wet ink in what has been described as the thermographic process.

(2) Using the words "engraved" or "engraving," either alone or in conjunction with any other word or words, to designate, describe or refer to stationery products unless and until the respondents produce the stationery products so designated, described or referred to by a process which consists essentially in the application of blank stationery to an inked intaglio plate under pressure sufficient to force the surface of the stationery into the letters or designs which are cut or incised on the plate so that the ink in such plate adheres to the stationery to form letters, words, characters or designs which are in relief and raised from the general plane of the surface of the stationery.

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 February 11, 1952].

IN THE MATTER OF

IRVING SALZMAN TRADING AS UNION MILL ENDS

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

Docket 5927. Complaint, Oct. 9, 1951—Decision, Feb. 11, 1952

Where an individual engaged in the mail order sale of assortments of cloth to the general public in different states, in advertising in newspapers, periodicals, and other advertising literature—

(a) Represented that this assortment of remnants consisted chiefly of pieces of material of sufficient size to make aprons, skirts, jackets, play clothes, pinafores and sun suits and that his assortment of dress goods consisted entirely of prints, percales, ginghams, shirtings and similar materials;

The facts being that the remnant assortment consisted chiefly of scraps, trimmings and small irregular pieces of cloth, and included only a few pieces of material large enough to make the aforesaid garments; and a substantial part of the dress goods assortment consisted of goods other than those claimed;

(b) Falsely represented that purchasers of his assortments would be given twenty-five button cards "free" and that the button cards were customarily sold elsewhere for 25 cents each;

The facts being that it was necessary to pay for the assortment before button cards were furnished and the price thereof was included in that charged for the assortment, except in the event the assortment was returned and the purchase price refunded; and such button cards were customarily sold by retailers for much less than 25 cents; and

(c) Falsely represented that his said offer was a "get-acquainted" offer and good for a short time only; when in fact it comprised part of a continuous scheme of solicitation;

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

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

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. B. L. Williams 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 Irving Salzman, an individual trading as Union Mill Ends, 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 Irving Salzman is an individual trading as Union Mill Ends, with his office and principal place of business located at 338 Broadway, Monticello, New York. The respondent is now and since April 1950 has been engaged in conducting a mail order business in the sale of assortments of cloth to the general public.

PAR. 2. In connection with said business respondent causes and has caused his products, when sold, to be shipped from his place of business in the city of Monticello, New York, to the purchasers thereof located in other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States. His volume of trade in said products in such commerce is and has been substantial.

PAR. 3. In the course and conduct of his aforesaid business, and for the purpose of promoting the sale of his products in commerce, respondent has made certain statements, representations and claims concerning said products and the use to which the same may be put, by means of advertisements inserted in newspapers and periodicals and other advertising literature. Among and typical of said statements and representations are the following:

FREE 25 BUTTON CARDS	VALUED
3 to 10 Buttons on every card)	at
Sells for 25¢ a card elsewhere)	$6.25
18 YARDS REMNANTS (ABOUT)	$1.98
(3 lbs.)	
TOTAL VALUE	$8.23

This is a get acquainted offer ONLY good for a short time. YES—25 different Button cards FREE NO charge to you. All smart-looking buttons, guaranteed washable. Buttons for expensive dresses, blouses, coats, skirts, suits, etc.; All useful buttons. This offer is made to introduce you to our Remnant Bargain. You get the BEST QUALITY Prints and Percales. Large Pieces! Full width Dress Goods included. ALL SIZES USABLE! Make aprons, skirts, jackets, patchwork quilts, play clothes, pinafores, sun suits, etc. ALL for ONLY $1.98. Satisfaction guaranteed or money cheerfully refunded. Keep free premium even if we do not please you. Surely this is fair. RUSH order back with this ad.

SEND NO MONEY! Order C. O. D. _____ Order TODAY
UNION MILL ENDS _____ Monticello, New York

DRESS-GOODS
25¢ YARD

SELLS FOR MUCH MORE ELSEWHERE. Beautiful Prints, Percales, Ginghams, Shirting, etc., 2 3, & 4 yards of each. Width 36 inches. All

new patterns. This is a get-acquainted offer ONLY good for a short time. RUSH your order back.

No order accepted less than 12 yards
12 Yard BUNDLE ONLY $2.98 ----------

PAR. 4. By means of the aforesaid statements respondent represented, directly and by implication, that his assortment of remnants consisted chiefly of pieces of material of sufficient size with which aprons, skirts, jackets, play clothes, pinafores and sun suits could be made; that purchasers of said assortments would be given twenty-five button cards "free"; that said button cards supplied with said assortment were customarily sold elsewhere for 25 cents each; that his assortment of dress goods consisted entirely of prints, percales, ginghams and shirtings and similar materials and that his offer of sale of said assortments was a get acquainted offer and was good for only a short time.

PAR. 5. The said representations were false, misleading and deceptive. In truth and in fact said assortments of remnants contained only a few pieces of material of sufficient size to make aprons, skirts, jackets, play clothes, pinafores and sun suits. The balance of said assortments consisted of scraps, trimmings and small irregular pieces of cloth.

The twenty-five button cards sent with each purchase of the assortment were not given "free." It was necessary to purchase and pay for the assortment before said articles were furnished and the cost thereof was included in the price charged for the assortment, except in those cases when the assortment was returned, the purchase price refunded and the articles retained by the purchaser.

The button cards had not been generally sold for 25¢. In truth and in fact, the same kind, type and quality of button cards as those offered by the respondent were regularly and ordinarily sold by various retailers at the time of the advertisement for much less than the price stated by respondent. A substantial part of respondent's assortment of dress goods consisted of goods other than prints, percales, ginghams, and shirtings and similar materials.

The offers advertised by respondent as get acquainted offers and good only for a short time were actually not terminated at or limited to any given time. Said offers comprised a part of a continuous scheme of solicitation in the regular course and conduct of the respondent's business.

PAR. 6. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and

representations were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the products sold by respondent.

PAR. 7. The aforesaid acts and practices of the respondent, 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 February 11, 1952, the initial decision in the instant matter of Hearing Examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 9, 1951, issued and subsequently served its complaint in this proceeding on respondent Irving Salzman, an individual trading as Union Mill Ends, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Thereafter, respondent filed an answer in which he admitted all the material allegations of fact in the complaint and waived all intervening procedure and further hearing as to such facts. Subsequently, the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and answer, and the hearing examiner, having duly considered the 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 Irving Salzman is an individual trading as Union Mill Ends, with his office and principal place of business located at 338 Broadway, Monticello, New York. The respondent is now and since April 1950 has been engaged in conducting a mail order business in the sale of assortments of cloth to the general public.

PAR. 2. In connection with said business respondent causes and has caused his products, when sold, to be shipped from his place of busi-

ness in the city of Monticello, New York, to the purchasers thereof located in other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States. His volume of trade in said products in such commerce is and has been substantial.

PAR. 3. In the course and conduct of his aforesaid business, and for the purpose of promoting the sale of his products in commerce, respondent has made certain statements, representations and claims concerning said products and the use to which the same may be put, by means of advertisements inserted in newspapers and periodicals and other advertising literature. Among and typical of said statements and representations are the following:

FREE 25 BUTTON CARDS	VALUED
3 to 10 Buttons on every card)	at
Sells for 25¢ a card elsewhere)	$6.25
18 YARDS REMNANTS (ABOUT) (3 lbs.)	$1.98
TOTAL VALUE	$8.23

This is a get acquainted offer ONLY good for a short time. YES—25 different Button cards FREE NO charge to you. All smart-looking buttons, guaranteed washable. Buttons for expensive dresses, blouses, coats, skirts, suits, etc. All useful buttons. This offer is made to introduce you to our Remnant Bargain. You get the BEST QUALITY Prints and Percales. Large Pieces! Full width Dress Goods included. ALL SIZES USABLE! Make aprons, skirts, jackets patchwork quilts, play clothes, pinafores, sun suits, etc. ALL for ONLY $1.98. Satisfaction guaranteed or money cheerfully refunded. Keep free premium even if we do not please you. Surely this is fair. RUSH order back with this ad. SEND NO MONEY! Order C. O. D.---------- Order TODAY

UNION MILL ENDS----------Monticello, New York

DRESS GOODS

25¢ YARD

SELLS FOR MUCH MORE ELSEWHERE. Beautiful Prints, Percales, Ginghams, Shirting, etc., 2, 3, & 4 yards of each. Width 36 inches. All new patterns. This is a get-acquainted offer ONLY good for a short time. RUSH your order back.

No order accepted less than 12 yards

12 Yard BUNDLE ONLY $2.98----------

PAR. 4. By means of the aforesaid statements respondent represented, directly and by implication, that his assortment of remnants consisted chiefly of pieces of material of sufficient size with which aprons, skirts, jackets, play clothes, pinafores and sun suits could be made; that purchasers of said assortments would be given twenty-five button cards "free": that said button cards supplied with said assortment were customarily sold elsewhere for 25 cents each; that his assort-

ment of dress goods consisted entirely of prints, percales, ginghams and shirtings and similar materials and that his offer of sale of said assortments was a get-acquainted offer and was good for only a short time.

PAR. 5. The said representations were false, misleading and deceptive. In truth and in fact, said assortments of remnants contained only a few pieces of material of sufficient size to make aprons, skirts, jackets, play cloths, pinafores and sun suits. The balance of said assortments consisted of scraps, trimmings and small irregular pieces of cloth.

The twenty-five button cards sent with each purchase of the assortment were not given "free." It was necessary to purchase and pay for the assortment before said articles were furnished and the cost thereof was included in the price charged for the assortment, except in those cases when the assortment was returned, the purchase price refunded and the articles retained by the purchaser.

The button cards had not been generally sold for 25¢. In truth and in fact, the same kind, type and quality of button cards as those offered by the respondent were regularly and ordinarily sold by various retailers at the time of the advertisement for much less than the price stated by respondent. A substantial part of respondent's assortment of dress goods consisted of goods other than prints, percales, ginghams, and shirtings and similar materials.

The offers advertised by respondent as get-acquainted offers and good only for a short time were actually not terminated at or limited to any given time. Said offers comprised a part of a continuous scheme of solicitation in the regular course and conduct of the respondent's business.

PAR. 6. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the products sold by respondent.

CONCLUSION

The aforesaid acts and practices of the respondent, 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, Irving Salzman, an individual trading as Union Mill Ends, or trading under any other name or trade designation, his representatives, agents and employees, directly or indirectly, through any corporate or other device, in connection with the offering for sale, sale or distribution of assortments of cloth in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner or by any means the sizes, quality, composition or types of pieces of material included in such assortments.

2. Misrepresenting the price at which any article of merchandise is customarily sold by others.

3. Representing, directly or by implication, that any offer for the sale of merchandise is a mere get-acquainted offer or is applicable for a limited period of time only, when such offer is in fact a part of a regular method of solicitation in the normal course of business.

4. Using the word "free," or any other word or words of similar import, in advertising, to designate, describe or refer to merchandise which is not in truth and in fact a gift or gratuity, or which is not given without requiring the purchase of other merchandise or the performance of some service inuring directly or indirectly to the benefit of the respondent.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 [as required by said declaratory decision and order of February 11, 1952].

IN THE MATTER OF

ANDREW G. CHOLICK ET AL. TRADING AS WESTERN TRAINING SERVICE

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

Docket 5821. Complaint, Oct. 24, 1950—Decision, Feb. 14, 1952

Where three partners engaged in the interstate sale and distribution of correspondence courses to prepare students for examination for certain Government Civil Service positions; in promoting the sale of their courses through newspaper advertisements and postal cards mailed to post office and rural route box holders, and through traveling agents—

(a) Represented that persons completing their course and passing a civil service examination were assured of positions in the United States Civil Service, through such statements as "Men and Women Wanted to Prepare for Civil Service Jobs, Act Now", "Civil Service Men, Women, 18 to 50, Many Opportunities" and, after listing numerous positions, "A Few of the Hundreds of Different Kinds of Positions";

The facts being that while numerous vacancies may exist generally in said service, the taking of their course of study and the passing of a civil service examination does not assure employment, which is subject to veteran's preference, availability of eligibles in various districts, and other conditions and uncertainties;

(b) Misleadingly represented that a common school or eighth grade education was usually sufficient to qualify for and obtain positions in the Civil Service; when in fact while such an education might be sufficient for most of the lower grade positions, for many a high school education is required, and in still others additional special training, specific physical qualification or practical experience; and,

(c) Represented in some instances, through their agents, that the agent visited a given territory only once every two years and that unless prospective students enrolled at the time of his visit, they would have to wait two years before they would have another opportunity; notwithstanding the fact that prospective students could enroll at any time;

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

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.

Other charges of the complaint were not sustained by the record: namely, that respondents through their advertising or sales agents, or both, represented and implied that said correspondence school was a branch of or connected with the Government of the United States Civil Service Commission; that respondents' representatives and agents were similarly thus connected; that respondents would continue training students until they had been placed in Government positions; that positions were permanent once an employee had served his first year of probation; that the school had on its staff former

Government examiners; that only those with high qualifications were accepted, and that the school was under Government supervision.

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

Mr. William L. Pencke for the Commission.

Mr. A. C. Allen and *Mr. Solon B. Clark*, of Portland, Oreg., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Andrew G. Cholick, A. Lawrence Cholick and Joseph J. Cholick, copartners, trading as Western Training Service, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Andrew G. Cholick, A. Lawrence Cholick and Joseph J. Cholick are individuals trading and doing business as copartners under the name and style of Western Training Service, with their office and principal place of business at 206 Panama Building, Portland, Oregon.

PAR. 2. For more than one year last past, respondents have been and are now engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examination for certain Civil Service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mails. Respondents, in the course and conduct of said business, cause their said courses of study and instruction to be transported from their said place of business in the State of Oregon to, into and through States of the United States other than Oregon to the purchasers thereof in such other States. There has been at all times mentioned herein a course of trade in said courses of instructions so sold and distributed by respondents in commerce between and among the various States of the United States.

PAR. 3. In connection with the sale of said courses of study and instruction, respondents have made and are making use of printed advertising matter distributed to prospective students throughout the central and western States, and of advertisements inserted in newspapers circulated in said States, in and by which numerous representations have been made and are made in regard to said courses of study

and matters and things connected therewith. Typical of such representations are the following:

TRAIN FOR CIVIL SERVICE

Permanent Employment, Vacations, Pensions and Sick Leave Offered By State, County, City and Federal Civil Service. Stenographers, Typists, Postal, Customs. Revenue, Immigration, Veterans Adm. Clerks & Inspectors, etc. Instruction for these and many others may be had from the old Licensed School Established in 1931. For Information address:

WESTERN TRAINING SERVICE
Box 99 % Humboldt Standard.

MEN AND WOMEN
Ages 18 to 50
GOVERNMENT POSITIONS
Thousands to be Filled

Clerks, Internal revenue agents, railway mail clerks, accountants, post office clerks, mail carriers, immigration service, custom service, veterans administration, stenographers, typists, storekeepers, assistant meat inspectors; many others to choose from
Steady employment. Instruction now being given.

WESTERN TRAINING SERVICE
(Established 1931)
206 PANAMA BLDG. Portland 4, Or.
Send me full information.

PREPARE AT HOME FOR A GOVERNMENT JOB
Security. Vacations
Promotions. Pensions

Write

WESTERN TRAINING SERVICE
206 Panama Bldg. Portland 4, Ore.

PAR. 4. By means of the foregoing statements and representations and others to the same effect not herein set out, respondents represent and imply that said Western Training Service is a branch of or connected with the United States Government or the United States Civil Service Commission; that many positions in the United States Civil Service, including those specifically named in said advertisements, are vacant; that men and women are needed to fill said vacancies and that said positions may be obtained through respondents' Western Training Service.

PAR. 5. By means of oral statements and representations made by their sales agents, respondents represent and imply to prospective students and purchasers of their said courses of instruction that said representatives and sales agents are connected with the United States Government or the United States Civil Service Commission in some official capacity; that respondents will continue training students until they have been placed in Government positions; that students taking said course of training will pass a Civil Service examination and be sure of a job in the United States Civil Service; that respondents' said school is in some manner connected with the United States Government or the United States Civil Service Commission and has special contacts with said Civil Service Commission enabling said school to give advance information on examination dates and to assist students in procuring Civil Service positions; that positions are permanent once an employee had served his first year of probation; that respondents' school has on its staff former Government examiners; that an eighth grade education is sufficient to qualify for and to obtain positions in the classifications for which respondents offer training, and that not every one is signed up for such training but that only those with high qualifications are accepted; that the school is under Government supervision; that salesmen visit a given territory once every two years, and that unless prospective students enroll at the time of the salesmen's visit they will have to wait for two years before they can have another opportunity to enroll.

By means of return postal cards, listing a large number of Civil Service positions, addressed to rural route box holders, and by furnishing to prospective students and enrollees a booklet entitled "HOW TO GET A GOVERNMENT JOB," respondents and their salesmen further the impression and implication that respondents' school is connected with or authorized by the United States Government to train persons for Government positions and that said salesmen operate under some official authority.

In said sales literature and advertisements, respondents represent that their school was licensed and has been continuously operated since 1931.

PAR. 6. All of said statements, representations, and implications are grossly exaggerated, false and misleading. In truth and in fact, there is no connection whatsoever between respondents or their salesmen and the United States Government, the United States Civil Service Commission or any other agency or branch of the Government, nor does the Government supervise respondents' school. The United States Civil Service Commission does not advertise for men and women to fill Government positions or that vacancies exist in Government Service. Respondents have no power or authority to place any person in any Civil Service position, or guarantee that such person will pass Civil Service examinations by taking said courses of instruction. Respondents' representations that there are certain vacancies in the United States Civil Service and that students would continue to be trained until they pass an examination and are placed in Civil Service positions implies that such examination may be called within the near future, when in fact examinations for a number of positions listed in respondents' sales literature and advertisements may not be called for several years. Moreover, a number of positions, including guards, custom inspectors, custodians, and others, are restricted to ten-point veteran applicants. Respondents have no special contacts with the Civil Service Commission or any other branch of the Government and possess no advance information pertaining to Civil Service examinations; nor have they any information which persons interested in examinations cannot readily obtain from the Civil Service Commission, their regional offices, or local post offices. While Government positions are generally permanent, there are many circumstances under which employees may be separated from the service. Respondents have no former Government examiners on their teaching staff.

While an eighth grade education may be sufficient for most of the lower grades, a high school education is required for many positions, and still other positions require special training, special physical qualifications or experience. Respondents do not limit enrollments to persons with high qualifications but accept enrollments from all persons who are willing to purchase said courses of instruction. Prospective purchasers may purchase said courses of instruction at any time they desire and are not required to wait for a period of two years after declining to enroll on the occasion of the salesman's first visit. Respondents have not operated such school continuously since

1931 as it was closed during the period of World War II and for some time thereafter.

PAR. 7. In the course and conduct of their business as aforesaid, respondents in soliciting enrollment make use of a printed form of contract designated "Enrollment Agreement" which contains a statement that:

> I desire to secure a Civil Service appointment and should I fail to pass the first examination taken, I am to receive, without further payment, coaching UNTIL I RECEIVE MY APPOINTMENT.

Said representation is misleading in that no one may secure a Civil Service appointment through respondents' said school and continued coaching will not necessarily lead to an appointment to the Civil Service; and if a student should qualify for and pass an examination, it does not insure an appointment but may merely be the means of having said student's name placed on a register and such student may not be offered an appointment for a long time after passing said examination.

PAR. 8. The use by respondents of the statements and representations aforesaid, has had and now has the tendency and capacity to and does confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and to induce them to purchase respondents' courses of study and instruction in said commerce on account thereof.

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

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 February 14, 1952, the initial decision in the instant matter of Hearing Examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 24, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the

provisions of that Act. After the filing by respondents of their answer to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to 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. Thereafter the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, answer, and testimony and other evidence (counsel having elected not to file proposed findings and conclusions for consideration by the hearing examiner or to argue the matter orally), 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 respondents, Andrew G. Cholick, A. Lawrence Cholick and Joseph J. Cholick, were, for a number of years immediately preceding May 1, 1951, engaged in business as copartners under the name Western Training Service, with their office and principal place of business located at 206 Panama Building, Portland, Oregon. Respondents were engaged in the sale and distribution of courses of study and instruction intended for preparing students thereof for examination for certain Civil Service positions in the United States Government, such courses being pursued by correspondence through the medium of the United States mails. As indicated above, the business was discontinued in April 1951.

PAR. 2. In the course and conduct of their business, respondents caused their courses of study and instruction, when sold, to be transported from their place of business in the State of Oregon to purchasers located in various other States of the United States. During the period of time in question, respondents maintained a course of trade in their courses in commerce between and among various States of the United States.

PAR. 3. In promoting the sale of their courses of study and instruction, respondents used newspaper advertisements and also postal cards which were mailed to post office box holders and rural route box holders. When inquiries were received from prospective students, such inquiries were referred to traveling sales agents employed by respondents who proceeded to call upon the prospects and solicit the purchase of the courses of study.

One of the principal issues raised by the complaint is whether respondents have exaggerated and misrepresented the opportunities

for obtaining positions in the United States Civil Service and whether respondents have wrongfully represented that persons taking respondents' courses of study and passing Civil Service examinations were assured of employment. The postal card used by respondents contained the statement "Men and Women Wanted to Prepare for Civil Service Jobs, Act Now," and the statement "Civil Service, Men, Women, 18 to 50, Many Opportunities." After listing numerous positions in the Civil Service, the card stated that these positions were but "A Few of the Hundreds of Different Kinds of Positions." The card concluded with the statement "If you want to be ready to fill one of the thousands of Government jobs that must be filled from time to time due to deaths, retirement, and normal Government expansion, fill in the attached card and mail at once." "The newspaper advertisements were in similar vein, stating that there were "thousands" of Government positions to be filled. Like the card, the advertisements listed a number of positions and then stated that there were "Many Others to Choose From." The enrollment agreement which persons purchasing the courses were asked to sign contained, under the caption "Continuous Training Until Appointed," the following: "Should I fail to pass the first examination taken, I am to receive, without further payment, coaching until I receive my appointment."

Essentially the same representations were made to prospective students by respondents' sales agents, who stressed the availability of positions in the Civil Service and in at least some instances represented that persons purchasing respondents' courses and passing the Civil Service examinations were assured of appointment to positions.

These representations were unwarranted and misleading. While numerous vacancies may exist generally in the United States Civil Service, the taking of respondents' courses of study and passing a Civil Service examination does not assure employment, as employment is subject to veterans' perferences, the availability of eligibles in various Civil Service districts, and other conditions. Moreover, examinations for numerous positions listed in respondents' advertising material may not be called for several years, and even though a student takes and passes an examination and his name is placed upon the eligible list, an appointment may not be made for a long period of time. Also, a number of positions are open only to veterans with 10 point preference.

Respondents also represented, both in their advertising material and through their sales agents, that a common school or eighth grade education is usually sufficient to qualify for and obtain positions in the Civil Service. This representation was likewise erroneous and misleading. While an eighth grade education may be sufficient for

most of the lower grade positions in Civil Service, a high school education is required for many positions, and still other positions require additional special training, specific physical qualifications, or practical experience.

A further representation made in some instances by respondents' sales agents to prospective purchasers was that the agent visited a given territory only once every two years and that unless prospective students enrolled at the time of the agent's visit, they would have to wait a period of two years before they would have another opportunity to enroll. There was no basis in fact for this representation, as prospective students could enroll for respondents' courses at any time they desired and were not required to wait two years or any other period of time.

PAR. 4. While the complaint contained certain charges in addition to those discussed above, such additional charges are not sustained by the record.

PAR. 5. The acts and practices of respondents, as described above, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' school and its courses of study and instruction and with respect to positions in the United States Civil Service, and the tendency and capacity to cause such portion of the public to purchase respondents' courses as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER

It is ordered, That the respondents, Andrew G. Cholick, A. Lawrence Cholick and Joseph J. Cholick, individually and as copartners trading under the name Western Training Service, or under any other name, and their 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 courses of study and instruction, do forthwith cease and desist from representing, directly or by implication:

1. That persons completing respondents' courses and passing a Civil Service examination are assured of positions in the United States Civil Service.

2. That an eighth grade education is usually sufficient to qualify for and obtain Civil Service positions, unless such representation be limited to positions in the lower grades.

3. That unless prospective students enroll for respondents' courses of study at the time of the visit of respondents' sales agent they will not be permitted to enroll for a period of two years or any other specified period of time.

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 February 14, 1952].

IN THE MATTER OF

HARRY A. BURCH DOING BUSINESS AS WESTERN TRAINING SERVICE AND NATIONAL TRAINING SERVICE

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

Docket 5827. Complaint, Nov. 2, 1950—Decision, Feb. 14, 1952

Where an individual engaged in the interstate sale and distribution of correspondence courses to prepare students for examination for certain Civil Service positions—

(a) Falsely represented through statements on printed postal cards, circulars, newspapers, and other advertising media, and through sales agents and a sales guide with which he supplied them, that his school was a branch of, or connected with, the Government or the Civil Service Commission;

(b) Represented that many positions were vacant, that men and women were needed to fill such vacancies, and that such positions might be obtained through his school; and

(c) Represented as aforesaid, including statements on postal cards distributed to holders of rural post office boxes, that men and women were wanted to prepare for various Civil Service examinations, including customs, immigration and border patrol positions, and through such statements created the impression that such postal cards were official announcements of the Civil Service Commission;

The facts being that said commission does not advertise for persons to prepare for examinations or to fill Government positions; said individual had no power or authority to place any person in any Civil Service position; and while many vacancies may exist generally in the Civil Service, the taking of his course of study and the passing of a Civil Service examination would not assure employment, due to veterans' preferences, availability of eligibles in different Civil Service districts, and other contingencies;

(d) Falsely represented that the remuneration in Civil Service positions was better than the average salaries or wages obtainable in comparable positions in private industry; and

Where said individual, engaged as aforesaid—

(e) Represented through his said traveling sales agents, that an eighth grade education was sufficient to qualify for and obtain the positions concerned; the fact being that while such an education may suffice for most of the lower grade positions, a high school education is required for many, and still others require additional special training, specific physical qualifications, or practical experience;

(f) Falsely represented that persons employed in the United States Civil Service are pensioned on two-thirds of their salaries; the facts being that the amount of retirement paid depends in each case upon the length of service and other factors;

(g) Falsely represented that unless students enrolled at the time of the sales agent's visit they would not be permitted to enroll for a period of two years; when in fact they were free to enroll at any time;

(h) In certain instances furthered the false implication that said school was connected with or authorized by the Government and that such agents had some official capacity or authority, through exhibiting to prospective purchasers a book entitled "Reference Manual of Government Positions"; and

(i) Represented falsely that it was necessary that prospects take the courses of study offered in order to qualify for Civil Service positions, and that such agents were required by the Civil Service to obtain certain preliminary information for prospects;

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

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.

While the complaint also raised an issue as to respondent's trade name, National Training Service, which it charged as misleading in itself as representing or implying a Government connection, and a stipulation of facts contained a statement to the same effect: there appeared little likelihood that the name itself, apart from other representations as to Government connection, would be misleading to the public, and it was accordingly concluded that an order prohibiting its use would not be warranted.

Before *Mr. William L. Pack*, hearing examiner.
Mr. William L. Pencke for the Commission.
Mr. Maurice Kadish, of Seattle, Wash., 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 Harry A. Burch, an individual, doing business under the names of Western Training Service and National Training Service, 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. Harry A. Burch, is an individual, trading and doing business under the names of Western Training Service and National Training Service, with his office and principal place of business at 1314 East 43rd Street, in the city of Seattle and State of Washington.

PAR. 2. For more than two years last past, respondent has been and is now engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examination for certain Civil Service positions under the United States Govern-

ment, which said courses are pursued by correspondence through the medium of the United States mails. Respondent, in the course and conduct of said business, causes his said courses of study and instruction to be transported from his said place of business in the State of Washington to, into and through States of the United States other than Washington to the purchasers thereof in such other States. There has been at all times mentioned herein a course of trade in said courses of instruction so sold and distributed by respondent in commerce between and among the various States of the United States, and said course of trade has been and is, substantial.

PAR. 3. In connection with the sale of said courses of study and instruction respondent has made and is making use of printed advertising matter distributed to prospective students throughout the central and western States, and of advertisements in newspapers circulated in said States, in and by which numerous representations have been and are made in regard to said courses of study and matters and things connected therewith. Typical of such representations are the following:

CIVIL SERVICE JOBS

(MEN AND WOMEN 18 TO 50)

Offer YOU: Better than average pay! PERMANENT SECURITY! AUTOMATIC PAY INCREASES!! AUTOMATIC PROMOTIONS! TWO WEEKS OR MORE ANNUAL VACATION WITH PAY! ANNUAL SICK LEAVE WITH PAY! 40-HOUR WEEK! TEN PER CENT EXTRA FOR NIGHT WORK! HIGH RETIRED PAY AS LONG AS YOU LIVE WHEN YOU REACH RETIREMENT AGE! The above advantages go with all jobs in the PERMANENT CLASSIFIED CIVIL SERVICE. To be able to get one of these jobs you must PASS CIVIL SERVICE COMPETITIVE EXAMINATION. TRAINING YOU TO PASS THESE EXAMINATIONS IS OUR BUSINESS!!! Time required is short. The COST IS LOW! The TERMS ARE EASY!

WESTERN TRAINING SERVICE

MEN
and
WOMEN
WANTED

AGES 18 to 50

To Prepare For
CIVIL SERVICE JOBS

GOOD SALARIES &
PERMANENT JOBS
FOR LIFE

RURAL STAR ROUTE
OR
POST OFFICE BOXHOLDER
LOCAL

MEN
and
WOMEN
WANTED
Ages—18–50
TO PREPARE FOR
CIVIL SERVICE EXAMINATIONS
Railway Postal Clerk—P. O. Clerk, Carriers—
Customs—Immigration—Internal Revenue—
Clerks, Inspectors—Border Patrol Contact
Representatives
CIVIL SERVICE OFFERS: Permanent Employment, Promotions, Vacations, Sick
Leave, Pensions
MUNICIPAL—STATE—FEDERAL
For full details and qualifications, fill in completely, detach and mail attached post card AT ONCE—No Postage Necessary.

PAR. 4. By means of the foregoing statements and representations and others to the same effect not herein set out and by the use of the trade name National Training Service, respondent represents and implies that his said school is a branch of or connected with the United States Government or the U. S. Civil Service Commission; that many positions in the United States Civil Service, including those specifically named in said advertisements are vacant, that men and women are needed to fill said vacancies and that said positions may be obtained through respondent's Western Training Service or National Training Service; that men and women are wanted by the United States Government to prepare for civil service positions; and that the remuneration in civil service is better than the average wages paid in comparable jobs.

PAR. 5. Respondent furnished his salesmen with a so-called "Sales Guide" containing suggestions and directions for conducting interviews with prospective purchasers of said course. Among the statements directed by respondent to be made as aforesaid are the following:

Mr. Doe, you wrote in about Civil Service . . . The reason that I have called to talk to you about Civil Service is that you could have but one arm or a leg and we would not know anything about it. . . There are a few personal questions I have to ask you. I do not like to, but it is required by the Civil Preparation Service . . . —if you cannot pass us, you could not pass the government . . .

I am going to give you a little Civil Service to see how you would make out . . . In Civil Service no one knows how high they can go . . . At the time of retirement, . . . they say "You have done your work well, Go home and we will pay you just the same, and that is two-thirds of your pay the rest of your life" . . .

The very important part about our qualifications are selecting people who

have a decisive mind. This is the last call I can make for a period of two years . . .

By means of said sales talk and other oral statements and representations made by his sales agents, respondent represents and implies to prospective students and purchasers of his said courses of instruction that said Western Training Service and National Training Service are connected with the United States Government or the United States Civil Service Commission in some official capacity; that if enrollees pursue and complete respondent's course of study, they will be assured of a job in the U. S. Civil Service and that it is necessary to take said course of instruction in order to qualify therefor, and that said salesmen are required by the Civil Service to obtain preliminary information; that many vacancies exist in the U. S. Civil Service and that respondent can place his students in such positions; that an eighth grade education is sufficient to qualify for and obtain most of said positions; that persons employed in the United States Civil Service are pensioned on two-thirds of their salary; and that unless students enroll at the time of the salesman's visit, they will not be able to do so for a period of two years.

Through statements on postal cards distributed to holders of rural newspaper and post office boxes respondent represents that men and women are wanted to prepare for civil service examinations, including customs, immigration and border patrol positions, which statements coupled with the trade name National Training Service, create the impression that said cards are official announcements of the U. S. Civil Service Commission.

By means of exhibiting a book entitled "Reference Manual of Government Positions," to prospective purchasers, respondent's salesmen further the impression and implication that respondent's school is connected with, or authorized by the United States Government and that said salesmen are clothed with some official capacity or authority.

PAR. 6. All of said statements, representations and implications are grossly exaggerated, false and misleading. In truth and in fact, there is no connection whatsoever between the respondent or his salesmen and the United States Government or any agency thereof. The United States Civil Service Commission does not advertise for men and women to prepare for civil service examinations or to fill Government positions. Respondent has no power or authority to place any person in any civil service position. Neither respondent nor his salesmen have been authorized by any Government agency to qualify applicants for civil service examinations or positions, or obtain preliminary data. It is not necessary to purchase respondent's courses of instruction in

order to take civil service examinations and obtain positions in civil service.

While many vacancies may exist generally in the U. S. Civil Service, the taking of respondent's course of study and passing an examination does not assure immediate employment, for the reason that such employment is subject to veterans' preferences, the availability of eligibles in various civil service districts, and other conditions. Moreover, examinations for numerous positions listed in respondents's sales literature may not be called for several years, and even if a student takes and passes an examination and his name is placed upon the eligible list, an appointment may not be made for a long time; and a number of positions are open only to ten-point veterans. While an eighth grade education may be sufficient for most of the lower grades, a high school education is required for many positions, and still other positions require additional special training, specific physical qualifications or practical experience.

The wages and salaries paid to Civil Service employees are not higher than the average wages and salaries prevailing for comparable positions in private industry. U. S. Civil Service employees are not pensioned at two-thirds of their salaries, the amount of retirement pay depending in each case upon the length of service and other specific provisions pertaining to the retirement of Government employees.

If prospective purchasers of said courses of study do not decide to enroll at the time they are solicited by respondent's salesmen, they may enroll at any time subsequent to such visit and are not required to wait for a return visit by said salesmen two years after the first call.

Respondent's use of the name National Training Service in connection with the sale of courses of study for U. S. Civil Service examinations, creates the impression and implication that said National Training Service is connected with or a part of the U. S. Civil Service. In truth and in fact, it is a private business, operated for profit by respondent.

PAR. 7. The use by respondent of the statements and representations aforesaid, has had and now has the tendency and capacity to and does confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and to induce them to purchase respondent's courses of study and instruction in said commerce on account thereof.

PAR. 8. The aforesaid acts and practices of respondent, 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 February 14, 1952, the initial decision in the instant matter of Hearing Examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 2, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Harry A. Burch, individually and doing business under the names Western Training Service and National Training Service, charging him 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 his answer to the complaint a hearing was held before the above-named hearing examiner, theretofore duly designated by the Commission, at which hearing a stipulation of facts was entered into between counsel supporting the complaint and counsel for respondent, and certain testimony and other evidence were also introduced at the hearing. Such stipulation, 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 the hearing examiner upon the complaint, answer, stipulation of facts, (such stipulation having been approved by the hearing examiner) and testimony and other evidence (counsel having elected not to file proposed findings and conclusions for consideration by the hearing examiner or to argue the matter orally), 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, Harry A. Burch, is an individual trading and doing business under the name National Training Service, with his office and principal place of business located at 1314 East 43rd Street, Seattle, Washington. Respondent formerly used also the trade name Western Training Service, the use of this name having been discontinued by him some two years ago. Respondent is now, and for a number of years last past has been, engaged in the sale and

distribution of courses of study and instruction intended for preparing students thereof for examination for certain Civil Service positions in the United States Government, such courses being pursued by correspondence through the medium of the United States mails.

PAR. 2. In the course and conduct of his business respondent causes and has caused his courses of study and instruction, when sold, to be transported from his place of business in the State of Washington to purchasers located in various other States of the United States. Respondent maintains and has maintained a course of trade in such courses in commerce between and among various States of the United States.

PAR. 3. In promoting the sale of his course of study and instruction respondent makes use of printed postal cards, circulars and other advertising media and also of advertisements inserted in newspapers, all of which are disseminated among prospective purchasers. By means of various statements appearing in such advertising material, respondent represents that his school is a branch of or is connected with the United States Government or the United States Civil Service Commission; that many positions in the United States Civil Service, including certain postions specifically named in such advertising material, are vacant, that men and women are needed to fill such vacancies and that such positions may be obtained through respondent's school; that men and women are wanted by the United States Government to prepare for Civil Service positions; and that the remuneration in Civil Service positions is better than the average salaries or wages obtainable in comparable positions in private industry.

Respondent also uses traveling sales agents to contact prospective students and such agents are supplied by respondent with a sales guide which contains suggestions and instructions for conducting interviews with prospects. Through the use of such sales guide and of other statements made by his sales agents, respondent represents to prospective students that his school is connected with the United States Government of the United States Civil Service Commission in some official capacity; that if enrollees pursue and complete respondent's courses of study they will be assured of a position in the United States Civil Service, and that it is necessary that prospects take such courses of study in order to qualify for such positions; that such sales agents are required by the United States Civil Service to obtain certain preliminary information from prospects; that many vacancies exist in the United States Civil Service, and that respondent can place his students in such positions; that an eighth grade education is sufficient to qualify for and obtain most of such positions; that persons employed in the United States Civil Service are pensioned on two-thirds of their

salary; and that unless students enroll at the time of the sales agent's visit they will not be permitted to enroll for a period of two years.

By means of statements on postal cards distributed to holders of rural post office boxes, respondent further represents that men and women are wanted to prepare for various Civil Service examinations, including customs, immigration and border patrol positions, and such statements create the impression that such postal cards are official announcements of the United States Civil Service Commission.

By exhibiting to prospective purchasers a book entitled "Reference Manual of Government Positions," respondent's sales agents have in certain instances furthered the impression and implication that respondent's school is connected with or authorized by the United States Government and that such sales agents have some official capacity or authority.

PAR. 4. All of these representations are erroneous and misleading. Respondent and his sales agents have no connection whatever with the United States Government or any agency thereof. The United States Civil Service Commission does not advertise for persons to prepare for Civil Service examinations or to fill Government positions. Respondent has no power or authority to place any person in any Civil Service position. Neither respondent nor his salesmen have been authorized by any Government agency to qualify applicants for Civil Service examinations or positions or to obtain preliminary or other data from such persons. It is not necessary to purchase respondent's courses of study in order to take Civil Service examinations and obtain Civil Service positions.

While many vacancies may exist generally in the United States Civil Service, the taking of respondent's course of study and passing a Civil Service examination does not assure employment, as employment is subject to veterans' preferences, the availability of eligibles in various Civil Service districts, and other conditions. Moreover, examinations for numerous positions listed in respondent's sales literature may not be called for several years, and even if a student takes and passes an examination and his name is placed upon the eligible list an appointment may not be made for a long period of time, and a number of positions are open only to veterans with ten-point preference. While an eighth grade education may be sufficient for most of the lower grade positions in Civil Service, a high school education is required for many positions, and still other positions require additional special training, specific physical qualifications, or practical experience.

Salaries and wages paid Civil Service employees are not higher than the average salaries and wages prevailing in comparable positions in

private industry. Civil Service employees are not pensioned at two-thirds of their salary, the amount of retirement pay depending, in each case, upon the length of service and other specific provisions pertaining to the retirement of Government employees.

If prospective purchasers of respondent's courses of study do not decide to enroll at the time they are solicited by respondent's salesman, they may enroll at any time subsequent to such visit and are not required to wait two years or any other period of time.

PAR. 5. The acts and practices of respondent, as described above, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's school and its courses of study and instruction and with respect to positions in the United States Civil Service, and have the tendency and capacity to cause such portion of the public to purchase respondent's courses as a result of the erroneous and mistaken belief so engendered.

CONCLUSIONS

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.

The complaint also raises an issue as to respondent's trade name National Training Service, charging that the name itself is misleading as representing or implying that the school is connected with the United States Government. While the stipulation of facts contains a statement to the same effect, the hearing examiner questions whether such position is sound. There would appear to be little likelihood that the name itself, apart from other representations as to Government connection, would be misleading to the public. It is therefore concluded that an order prohibiting the use of the trade name would not be warranted.

ORDER

It is ordered, That the respondent, Harry A. Burch, individually and doing business under the names Western Training Service and National Training Service or any other name, and his 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 courses of study and instruction, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's school has any connection with the United States Government or any agency thereof.

2. That persons completing respondent's courses are assured of positions in the United States Civil Service, or that it is necessary that persons take such courses in order to qualify for such positions.

3. That salaries or wages obtainable in Civil Service positions are higher than those obtainable in comparable positions in private industry.

4. That respondent's sales agents are authorized by the United States Civil Service Commission to obtain any information from purchasers or prospective purchasers of respondent's courses, or that such sales agents have any connection whatever with said Commission.

5. That an eighth grade education is sufficient to qualify for and obtain most Civil Service positions, unless such representation be limited to positions in the lower grades.

6. That persons employed in the United States Civil Service receive pensions or retirement annuities amounting to two-thirds of their salary.

7. That unless prospective students enroll for respondent's courses at the time of the visit of respondent's sales agent they will not be permitted to enroll for a period of two years or any other specified period of time.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent 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 February 14, 1952].

Order

IN THE MATTER OF

RENE D. LYON COMPANY, INC. ET AL.

MODIFIED ORDER TO CEASE AND DESIST

Docket 5859. Order, February 14, 1952

Order modifying prior order of Commission of September 20, 1951, at page 313, *supra*, in the public interest so as to prohibit adequately "a continuation of the unlawful acts and practices" there set forth; and

To require respondents, etc.; in connection with the offer, etc., of watch or wrist bands or similar products of foreign origin, in commerce, to cease and desist from offering the same without clearly and conspicuously disclosing the country of their origin, etc. as in the order specified.

Before *Mr. Webster Ballinger*, hearing examiner.
Mr. William L. Taggart for the Commission.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE AND DESIST

The Commission, on its own motion, having reconsidered its decision of September 20, 1951, in this matter, and it appearing that the order to cease and desist in said decision is inadequate to prohibit a continuation of the unlawful acts and practices set forth in the findings as to the facts in said decision and that the public interest may require that this proceeding be reopened and said order to cease and desist modified; and the Commission having issued its rule to show cause why the proceeding should not be reopened and the order to cease and desist modified in the respects indicated therein, and no reasons having been presented as to why the public interest does not require that this proceeding be reopened and the order to cease and desist modified; and

The Commission having duly considered the matter and being of the opinion that the public interest requires that this proceeding be reopened and the order to cease and desist modified:

It is ordered, That this proceeding be, and it hereby is, reopened for the purpose of modifying the order to cease and desist previously entered herein.

It is further ordered, That said order to cease and desist be, and it hereby is, modified to read as follows:

MODIFIED ORDER

It is ordered, That the respondents, Rene D. Lyon Company, Inc., a corporation, its officers, and Rene D. Lyon and Donald A. Lyon, individually, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of watch or wrist bands or similar products, of foreign origin, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling said products without clearly and conspicuously disclosing thereon or in immediate connection therewith the country of origin of such products.

2. Representing in any manner that said products are of domestic manufacture.

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.

Syllabus

IN THE MATTER OF

DUON, INCORPORATED AND DONALD H. MILLER

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914 AND OF SEC. 3 OF AN ACT APPROVED OCT. 15, 1914

Docket 5933. Complaint, Oct. 26, 1951—Decision, Feb. 14, 1952

Where a corporation and its president, engaged in the manufacture and competitive interstate sale and distribution of shampoos and other cosmetic preparations, particularly "Vita Fluff Creme Shampoo", "Criterion Creme Shampoo", and "Custombuilt Creme", through some two hundred jobbers to professional beauty shops and operators, primarily;

(a) Made and imposed conditions, agreements and understandings that its jobbers, distributors and other parties would not sell, handle or otherwise distribute creme shampoos made and sold by its competitors; and, in order to enforce such conditions and their objectives—

(b) Required jobbers, by coercive and intimidating means, to purchase and deal in shampoos and cosmetic preparations made and sold by it;

(c) Policed the sales and activities of jobbers through an identifying code placed upon its products ordered by each, and investigated and checked sales made by them;

(d) Refused or threatened to refuse shipments of its products to jobbers unless they refrained from selling certain shampoos and cosmetic preparations produced and sold by its competitors;

(e) Refused or threatened to refuse sale of its "Vita Fluff Creme Shampoo", and at times other cosmetic preparations, unless and until such jobbers bought or agreed to buy certain other products made and sold by it, or unless and until, they purchased through it certain advertising material, viz., calendars;

(f) Refused to fill orders placed with it by certain of its jobbers when it was discovered that they had sold shampoo and other cosmetic preparatons made by its competitors; and,

(g) Refused or threatened to refuse shipment of its products to jobbers who sub-jobbed or sold its products to jobbers with whom it did not deal directly, because latter dealt in products produced or sold by its competitors;

Which acts, practices and methods lessened competition; prevented its jobbers or distributors from receiving the benefits to be derived from purchasing and selling competitive products sought and purchased from other sources by customers of said jobbers; precluded manufacturing competitors from selling certain of their products to purchasers of said corporation's products; and precluded jobbers and distributors of its products who did not agree to purchase and sell the same exclusively, from purchasing and selling such products; and had the capacity and tendency so to do; to the prejudice of the public; and

With the result that the further effect of aforesaid sales and contracts for sale on the aforesaid conditions, agreements and understandings might be to substantially lessen competition in the line of commerce in which said corporation and individual were engaged, and in that in which the

customers and purchasers of said corporation's products were engaged; and tend to create a monopoly in said corporation in the manufacture and sale of shampoos and other cosmetic preparations:

Held, That the aforesaid acts constituted a violation of Section 5 of the Federal Trade Commission Act, and Section 3 of the Clayton Act.

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

Mr. Lynn C. Paulson and *Mr. Joseph J. Gercke* for the Commission.

Loftin, Anderson, Scott, McCarthy & Preston, of Miami. Fla., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A., Sec. 45) and of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act (15 U. S. C. A. Sec. 14), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Duon, Inc., a corporation, and Donald H. Miller, an individual, hereinafter referred to as respondents, have violated the provisions of the aforementioned Federal Trade Commission Act and of Section 3 of the aforementioned Clayton Act, in commerce, as "commerce" is defined in said Acts, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Count I

Federal Trade Commission Act Charges

PARAGRAPH 1. Respondent Duon, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio and has its main office and principal place of business at Coral Gables, Florida. This respondent also owns and maintains a plant for the manufacture of its products at Dayton, Ohio.

Respondent Donald H. Miller is president of Duon, Inc., and is now, and has been during the times herein mentioned, in active direction and control of the policies and operations of respondent corporation, and in all things hereinabove and hereinafter alleged has been and is now acting on behalf of, with and through said respondent corporation. Respondent Donald H. Miller has his office and principal place of business at Coral Gables, Florida.

PAR. 2. Respondent, Duon, Inc., is now, and for more than three years last past, has been engaged in the manufacture of shampoos and other cosmetic preparations, chief among which are products

bearing the trade names "Vita Fluff Creme Shampoo," "Criterion Creme Shampoo," and "Custombilt Creme," and in the sale thereof to and through jobbers to professional beauty shops and operators primarily. Said jobbers, beauty shops and operators are located throughout the several States of the United States and in the District of Columbia. Said products, when sold as aforesaid, are transported from the place of manufacture at Duon's, Inc., plant in Dayton, Ohio, to the purchasers thereof located in States other than the place of manufacture of said products, and there is now and has been for more than three years last past a constant current of trade and commerce in said products 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, as hereinafter and hereinbefore described, said respondent, Duon, Inc., has been for more than three years last past, and is now, in competition in the sale of shampoos and other cosmetic preparations in commerce between and among the various States of the United States, and in the District of Columbia, with other manufacturers and distributors of shampoos and other cosmetic preparations. Sales were made in various States through some two hundred jobbers for use, consumption and resale within the United States. Respondent's total sales in 1949 were in excess of $350,000.

PAR. 4. For more than three years last past, and continuing to the present time, respondent Duon, Inc., in the sale of and in connection with the sale of shampoos and other cosmetic preparations to and through jobbers, distributors and other parties, has been making and imposing conditions, agreements and understandings that said jobbers, distributors and other parties would not sell, handle or otherwise distribute creme shampoos manufactured and sold by competitors of said respondent.

PAR. 5. Among such conditions, understandings and agreements, but not limited thereto, or in order to effectuate, enforce and carry out such conditions, agreements and understandings referred to in Paragraph Four above, and the purposes and objectives thereof, respondents have done and are doing the following acts, practices and things, among others:

1. Have required and are requiring jobbers, by coercive and intimidating means, to purchase and deal in shampoos and cosmetic preparations manufactured and sold by respondents.

2. Have policed and are policing the sales and activities of jobbers by means of an identifying code placed upon respondents' products ordered by each jobber, and have investigated and are investigating and checking sales made by said jobbers.

3. Have refused and are refusing, or threatening to refuse, shipments of their products to jobbers unless said jobbers refrain from selling certain shampoos and cosmetic preparations produced and sold by competitors of respondents.

4. Have refused and are refusing, or threatening to refuse, sale of their product "Vita Fluff Creme Shampoo," and at times other cosmetic preparations unless and until said jobbers buy or agree to buy certain other products manufactured and sold by respondents, or unless and until said jobbers purchase through respondents certain advertising material, viz., calendars.

5. Have refused and are refusing to fill orders placed with respondents by certain of their jobbers when said jobbers are discovered to have sold shampoos and other cosmetic preparations manufactured by competitors of respondents.

6. Have refused and are refusing, or threatening to refuse, shipment of their products to jobbers who sub-job or sell respondents' products to jobbers with whom respondents do not deal directly because said jobbers deal in products produced or sold by competitors of respondent Duon, Inc.

PAR. 6. The acts, practices and methods hereinabove set forth in Paragraphs Four and Five are all to the prejudice of the public; have the capacity and tendency to lessen and do lessen competition; tend to prevent and do prevent the jobbers or distributors of said respondents from receiving the benefits to be derived from purchasing and selling competitive products sought by and purchased from other sources by customers of said jobbers; tend to preclude and do preclude manufacturing competitors of shampoos and other cosmetic preparations from selling certain of their products to purchasers of respondents' products, and of precluding jobbers and distributors of respondents' products, who do not agree to purchase and sell respondents' products exclusively, from purchasing and selling respondents' products; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act (15 U. S. C. A., Sec. 45).

Count II

Clayton Act Charges

PARAGRAPH 1. Paragraphs One to Five, inclusive, of Count I hereof are hereby adopted and made a part of this Count as fully and with the same effect as though here set forth.

PAR. 2. The acts, practices and methods hereinabove set forth in Paragraphs Four and Five tend to prevent and do prevent the job-

bers or distributors of said respondents from receiving the benefits to be derived from purchasing and selling competitive products sought by and purchased from other sources by customers of said jobbers; tend to preclude and do preclude manufacturing competitors of shampoos and other cosmetic preparations from selling certain of their products to purchasers of respondents' products, and of precluding jobbers and distributors of respondents' products who do not agree to purchase and sell respondents' products exclusively, from purchasing and selling respondents' products.

PAR. 3. The further effect of such sales and contracts for sale on such conditions, agreements and understandings, may be to substantially lessen competition in the line of commerce in which the respondents are engaged and in the line of commerce in which the customers and purchasers of respondents' products are engaged; and tend to create a monopoly in respondents in the manufacture and sale of shampoos and other cosmetic preparations in the manufacture and sale of which respondents have been and now are engaged.

PAR. 4. The aforesaid acts of respondents 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).

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A., Sec. 45) and of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act (15 U. S. C. A. Sec. 14), the Federal Trade Commission on October 26, 1951, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition in violation of the provisions of said Federal Trade Commission Act and with violation of the provisions of section 3 of the aforementioned Clayton Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided for in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding,

[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 February 14, 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.

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 the 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. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent 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 respondents in consenting to the Commission's entry of said findings as to the facts, conclusion and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree 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 respondents consent may be entered herein, in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Duon, Incorporated, is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, and has its main office and principal place of business at Coral Gables, Florida. This respondent also owns and maintains a plant for the manufacture of its products at Dayton, Ohio.

Respondent Donald H. Miller is president of Duon, Incorporated, and as officer of Duon, Incorporated, has his office and principal place of business at Coral Gables, Florida.

PAR. 2. Respondent Duon, Incorporated, is now and for more than three years last past has been engaged in the manufacture of shampoos and other cosmetic preparations, chief among which are products bearing the trade names "Vita Fluff Creme Shampoo, Criterion Creme Shampoo and Custombilt Creme," and in the sale thereof to and through jobbers to professional beauty shops and operators primarily.

PAR. 3. Respondent Duon, Incorporated, is engaged in interstate commerce in the sale or distribution of shampoos and other cosmetic preparations to jobbers and other purchasers located throughout the United States. In the course of its aforesaid sale and distribution of shampoos and other cosmetic preparations respondent, Duon, Incorporated, has shipped and does ship such products to the respective

places of business of its customers located at various points in the United States or in the District of Columbia other than the State of origin of such shipments. Respondent Donald H. Miller has exercised and is exercising active direction and control of the policies and operations of respondent Duon, Incorporated, in interstate commerce, as heretofore and hereinafter set forth.

PAR. 4. In the course and conduct of its said business, as hereinafter and hereinbefore described, said respondent, Duon, Incorporated, has been for more than three years last past, and is now, in competition in the sale of shampoos and other cosmetic preparations in commerce between and among the various States of the United States, and in the District of Columbia, with other manufacturers and distributors of shampoos and other cosmetic preparations. Sales were made in various States through some two hundred jobbers for use, consumption and resale within the United States. Respondent Duon's Incorporated, total sales in 1949 were in excess of $350,000.

PAR. 5. For more than three years last past, and continuing to the present time, respondent Duon, Incorporated, in the sale of and in connection with the sale of shampoos and other cosmetic prepartions to and through jobbers, distributors and other parties, has been making and imposing conditions, agreements and understandings that said jobbers, distributors and other parties would not sell, handle or otherwise distribute creme shampoos manufactured and sold by competitors of said respondent.

PAR. 6. Among such conditions, understandings and agreements, but not limited thereto, or in order to effectuate, enforce and carry out such conditions, agreements and understandings referred to in Paragraph Five above, and the purposes and objectives thereof, respondents have done and are doing the following acts, practices and things, among others:

1. Have required and are requiring jobbers, by coercive and intimidating means, to purchase and deal in shampoos and cosmetic preparations manufactured and sold by respondent, Duon, Incorporated.

2. Have policed and are policing the sales and activities of jobbers by means of an identifying code placed upon respondent Duon's, Incorporated, products ordered by each jobber, and have investigated and are investigating and checking sales made by said jobbers.

3. Have refused and are refusing or threatening to refuse, shipments of Duon's, Incorporated, products to jobbers unless said jobbers refrain from selling certain shampoos and cosmetic preparations produced and sold by competitors of respondent Duon, Incorporated.

4. Have refused and are refusing, or threatening to refuse, sale of Duon's, Incorporated, product "Vita Fluff Creme Shampoo," and at times other cosmetic preparations unless and until said jobbers buy or agree to buy certain other products manufactured and sold by respondent Duon, Incorporated, or unless and until said jobbers purchase through respondent, Duon, Incorporated, certain advertising material, viz., calendars.

5. Have refused and are refusing to fill orders placed with respondent Duon, Incorporated, by certain of its jobbers when said jobbers are discovered to have sold shampoos and other cosmetic preparations manufactured by competitors of respondent Duon, Incorporated.

6. Have refused and are refusing, or threatening to refuse, shipment of Duon's, Incorporated, products to jobbers who sub-job or sell respondent Duon's, Incorporated, products to jobbers with whom respondent Duon, Incorporated, does not deal directly because said jobbers deal in products produced or sold by competitors of respondent, Duon, Incorporated.

PAR. 7. The acts, practices and methods hereinabove set forth in Paragraphs Five and Six are all to the prejudice of the public; have the capacity and tendency to lessen and do lessen competition; tend to prevent and do prevent the jobbers or distributors of said respondent Duon, Incorporated, from receiving the benefits to be derived from purchasing and selling competitive products sought and purchased from other sources by customers of said jobbers; tend to preclude and do preclude manufacturing competitors of shampoos and other cosmetic preparations from selling certain of their products to purchasers of respondent Duon's, Incorporated, products, and of precluding jobbers and distributors of respondent Duon's, Incorporated, products, who do not agree to purchase and sell respondent Duon's, Incorporated, products exclusively from purchasing and selling respondent Duon's, Incorporated, products.

PAR. 8. The further effect of such sales and contracts for sale on such conditions, agreements and understandings as hereinabove set forth may be to substantially lessen competition in the line of commerce in which the respondents are engaged and in the line of commerce in which the customers and purchasers of respondent Duon's, Incorporated, products are engaged; and tend to create a monopoly in respondent Duon, Incorporated, in the manufacture and sale of shampoos and other cosmetic preparations in the manufacture and sale of which respondents have been and are now engaged.

CONCLUSION

PAR. 9. The aforesaid acts of respondents constitute a violation of section 5 of the Federal Trade Commission Act as amended, and 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).

ORDER TO CEASE AND DESIST

I. *It is ordered*, That the respondents, Duon, Incorporated, a corporation, and Donald H. Miller, an individual, directly or indirectly, through the officers, agents, representatives and employees of Duon, Incorporated, or otherwise, in connection with the offering for sale, sale and distribution of shampoos and other cosmetic preparations in commerce, as Congress has defined "commerce" in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or entering into contracts of sale, or distributing or entering into contracts for the distribution, of shampoos and other cosmetic preparations through or with jobbers, distributors or others, on the condition, agreement or understanding that the said jobbers, distributors or others shall not sell or distribute or otherwise deal in all or certain shampoos and cosmetic preparations manufactured, sold or distributed by competitors of respondent Duon, Incorporated.

2. Enforcing or continuing in operation or effect any conditions, agreement or understanding in or in connection with any existing sale or distribution contract, or other arrangement, to the effect that the purchaser, jobber, distributor or other party to the contract or arrangement shall not handle, sell, distribute or trade in shampoos and cosmetic preparations manufactured and distributed by competitors of respondent Duon, Incorporated.

3. Cancelling, or directly or by implication threatening the cancellation of any contract or franchise or selling agreement with respondent Duon's, Incorporated, jobbers, distributors, or others because of the failure or refusal of such jobbers, distributors or others to purchase or deal exclusively in said products sold and distributed by respondent Duon, Incorporated.

4. Refusing or threatening to refuse sale of one or more of respondent Duon's, Incorporated, products to jobbers or distributors or others, unless or until said jobbers or other parties purchase or agree to purchase through respondent Duon, Incorporated, certain other products or advertising material, viz., calendars.

5. Refusing or threatening to refuse to fill orders placed with respondent Duon, Incorporated, by jobbers or distributors, or others, until and unless said jobbers, distributors or others agree to stop selling certain or all products produced by respondent Duon's, Incorporated, competitors.

6. Enforcing or attempting to enforce any policy of requiring dealers in respondent Duon's, Incorporated, products to refrain from dealing in or handling its competitors' products by refusing or threatening to refuse shipment of respondent Duon's, Incorporated, products to jobbers or distributors because they sub-job respondent Duon's, Incorporated, products.

7. Intimidating, coercing or persuading jobbers or distributors, potential jobbers or distributors, or attempting to intimidate, coerce or persuade jobbers or distributors, or potential jobbers or distributors to sell, handle or deal in respondent Duon's, Incorporated, products exclusively by directly or indirectly informing or notifying such jobbers or distributors, or causing any of them to be informed or notified that if they sell or otherwise deal in such products of a competitor or competitors of respondent Duon, Incorporated, as are competitive with the products sold and distributed by respondent Duon, Incorporated, they will be refused the opportunity to buy, job or distribute respondent Duon's, Incorporated, products; will not have their orders for respondent Duon's, Incorporated, products filled; shipment of respondent Duon's, Incorporated, products to its customers will be refused; they would otherwise be put to a financial or competitive disadvantage; or by using any like or similar means, method or policy to the same end.

8. Requiring or causing any jobber or distributor, or other dealer, to do any of the acts or engage in any of the practices forbidden by the foregoing paragraphs of this order.

II. *It is further ordered*, That the respondents, Duon, Incorporated, a corporation, and Donald H. Miller, an individual, directly or indirectly through the officers, agents, representatives and employees of Duon, Incorporated, or otherwise, in connection with the offering for sale, sale and distribution of shampoos and other cosmetic preparations in commerce, as "commerce" is defined in the Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 14, 1914, commonly known as the Clayton Act, to forthwith cease and desist from:

1. Selling or entering into contracts for sale or distributing or entering into contracts for the distribution of shampoos and other cosmetic preparations through or with jobbers, distributors or others, on the

condition, agreement or understanding that the said jobbers, distributors or others shall not sell or distribute or otherwise deal in all or certain shampoos and cosmetic preparations manufactured, sold or distributed by competitors of respondent Duon, Incorporated.

2. Enforcing or continuing in operation or effect any condition, agreement or understanding in or in connection with any existing sale or distribution contract, or other arrangement, to the effect that the purchaser, jobber, distributor or other party to the contract or arrangement shall not handle, sell, distibute or trade in shampoos and cosmetic preparations manufactured and distributed by competitors of respondent Duon, Incorporated.

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

DUON, INCORPORATED,
By its President, DONALD H. MILLER.
(sgd) Donald H. Miller,
DONALD H. MILLER,
(sgd) Donald H. Miller,

Date: January 9, 1952.

LOFTIN, ANDERSON, SCOTT, MCCARTHY, AND PRESTON
By: (sgd) DANIEL P. S. PAUL
Attorneys for Respondents.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 14th day of February, 1952.

213840—54——54

IN THE MATTER OF

AR-EX COSMETICS, 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 5411. Complaint, Dec. 27, 1945—Decision, Feb. 19, 1952

The symbol "RX" is, and for a long time has been, in practically universal use by physicians as a part of their directions to pharmacists for the filling of their prescriptions, and it is also used to an extent by pharmacists to indicate that their establishments compound physicians' prescriptions.

While the Commission was unable to find from the record in the instant matter that the use by respondents of said symbol in connection with the advertisement and sale of their cosmetics or soap had the capacity or tendency to induce the beliefs alleged in the complaint, namely, that "each parcel is individually compounded in accordance with a specific prescription therefor", it may well be that the use of said symbol has become so firmly associated in the minds of a substantial number of the public with physicians and their prescriptions that its use in connection with or reference to cosmetics and, perhaps, other products as well, may have the capacity and tendency to engender an erroneous belief of some sort concerning the relationship of a physician to the product.

Where a corporation and the individual who was its president and treasurer, engaged in the interstate sale and distribution of their "Ar-Ex" cosmetics and soap, including their "Cold Cream", "Dry Skin" preparation, "Chap Cream", "Deodorant Cream", "Face Powder", "Indelible Lipstick", "Special Formula (Non-Permanent) Lipstick", "Creme Rouge", "Compact Rouge", "Skin Lotion", "Cosmetic Hose", and "Soap for Dry Skin"; in advertising their said products—

(a) Falsely represented that they were free from all allergens and irritants; when in fact they contained ingredients which were kown to have caused allergic reactions, including skin irritations, in some people;

(b) Falsely represented that their "Cosmetic Hose" was virtually spot-proof, splash-proof and water-proof; and

(c) Falsely and misleadingly represented that their "Special Formula Lipstick" had been recommended by Consumers Research, on the basis of a statement in the December 1940 issue of its Bulletin that "lipsticks of the non-permanent variety guaranteed by the distributor to be free from bromo-fluorescein compounds, are available from Ar-Ex Cosmetics, Inc. * * *";

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such representations were true, and into the purchase of substantial quantities of respondents' said products 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 practices in commerce.

As respects the charge in the complaint that respondents' use of the symbol "RX" had long been used on the heading on physicians' prescriptions, and had become firmly associated in the minds of many persons with physicians

prescriptions and as referring to medical preparations: the complaint did not allege that the belief that respondents' products were of a "medicinal" nature was erroneous, nor did the answer aver that they were of such a nature, but merely denied that such a belief was engendered; and there was no issue of whether the products were within the somewhat indefinite category of products of a "medicinal" nature.

As respects the allegation of the complaint that the use by respondents of the symbol "RX" constituted a misleading representation that "each parcel is individually compounded in accordance with a specific prescription therefor", the Commission noted that cosmetics and soap are usual articles of merchandise, that respondents' products are displayed in store windows and in the cosmetic sections of drug and department stores, where they are sold over the counter to anyone who wishes to buy, in the dress provided by respondents; that the mechanics of their purchase and sale is vastly different from that involved in the purchase and sale of a product prescribed by a physician, and that the dress of the products in question is far removed from that of a pharmacist-filled prescription;

The Commission was unable to find from the record that the use by respondents of the symbol "RX" in connection with the advertisement and sale of their cosmetics and soap had the aforesaid capacity or tendency; and, upon consideration of the record, including the arguments of counsel before the hearing examiner, was of the opinion that the complaint, insofar as it related to the use of said symbol by respondents as above set out, should be dismissed without prejudice.

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

Mr. William L. Taggart for the Commission.

Mr. Theodore E. Rein and *Mr. Simon H. Alster*, 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 Ar-Ex Cosmetics, Inc., a corporation and Julius B. Kahn, individually, and as an officer 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. Respondent, Ar-Ex Cosmetics, Inc., is a corporation organized and existing under the laws of the State of Illinois with its offices and principal place of business located at 1036 West Van Buren Street, Chicago, Illinois. Respondent, Julius B. Kahn, is the President and Treasurer of the corporate respondent, Ar-Ex Cosmetics, Inc., and formulates and directs the policies and practices of said corporate respondent. His address is 1036 West Van Buren Street, Chicago, Illinois.

PAR. 2. Said respondents are now, and have been for some time last past, engaged in the sale and distribution of cosmetics, under the brand and trade name of "Ar-Ex."

Said respondents cause their said products, when sold, to be transported from their place of business in the city of Chicago, State of Illinois to purchasers located in various States of the United States other than the State of Illinois and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products, in commerce, among and between the various States of the United States, and in the District of Columbia.

PAR. 3. In the course of the conduct of their aforesaid business, respondents have disseminated, and are now disseminating and have caused and are now causing the dissemination of, false advertisements concerning their said products 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 are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements inserted in newspapers and periodicals, and by circular leaflets, pamphlets, and other advertising literature are the following:

Ar-Ex Cosmetics Are Free From All Known Irritants and Allergens.

AR-EX. A line of cosmetics that are really free from the known allergens and irritants.

You have the assurance that irritants and allergens which may interfere with the clinical picture are eliminated.

You will find this Formulary useful whenever you have occasion to prescribe allergen free cosmetics for patients who cannot use ordinary cosmetics.

AR-EX Cosmetics are prescribed and recommended by physicians because they are free from all known irritants and allergens.

The colors used in AR-EX . . . Lipstick are certified in accordance with the new Drug and Cosmetic Law. We have gone a step farther than the regulations demand by eliminating from our list of colors those certified colors which we have found to be allergens.

AR-EX SPECIAL FORMULA LIPSTICK is the only lipstick recommended by Consumers' Research for women who complain of these conditions (cracked, sore, dry, chapped lips) and who cannot use indelible lipsticks.

Ar-Ex Lipstick . . . The absence of any ingredient known to be harmful is assured by the Ar-Ex ideal of ethical cosmetic.

AR–EX DEODORANT has been clinically tested and does not irritate the most tender skin or harm the most delicate fabric . . . It contains no Alum, Aluminum Chloride, or other irritants.

AR–EX DEODORANT CREAM is a safe, non-irritating cream . . . It contains no Alum, Aluminum Chloride, Aluminum Sulfate, Aluminum Acetate, Zinc Sulphate, Formaldehyde, or Salicylic Acid, all of which are known to be irritating. The active ingredient is Aluminum Sulfocarbolate in a neutral vanishing cream base, has been tested and found to be non-irritating.

We remind you again that AR–EX Deodorant is a greaseless cream containing 20 percent aluminum phenolsulfonate, and hence may be tried by many patients who are sensitive to the ordinary commercial products containing one of the inorganic aluminum salts.

As far as we know, there is no other deodorant on the market, except AR–EX Deodorant in which the active ingredient is only aluminum phenolsulfonate.

AR–EX COSMETIC HOSE . . . Is virtually water, spot and splash proof.

PAR. 4. Through the use of the aforesaid statements and representations and others of the same import but not specifically set out herein, respondents have represented and now represent that their cosmetic products are free from all known allergens and irritants; that all certified colors which have been found to be allergens have been eliminated from their lipsticks; that their Special Formula lipstick is the only lipstick recommended by Consumers' Research for women who suffer from cracked, sore, dry and chapped lips and who for this reason cannot use indelible lipstick; that their Ar-Ex Deodorant contains no irritants and that their Cosmetic Hose product is virtually spot proof, splash proof and water proof.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' cosmetic products are not free from all known allergens and are not non-allergic. No substance can be said to be non-allergic to all persons. Respondents' Indelible lipstick contains the certified color or dye known as tetrabromfluorescin which is known to produce lipstick dermatitis and other allergic manifestations. Consumers' Research has not recommended respondents' Special Formula in preference to all others for use by women who suffer from cracked, sore, dry or chapped lips but only suggested that this product was one which was suitable for use under such conditions. The principal active ingredient in Ar-Ex Deodorant is aluminum phenolsulfonate (sulfocarbolate) which is known to be irritating to some skins. Respondents Ar-Ex Cosmetic Hose is not splash proof, spot proof or water proof or even "virtually" so, as represented by respondents.

PAR. 6. In connection with the advertising and sale of its products and as a brand or trade name therefor, respondents make use of the symbol "RX" accompanied by the symbol "Ar-Ex." For many centuries the symbol "RX" has been used as the heading or superscription on physicians' prescriptions and such symbol has become firmly

associated in the minds of many persons with physicians' prescriptions and as referring to medical preparations. The use by the respondents of such symbols has the tendency and capacity to cause such persons to understand and believe that respondents' products are in fact of a medicinal nature and that each parcel is indiivdually compounded in accordance with a specific prescription therefor.

In truth and in fact, while some of said products may have been prescribed by doctors for individual persons, they are not individually compounded for any particular person or upon a doctor's particular prescription but are manufactured in bulk and packaged from such bulk material.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and the mistaken belief that such statements and representations are true, and as a result of such erroneous and mistaken belief, to induce a substantial portion of the purchasing public to purchase substantial quantities of respondents' products.

PAR. 8. The aforesaid acts and practices, as herein alleged, are all to the 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 December 27, 1945, issued and thereafter caused to be served upon the respondents named in the caption hereof its complaint, charging them with the use of unfair and deceptive acts and practices in commerce in violation of said Act. After the service of said complaint and the filing by respondents 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 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 and a stipulation as to certain facts entered into by counsel and made a part of the record, the hearing examiner's recommended decision and the exceptions thereto, briefs of counsel in support of and in opposition to the complaint and oral arguments of counsel; and the Commission, having entered its order disposing of the exceptions to the recom-

mended decision 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 Ar-Ex Cosmetics, Inc., is a corporation organized and existing under the laws of the State of Illinois, with its offices and principal place of business located at 1036 West Van Buren Street, Chicago, Illinois. It was incorporated on August 9, 1935.

Respondent Julius B. Kahn is the president and treasurer of the corporate respondent, Ar-Ex Cosmetics, Inc., and formulates and directs the policies and practices of said corporate respondent. His address is 1036 West Van Buren Street, Chicago, Illinois.

PAR. 2. Said respondents are now, and have been for some time last past, engaged in the sale and distribution of a line of cosmetics and a soap, under the brand and trade name of "Ar-Ex." Among said products are Ar-Ex Cold Cream, Ar-Ex For Dry Skin, Ar-Ex Chap Cream, Ar-Ex Deodorant Cream, Ar-Ex Face Powder, Ar-Ex Indelible Lipstick, Ar-Ex Special Formula (Non-Permanent) Lipstick, Ar-Ex Creme Rouge, Ar-Ex Compact Rouge, Ar-Ex Skin Lotion, Ar-Ex Talc, Ar-Ex Cosmetic Hose, all of which are cosmetics, and Ar-Ex Soap for Dry Skin. Many of the said cosmetics are made in two forms, one with perfume and one without.

Said respondents cause their products, when sold, to be transported from their place of business in the city of Chicago, State of Illinois, to purchasers thereof located in various 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 their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, respondents, subsequent to March 21, 1938, disseminated and caused the dissemination of advertisements concerning their said products by the United States mails, and by various other 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, their purchase; and also disseminated and caused the dissemination of advertisements concerning their said products by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Through the use of various statements contained in said

advertisements, respondents represented that their cosmetic products and soap were free from all allergens and irritants; that their Cosmetic Hose product was virtually spot-proof, splash-proof and water-proof, and that their Special Formula Lipstick was the only lipstick recommended by Consumers' Research for women who suffer from cracked, sore, dry or chapped lips and who for this reason cannot use indelible lipstick.

PAR. 4. The foregoing representations were false and misleading in material respects. In truth and in fact respondents' cosmetics and soap contain both allergens and irritants. In compounding various of the products respondents use, among others, the following ingredients which are known to have caused allergic reactions, including skin irritations, in some people: perfume, zinc oxide, castor oil, cholesterol, aluminum sulphocarbolate, depollenized beeswax, beeswax, cocoa butter and zinc stearate. Respondents' "Cosmetic Hose" is not splash-proof, spot-proof, water-proof or virtually so.

Respondents' representation that their "Special Formula Lipstick" has been recommended by Consumers' Research was based upon a statement in the December 1940 issue of Consumers' Research Bulletin that "Lipsticks of the 'non-permanent' variety guaranteed by the distributor to be free from bromofluorescein compounds, are available from Ar-Ex Cosmetics, Inc., 6 N. Michigan Avenue, Chicago." It is obvious that this did not constitute a recommendation for respondents' lipstick, and that the respondents' representation to the contrary is false and misleading.

PAR. 5. The use by respondents of the foregoing statements and representations in the advertising of and in connection with the offering for sale, sale and distribution of their cosmetics and soap had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and into the purchase of substantial quantities of respondents' said products by reason of such erroneous and mistaken belief.

CONCLUSION

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

The complaint alleged that in connection with the advertising and sale of its products (which for the purpose of these findings is taken to include both cometics and soap) and as a brand therefor, respond-

ents have used the symbol "RX"; that for many centuries this smymbol has been used on the heading on physicians' prescriptions and has become firmly associated in the minds of many persons with physicians' prescriptions and as referring to medical preparations. It also alleged that the use of this symbol has the capacity and tendency to cause such persons to understand and believe that respondents' products are in fact of a medicinal nature and that each parcel is individually compounded in accordance with a specific prescription therefor.

The alleged belief that it was compounded in accordance with a "specific prescription" would of necessity involve a belief that the prescription was one written by a "specific" physician for a "specific" person.

The complaint did not allege that the belief that the products were of a "medicinal" nature was erroneous. The answer does not aver that they were of a "medicinal" nature but memerly denies that the belief was engendered. There was no issue of whether the products were or were not within the samewhat indefinite category of products of a "medicinal" nature.

The complaint alleged that the use by the respondents of the symbol "RX" constituted a representation that "each parcel is individually compounded in accordance with a specific prescription therefor" and that such representation is misleading because in truth "they are not individually compounded from any particular prescription . . .".

Cosmetics and soap are usual articles of merchandise. Respondents' products are displayed in store windows and in the cosmetic sections of drug and department stores where they are sold over the counter to anyone who wishes to buy, in the dress provided by respondents. The mechanics of their purchase and sale is vastly different from that involved in the purchase and sale of a product prescribed by a physician. The dress of the products in question is far removed from that of a pharmacist-filled prescription.

The evidence indicates that the symbol "RX" is a very old one, being the equivalent of the Latin "Recipe" meaning "Take" in the imperative. It is and for a long time has been in practically universal use by physicians as a part of their directions to pharmacists for the filling of their prescriptions. It is also used to an extent by pharmacists to indicate that their establishments compound physicians' prescriptions. It may well be that the use of this symbol has become so firmly associated in the minds of a substantial number of the public with physicians and their prescriptions that its use in connection with or reference to cosmetics, and perhaps other products as well, may have the capacity and tendency to engender an erroneous

belief of some sort concerning the relationship of a physician to the product.

The Commission is unable to find from this record, however, that the use by respondents of the symbol "RX" in connection with the advertising and sale of their cosmetics and soap had the capacity or tendency to induce the beliefs alleged in the complaint, i. e., that "each parcel is individually compounded in accordance with a specific prescription therefor."

The foregoing is not to be taken as an indication or holding by the Commission that the use of the symbol "RX" is not misleading or deceptive regardless of circumstances; it relates only to its lack of deceptiveness in the manner alleged in the complaint by which the Commission is bound.

Upon consideration of the record, including the arguments of counsel before the hearing examiner, the Commission is of the opinion that the complaint, in so far as it relates to the use of the symbol "RX" by respondents in connection with the advertising and sale of the cosmetics and soap should be dismissed without prejudice and the order to cease and desist this day issued accordingly thus provides.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the complaint introduced before a hearing examiner of the Commission theretofore duly designated by it, a stipulation as to certain facts entered into by counsel and made a part of the record, the hearing examiner's recommended decision and certain exceptions thereto, briefs in support of and in opposition to the complaint and oral argument of counsel, and the Commission having issued its order disposing of the exceptions to the recommended decision and having made its findings as to the facts and its conclusion that Ar-Ex Cosmetics, Inc., a corporation, and Julius B. Kahn, individually and as an officer of said corporation, have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Ar-Ex Cosmetics, Inc., a corporation, and its officers, and the respondent Julius B. Kahn, individually and as an officer of said corporation, and said respondents' agents, representative and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparations heretofore designated Ar-Ex Cold Cream, Ar-Ex For Dry Skin, Ar-Ex Chap Cream, Ar-Ex Deodorant Cream, Ar-Ex Face Powder, Ar-Ex Indelible Lipstick, Ar-Ex Special For-

mula (Non-Permanent) Lipstick, Ar-Ex Creme Rouge, Ar-Ex Compact Rouge, Ar-Ex Skin Lotion, Ar-Ex Talc, or Ar-Ex Cosmetic Hose, or any other cosmetic product of composition substantially similar to any of the foregoing, or any cosmetic product which contains perfume, zinc oxide, castor oil, cholesterol, aluminum sulphocarbolate, depollenized beeswax, beeswax, cocoa butter or zinc stearate, do forthwith cease and desist from:

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

(a) That any such product is free from or does not contain any allergen or any irritant;

(b) That the product heretofore designated "Ar-Ex Special Formula (Non-Permanent) Lipstick," or any other product of substantially similar composition produced by the respondents, has been recommended by Consumers' Research;

(c) That any such product has been recommended by any person or organization, unless and until such recommendation has been made;

(d) Using the word "proof," or any other word or words of like meaning, to describe the resistance of "Ar-Ex Cosmetic Hose," or any other cosmetic of substantially similar composition, to spots, water or splashes.

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

It is further ordered, That the respondent Ar-Ex Cosmetics, Inc., and its officers, and the respondent Julius B. Kahn, 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 of the product heretofore designated "Ar-Ex Soap for Dry Skin," or any other soap of substantially similar composition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing directly or by implication that such soap is free from or does not contain any allergen or any irritant.

It is further ordered, That the complaint herein in so far as it relates to respondents' use of the symbol "RX" be, and the same hereby is, dismissed without prejudice to the right of the Commission to take

such further or other action in the future with respect thereto as may be warranted by the then existing circumstances.

It is further ordered, That the respondents Ar-Ex Cosmetics, Inc., and Julius B. Kahn 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.

Syllabus

IN THE MATTER OF

WINDSOR PEN CORPORATION 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 5829. Complaint, Dec. 1, 1950—Decision, Feb. 19, 1952

By virtue of the established custom of imprinting and otherwise labeling or marking products of foreign origin and their containers with the name of their country of origin in legible English words, in a conspicuous place, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign-made or imported mechanical pencils.

When products composed in whole or in substantial part of imported articles, are offered for sale and sold in the channels of trade in commerce, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless they are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

There is now and has been among the members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

Where a corporation and its president, engaged in the assembling of fountain pens and mechanical pencils and in the interstate sale and distribution thereof to jobbers and retailers for sale to the general public, purchasing mechanisms for their pencils imported from Japan in bulk in containers plainly stamped with the country of origin, which contained on the spiral end the words, "Made in Japan" in such small print as to require magnification to read;

(a) Sold pencils which they assembled by press fitting said mechanisms into the pencil barrels so that the words "Made in Japan" were completely concealed, without disclosing otherwise on said pencils or on their containers, that any part of the product was of foreign origin; and

(b) Affixed clips bearing the words "Windsor USA" to certain brands of their said pencils, usually shipped in sets with fountain pens in cartons plainly marked with respondent's corporate name and the words "New York, N. Y.";

With tendency and capacity to mislead members of the consuming public into the erroneous belief that said pencils were wholly of domestic origin, and into the purchase thereof in reliance upon such belief; and

(c) Furnished, on request of their jobbers and dealers, price tags or stickers ranging from $3.50 to $22.50 for use on said sets;

The facts being that said boxed sets, which included said pencils and one or more fountain pens sold as units, were sold by respondents at prices ranging from $2.80 to $5.00 per dozen, and, together with other articles, up to $12.00 per dozen;

With the effect of providing their distributors and dealers with a means or instrumentality for grossly deceiving the buying public as to the usual and customary prices of said pen and pencil sets, and of inducing the purchase thereof in reliance upon such belief:

Held, That said acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Clyde M. Hadley*, hearing examiner.

Mr. Morton Nesmith and *Mr. William L. Pencke* for the Commission.

Wolf & Burrell, 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 Windsor Pen Corporation, a corporation, and Morris Fink and Sady Fink, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and, it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Windsor Pen Corporation is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business at 352 Fourth Avenue, New York 10, New York.

Respondents Morris Fink and Sady Fink are President and Secretary-Treasurer, respectively, of said corporation with their office and principal place of business at the same address as corporate respondent. Said individuals formulate, direct and control the policies and practices of corporate respondent.

PAR. 2. The respondents are now and have been for several years last past engaged in the business, among other things, of assembling fountain pens and mechanical pencils, and selling and distributing said products.

PAR. 3. The respondents cause said products when sold to be shipped from their place of business in the State of New York to jobbers and dealers located in various other States of the United States and in the District of Columbia. Said jobbers and retailers in turn sell said products to the general public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said

products in commerce between and among the various States of the United States and in the District of Columbia. Their volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of their business, respondents purchase mechanisms, actions or movements for their pencils which have been imported from Japan in bulk quantities. These mechanisms, actions or movements are received by them in packages, boxes or wrapping plainly stamped with the country of origin and with the words "Made in Japan" stamped on the spiral end of said mechanisms, actions, or movements. Respondents assemble mechanical pencils by press fitting these mechanisms, actions or movements into pencil barrels and by adding caps or erasers and pocket clips thereto. In this process of press fitting, the words "Made in Japan" appearing on the mechanisms, actions or movements are completely concealed. At no place on these pencils, or on the boxes in which they are packed, is the fact disclosed that any part thereof is of foreign origin. On the contrary, the clips which are affixed to these mechanical pencils are stamped or imprinted with the letters "U. S. A." and said pen and pencil sets are shipped in cartons plainly marked "Windsor Pen Corporation, New York, N. Y."

The mechanical pencils are in some cases boxed in sets with one or more fountain pens and sold as units. These boxed sets are sold by respondents at prices ranging from $2.80 per dozen to $5.00 per dozen, and together with other articles, as high as $12.00 a dozen. Respondents furnish, on request of its jobbers or dealers, price tags or stickers of various denominations, such as $3.50, $6.50 $7.50, $10.00, $17.20, and $22.50.

PAR. 5. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

At all times material to this complaint, there has been, and now is, among said members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The pen and pencil sets sold by respondents are rarely if ever sold to the purchasing public for $3.50, $6.50, $7.50, $10.00, $17.20, or $22.50. Respondents' practice of supplying price tags or stickers in these various denominations which may be and are affixed to boxes containing said sets provides a means and instrumentality by and through which dealers may and do grossly misrepresent the usual and customary prices of said sets.

PAR. 7. The practice of respondents as aforesaid in affixing metal pocket clips, upon which are imprinted the letters, "U. S. A." to the mechanical pencils manufactured or assembled by them, which pencils contain Japanese mechanisms, actions or movements, has had and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said mechanical pencils are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

The further practice of respondents as aforesaid in offering for sale, selling, and distributing mechanical pencils, the mechanisms, actions, or movements of which are of foreign origin without any imprinting, labeling, or conspicuous marking on the pencils or on the individual cartons in which they are packed to indicate to purchasers that the mechanisms, actions or movements of said pencils are of Japanese origin, has had, and now has the tendency and capacity to mislead and deceive purchasers and members of the buying and consuming public into the false and erroneous belief that said mechanical pencils are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

The further practice of respondents as aforesaid in supplying its customers with price tags, or stickers with amounts thereon greatly in excess and disproportionate to the customary or usual selling price for said articles, has the tendency and capacity to mislead and deceive purchasers into the erroneous and mistaken belief that the said fictitious prices are the customary and usual prices at which said articles are normally sold, and induces a substantial amount of

the purchasing public to purchase said products as a result of such erroneous and mistaken belief.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 1, 1950, issued and subsequently served its complaint upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. Hearings were held in this matter before a hearing examiner duly designated by the Commission. Respondents' answer to the complaint was read into the record by their counsel at the initial hearing herein. At a subsequent hearing, counsel supporting the complaint and counsel for the respondents stipulated and agreed that a statement of facts thereupon read by them into the record might be taken as the facts in this proceeding and in lieu of evidence in support of the complaint and in opposition to the charges stated therein, and that such statement of facts might serve as the basis for findings as to the facts, conclusion and order disposing of the proceeding. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answer thereto, the stipulated facts, proposed findings and conclusions presented by counsel for respondents, and oral argument by counsel, and said hearing examiner filed his initial decision herein on July 12, 1951.

Counsel for the respondents Windsor Pen Corporation and Morris Fink, on August 9, 1951, filed with the Commission an appeal from said initial decision. Thereafter, this proceeding having regularly come on for final hearing by the Commission upon said appeal, including the brief in support thereof, memorandum of authorities filed in opposition thereto and oral argument of counsel, the Commission issued its order denying said appeal.

The Commission is of the opinion, however, that the order contained in the hearing examiner's initial decision is ambiguous in certain respects. Therefore, the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Windsor Pen Corporation is a New York corporation with its office and principal place of business at 352 Fourth Avenue, New York 10, New York. Respondent Morris Fink is the president of said corporation with his office and principal place of business at the same address as corporate respondent. Said individual respondent Morris Fink formulates, directs and controls the policies and practices of corporate respondent.

The allegations of the complaint as to respondent Sady Fink are not supported by the evidence of record, and, therefore, she is not included in the term "respondents" as used hereinafter.

PAR. 2. The respondents are now and have been for several years last past engaged in the business, among other things, of assembling fountain pens and mechanical pencils, and selling and distributing said products, in commerce between and among the various States of the United States, to jobbers and retailers who in turn sell said products to the general public. Their volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents have purchased mechanisms, actions or movements for their pencils which have been imported from Japan in bulk quantity. These mechanisms, actions or movements were received by the respondents in packages, boxes or wrappings plainly stamped with the country of origin, namely, Japan. When received by the respondents, said mechanisms, actions or movements, on the spiral end thereof, are imprinted with the words "Made in Japan" in such small print as to require magnification to read legibly.

PAR. 4. Respondents assemble mechanical pencils by press fitting these mechanisms, actions or movements into the pencil barrels so that in the process of such press fitting the words "Made in Japan," as described aforesaid, are completely concealed. At no place on these pencils, except as aforesaid, nor on the boxes in which they are packed for shipment to jobbers or retailers, is the fact disclosed that any part of such pencils is of foreign origin. Respondents have furthermore affixed clips to certain brands of their mechanical pencils, containing Japanese mechanisms, on which were stamped or imprinted the words "Windsor USA"; said pencils being then usually shipped in sets with fountain pens in cartons plainly marked "Windsor Pen Corporation, New York, N. Y.". The use of said inscription "Windsor USA" was discontinued by respondents as of January 1, 1951, since which date such imprint has been the single word "Windsor."

PAR. 5. By virtue of the established custom of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of their country of origin in legible English words, in a conspicuous place, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, labeling or marking, and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including foreign-made or imported mechanical pencils. When products composed in whole or in substantial part of imported articles are offered for sale and sold in the channels of trade in commerce throughout the United States and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are imprinted, labeled, or marked in a manner which informs purchasers that the said products, or parts thereof, are of foreign origin.

There is now and has been among the members of the buying and consuming public, including purchasers and users of mechanical pencils, in and throughout the United States and in the District of Columbia, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 6. The aforesaid mechanical pencils have in some cases been boxed in sets with one or more fountain pens and sold as units. These boxed sets are sold by the respondents at prices ranging from $2.80 to $5.00 per dozen, and together with other articles, as high as $12.00 per dozen. Respondents have furnished on request of their jobbers and dealers price tags or stickers, to be used on said sets, of various denominations—$3.50, $6.50, $7.50, $10.00, $17.20 and $22.50, which are greatly in excess of and disproportionate to the customary or usual selling prices for said articles. Said pen and pencil sets have rarely if ever sold to the purchasing public for the prices indicated by the labels thus supplied. This practice was discontinued by the respondents on February 1, 1951, and since then no price tags or stickers of any denomination have been furnished by them to their jobbers and dealers.

PAR. 7. Such practice of respondents in offering for sale, selling, and distributing mechanical pencils, the mechanisms, actions or movements of which are of foreign origin, without imprint, label or conspicuous mark on the pencils, or on the individual cartons in which they are packed, to indicate to purchasers that said mechanisms, ac-

tions or movements are of Japanese origin, has had and now has the tendency and capacity to mislead and deceive members of the buying and consuming public into the false and erroneous belief that the same are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief.

The practice of respondents in affixing metal pocket clips, imprinted with the letters "USA," to said mechanical pencils, so equipped with Japanese mechanisms, actions or movements, has had the tendency and capacity to mislead and deceive members of the buying and consuming public into the false and erroneous belief that the said pencils are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief.

Respondents' further practice of supplying their distributors and dealers with price tags or stickers containing highly exaggerated, disproportionate and fictitious figures has provided said dealers with a means or instrumentality for grossly deceiving the buying public as to the usual and customary prices of said pen and pencil sets, and to induce the purchase thereof in reliance upon such misrepresentation.

CONCLUSION

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

ORDER

It is ordered, That respondent Windsor Pen Corporation, a corporation, and its officers, and respondent Morris Fink, individually and as an officer thereof, and their respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of mechanical pencils or fountain pens in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling mechanical pencils, the mechanisms, actions or movements of which are of foreign origin, without affirmatively and clearly disclosing on or in immediate connection with said pencils, the country of origin of such mechanisms, actions or movements.

2. Representing, directly or by implication, that mechanical pencils containing mechanisms, actions or movements of foreign origin, are wholly of domestic origin.

3. Supplying customers or purchasers of fountain pens or mechanical pencils with price tags or stickers therefor bearing amounts which are in excess of the prices at which such articles are usually or customarily sold to the purchasing public; or otherwise representing that such articles are sold for amounts in excess of their usual and customary selling prices to the purchasing public.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent Sady Fink.

It is further ordered, That respondents Windsor Pen Corporation and Morris Fink 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.

Commissioner Mason not participating.

IN THE MATTER OF

EUGENE F. AGEE TRADING AS COMMERCIAL EXTENSION SCHOOL OF COMMERCE

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

Docket 5904. Complaint, July 9, 1951—Decision, Feb. 19, 1952

Where an individual engaged in the competitive operation of a business school and in the sale of residence and correspondence courses of study through sales agents who called upon prospective purchasers, and whom he supplied with copies of "A Directory of Private Business Schools in the United States", published by the "National Association and Council of Business Schools", which purported to be a handbook for vocational advisors and guidance officers throughout the United States, was distributed to members of the association and other interested parties, and included a "Directory of Approved Schools", names of some of which, in the 1949 and 1950 editions, were followed by an asterisk with footnote reference reading "Temporary approval to December 31, 1949" or "1950"—

(a) Represented in a substantial number of instances to prospective students through his said sales agents that "such temporary approval" was due to one or more of the facts (1) that the quality of the work done was not up to standard or was inferior to other approved schools; (2) that such schools would lose accreditation unless there was a complete change in the faculty by a given date; (3) that prospective employers refused to employ any graduate from any school whose rating was unfavorable as indicated by such asterisk, and that students attending competitive schools thus designated might impair their chances of employment; and (4) that the standing of such schools was questionable and that their officers had been involved in "crooked" or "shady" deals;

The facts being that the schools thus designated were regarded by the association as having failed to compute correctly the annual dues payable to it; and the so-called temporary approval had no relation whatever to their reputation, financial standing, accreditation, quality of work or the reputation of their faculty;

(b) Falsely represented that said "Directory of Private Business Schools" was an official publication of the United States Government;

(c) Falsely represented that certain named high school principals recommended said school to their graduates; and

(d) Represented that the character or nature of the student body of a certain competing school was undesirable in several respects;

The facts being that while some competitive schools did admit to their classes students of all races and ages, such fact did not render them undesirable; and

(e) Falsely represented that competing schools were undesirable choices for the reason that they might soon have to close down due to frequent changes in ownership and to financial difficulties;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's school and its competitors,

and to cause purchase of respondent's courses as a result; whereby substantial trade was unfairly diverted to said individual from his competitors:

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

While the complaint also charged that respondent's sales agents falsely represented that prospects must enroll immediately and make a deposit in order to be assured of membership in the starting class, or wait at least a year; and that students enrolling for a preliminary course in business English prior to attending residence school and graduation from high school could complete the standard business course in less time and at less expense than at competing schools: such additional charges were not sustained by the record, which also indicated that respondent had sought in good faith to prevent the aforesaid disparagement by his agents and other misleading representations—which were made without the knowledge or consent of him or his administrative staff—and that he had given assurances that in the future he and his said staff would continue to instruct all agents to avoid erroneous and misleading representations.

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

Mr. William L. Pencke for the Commission.

Frost, Peasinger & Myers, of Omaha, Nebr., 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 Eugene F. Agee, trading as The Commercial Extension School of Commerce, 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 Eugene F. Agee is an individual trading and doing business as Commercial Extension School of Commerce, hereinafter also referred to as the school, with his office and principal place of business located at 1514 Howard Street in the city of Omaha and State of Nebraska.

Said respondent is now and has been for more than two years last past engaged in the operation of a business school and the sale of courses of study and instruction in business subjects which said courses are pursued in residence and also by correspondence through the medium of the United States mails. Said respondent causes said courses to be transported from his said place of business in the State of Nebraska into and through States of the United States other than

Nebraska to purchasers thereof located in such other States. There has been at all times mentioned herein a course of trade in said courses of instruction so sold and distributed by said respondent in commerce between and among the various States of the United States and said course of trade has been and is substantial.

PAR. 2. During the time above mentioned, other individuals, firms and corporations in various States in the United States have been and are engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in commercial subjects which are pursued in residence and by correspondence. Said respondent has been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States, in the sale of his said courses of study and instruction with such other individuals, firms and corporations.

PAR. 3. In the course and conduct of his business as aforesaid, respondent, Eugene F. Agee, employs sales agents or representatives who call upon prospective purchasers of said courses of study for the purpose of soliciting enrollments and selling said courses. Respondent Agee has furnished and now furnishes said sales agents with copies of a "Directory of Private Business Schools in the United States," which directory is published by the National Association and Council of Business Schools, located in the city of Washington, D. C., and distributed to members of said association and other interested parties, and also purports to be a handbook for vocational advisors and guidance officers throughout the United States.

Part II of said Directory of Private Business Schools consists of a "Directory of Approved Schools" containing the names, addresses, administrative heads, year of founding, student capacity and approved courses of all member schools of said Association. The names of a certain number of schools in said directory are preceded by an asterisk, and at the bottom of each page appears the statement "*Temporary approval to December 31, 1950."

By causing said directory to be exhibited and through oral statements made by said sales agents, said respondent represented directly and by implication, to prospective students and purchasers of said courses of study:

1. That competitive schools listed in said Directory bearing an asterisk are approved only temporarily for one or more of the following reasons: the quality of the work done is not up to standard or is inferior to other approved schools; such schools would lose accreditment unless there were a complete change in the faculty by a given date; prospective employers refuse to employ any graduates from any

school whose rating was unfavorable as indicated by said asterisk, and students attending competitive schools so designated may impair their chances of employment; the standing of said schools is questionable and their officers were involved in "crooked" or "shady" deals.

2. That said Directory of Private Business Schools is an official publication of the United States Government.

3. That certain named high school principals recommend respondent's school to their graduates.

4. That prospects must enroll immediately and make a deposit on the tuition fees in order to be assured of membership in the starting class; or that failure to enroll immediately might prevent enrollment for at least one year.

5. That students enrolling for a preliminary correspondence course in Business English in respondent's school prior to attending residence school and prior to graduation from high school can complete the standard business courses in less time and at less expense than at competing schools.

6. That a certain competing school is undesirable for inexperienced young girls from rural communities because of the large number of old men, negroes, and veterans among its student body.

7. That competing schools are undesirable choices for the reason that they may soon have to close down due to frequent change in ownership and financial difficulties.

PAR. 4. All of said practices, statements, representations and implications are false, deceptive and misleading. In truth and in fact, the asterisk placed against the names of certain schools in said Directory solely denotes temporary approval of schools which are claimed by said Association to have failed properly to compute the annual dues payable to said Association. The use of said asterisk had no relation whatever to the reputation, financial standing, accreditation, quality of work or standing of competitive schools or the reputation of their faculties and the use of said Directory and the statements made by salesmen in connection therewith unfairly disparage the competitive schools designated by the asterisk.

Said Directory is not a publication by the United States Government or any agency thereof. The high school principals named by respondent's salesmen do not recommend his school to their graduates.

PAR. 5. Prospective students do not need to enroll immediately upon being solicited by respondent's salesmen in order to be assured of membership in the class being then formed; nor will they be prevented from enrolling at a later date if they do not enroll at the time of the salesman's visit. Enrollment in respondent's school for the so-called Business English course prior to graduation from high school does

not result in completing said respondent's standard course in less time and at less expense than at competing schools. On the contrary, such enrollment is detrimental to high school students whose regular school work requires all their time and attention prior to graduation; moreover, such preliminary course in Business English is substantially a duplication of the work already done by said students in high school.

While it is true that there are small numbers of negroes and veterans among the student body of a certain competing school, this fact does not make attendance at such school undesirable for young girls. Competitive schools do not have to close down because of financial difficulties or frequent change in ownership, nor will said competitive schools lose accreditation unless they change their faculties or improve their standard. Employers do not refuse to employ graduates from competitive schools because of any alleged unfavorable rating of said schools in said Directory; and students attending said competitive schools do not impair their future chances of employment.

PAR. 6. The aforesaid practices and use of the statements and representations aforesaid have had and now have the tendency and capacity to and do confuse, mislead, and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and to induce them to purchase respondent's courses of study and instruction in said commerce on account thereof. As a result, substantial trade in commerce has been unfairly diverted to respondent from his competitors and substantial injury has been and is being done to competition in commerce.

PAR. 7. The aforesaid acts and practices of 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 and unfair methods of competition 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 February 19, 1952, the initial decision in the instant matter of Hearing Examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 9, 1951, issued and subse-

quently served its complaint in this proceeding upon the respondent, Eugene F. Agee, an individual trading as Commercial Extension School of Commerce, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondent of his answer to the complaint, a hearing was held before the above named hearing examiner, theretofore duly designated by the Commission, at which a stipulation of facts was entered into by counsel supporting the complaint and counsel for respondent and incorporated in the record, which was duly filed in the office of the Commission. Counsel also agreed upon and recommended to the hearing examiner a form of order disposing of the proceeding. Thereafter, the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, answer, stipulation (approved by the hearing examiner), and recommended order (counsel having elected not to submit proposed findings and conclusions for consideration by the hearing examiner or to argue the matter orally), 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, Eugene F. Agee, is an individual doing business under the name Commercial Extension School of Commerce, with his office and principal place of business located at 1514 Howard Street, Omaha, Nebraska. Respondent is now, and for a number of years last past has been, engaged in the operation of a business school and in the sale of courses of study and instruction in business subjects, which courses are pursued both in residence and by correspondence through the medium of the United States mails.

PAR. 2. Respondent causes and has caused his courses of study and instruction, when sold, to be transported from his place of business in the State of Nebraska to purchasers located in various other States of the United States. Respondent maintains and has maintained a course of trade in his courses in commerce between and among various States of the United States.

PAR. 3. In the sale of his courses of study and instruction respondent is and has been in substantial competition with other individuals and with firms and corporations engaged in the sale and distribution, in commerce between and among the various States of the United States, of courses of study and instruction in commercial subjects.

PAR. 4. In the course and conduct of his business, respondent employs sales agents or representatives to call upon prospective pur-

chasers of his courses of study for the purpose of soliciting enrollments and selling such courses. These sales agents are supplied by respondent with copies of a "Directory of Private Business Schools in the United States" which is published by an organization known as the National Association and Council of Business Schools, and purports to be a handbook for vocational advisers and guidance officers throughout the United States. The book is distributed to members of the association and other interested parties. Included in the book is a "Directory of Approved Schools" which contains the names, addresses, administrative heads, the year of founding, student capacity, and approved courses of all schools which are members of the association. In the 1949 and 1950 editions of the book, the names of certain schools were preceded by an asterisk, and in such instances there appeared at the bottom of the page, following an asterisk, the statement "Temporary approval to December 31, 1949" or "1950." The asterisks and statements were omitted from the 1951 edition of the directory.

In a substantial number of instances the following representations have been made by respondent's sales agents to prospective students:

(a) That the approval of competitive schools designated in the directory by an asterisk is limited to temporary approval only for one or more of the following reasons: The quality of the work done by the school is not up to standard or is inferior to other approved schools; such schools would lose accreditation unless there were a complete change in the faculty by a given date; prospective employers refuse to employ any graduate from any school whose rating is unfavorable as indicated by such asterisk, and students attending competitive schools so designated may impair their chances of employment; the standing of such schools is questionable and their officers have been involved in "crooked" or "shady" deals.

(b) That such Directory of Private Business Schools is an official publication of the United States Government.

(c) That certain named high school principals recommend respondent's school to their graduates.

(d) That the character or nature of the student body of a certain competing school was undesirable in several respects.

(e) That competing schools are undesirable choices for the reason that they may soon have to close down due to frequent changes in ownership and to financial difficulties.

PAR. 5. These representations were unwarranted and misleading. The use in the directory of the asterisk and statement in question denotes only that the schools so designated have received temporary rather than final approval for the reason that such schools were re-

garded by the association as having failed to compute correctly the annual dues payable to the association. The so-called temporary approval has no relation whatever to the reputation, financial standing, accreditation, quality of work, or standing of competitive schools or the reputation of the faculty of such schools. The directory is not a publication of the United States Government or any agency thereof. Some of the high school principals named by respondent's agents had not in fact recommended respondent's school to their graduates. While some competitive schools admit to their classes members of all races and ages, such fact does not render such schools undesirable. It was not a fact that certain competitive schools referred to by respondent's agents would be compelled to discontinue operations because of financial difficulties or frequent changes in ownership, or that such schools would lose accreditation unless they changed their faculties and standards. Employers do not refuse to employ graduates from competitive schools because of any alleged unfavorable rating of such schools in the directory, and students attending such competitive schools do not thereby impair their future chances of employment.

PAR. 6. The record indicates that respondent has sought in good faith to prevent disparagement of competitive schools by his sales agents, as well as other representations which are misleading and without proper factual basis, and that the misrepresentations referred to above were made without the knowledge or consent of respondent or his administrative staff. The record also contains assurances by respondent that in the future he and his administrative staff will continue to instruct all sales agents to avoid erroneous and misleading representations.

PAR. 7. While the complaint contained certain charges in addition to those referred to above, such additional charges are not sustained by the record.

PAR. 8. The acts and practices of respondent as set forth in Paragraphs Four and Five have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's school and its competitors, and to cause such portion of the public to purchase respondent's courses of study and instruction as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been unfairly diverted to respondent from his competitors.

CONCLUSION

The acts and practices of respondent as hereinabove set out are all to the prejudice of the public and of respondent's competitors, and

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

ORDER

It is ordered, That the respondent, Eugene F. Agee, individually and trading as Commercial Extension School of Commerce or under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's courses of study and instruction, do forthwith cease and desist from:

1. Disparaging competitive schools by representing that such temporary or qualified approval as may be accorded to particular schools by any commercial school directory for reasons having no relation to the reputation or financial standing of such schools or their officers, or to the quality of their courses or to their accreditation, connotes that such schools or the courses offered by them do not conform to standards of approved schools or are inferior thereto; or by representing that employers refuse to employ graduates of such schools or that chances for employment of students attending competitive schools are otherwise impaired, or that competitive schools or their officers are of bad repute or engaged in dishonorable financial conduct, unless such is the fact.

2. Making any disparaging representations concerning the courses offered by competitors or with respect to the ethical, financial and educational reputation or standing of competitive schools or their officers, unless such representations are in fact true and correct.

3. Representing that the publication known as the Directory of Private Business Schools or any other directories published by commercial or trade organizations are official publications of the United States Government or any agency thereof.

4. Representing that any principals or officers of public schools or educational institutions recommend respondent's school or courses of study and instruction to their students or graduates, unless such is the fact.

5. Advertising in any manner to the character or nature of the student body of any competing school, inconsistent with the facts.

6. Representing that competing schools may close due to frequent changes in ownership or to financial difficulties, unless such is the fact.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent 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 February 19, 1952].

IN THE MATTER OF

DAVID'S SPECIALTY SHOPS, INC. AND DAVID, HARRY AND OSCAR ISRAEL

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

Docket 5852. Complaint, Feb. 21, 1951—Decision, Feb. 27, 1952

Where a corporate chain organization with several retail outlets in New York and Ohio, and its three officers—

(a) Misbranded certain wool products in violation of the Wool Products Labeling Act through labeling them as "100% wool," when they contained in fact substantial quantities of rayon fiber;

(b) Misbranded said products in that the constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said Act and Rules and Regulations promulgated thereunder;

(c) Misbranded certain of said products in that the legal name of the manufacturer or other person authorized by the Act to affix stamps, etc. thereto or, in lieu thereof, a registered identification number, was not shown on the attached labels;

(d) Misbranded certain of said products in that constituent fibers of their interlinings were not separately set forth upon the attached labels, as required by said Rules, etc.;

(e) Misbranded certain of said products within the intent and meaning of said Act and Rule 12, in that skirts and coats sold in combination, were not labeled separately with their constituent fibers and the precentages thereof;

(f) Misbranded certain of said products in that attached stamps, tags, etc. named fibers not present therein; and

After the delivery of certain wool products to them and shipment thereof to their retail stores in Ohio, and before offer and sale to the public; and with intent to violate the provisions of said Act—

(g) Caused and participated in the removal, and in other cases, in the mutilation, of some of the required stamps, tags, etc. affixed to certain wool products when received by them at their place of business;

With the result that said wool products, when offered for sale and sold by them to the public at their places of business, did not bear the information required by said Act and Rules and Regulations:

Held, That such acts, practices and methods, under the circumstances set forth, were in violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

In said proceeding in which respondents filed a substitute answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts; and in which the hearing examiner filed his initial decision, and counsel supporting the complaint seasonably filed an appeal and supporting brief and the Commission granted said appeal:

The Commission was of the opinion that the order to cease and desist contained in the initial decision was deficient in certain respects, in that (1) it did not prohibit respondents from removing or mutilating labels or other means of identification with intent to violate the provisions of the Wool Products Labeling Act of 1939, and (2) it did not prohibit respondents from misrepresenting on such labels the character or amount of the constituent fibers contained in the wool products; it appearing that the complaint alleged and respondents' answer admitted that respondents had engaged in both of the foregoing illegal practices; and in lieu of said initial decision made its findings, etc. as below set forth.

Before *Mr. Clyde M. Hadley*, hearing examiner.
Mr. Jesse D. Kash for the Commission.
Newman & Bisco, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that David's Specialty Shops, Inc., a corporation, and David Israel, Harry Israel, and Oscar Israel, individually and as officers of said corporation, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, David's Specialty Shops, 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 225 West 34th Street, New York, New York. Corporate respondent is a retail store chain organization with several retail outlets located in the States of New York and Ohio.

Respondents, David Israel, Harry Israel, and Oscar Israel are president, treasurer, and secretary, 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, 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 the said act and the Rules and Regulations

promulgated thereunder in that they were falsely and deceptively labeled as "100% wool," whereas in truth and in fact said products did not contain 100% wool but contained substantial quantities of rayon fiber. The said wool products so labeled were further misbranded in that their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said Act, in the manner and form 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 Act to affix stamps, tags or labels or other means of identification thereto, was not shown on the labels attached to its products as required by said Act and in the manner and form required by said Rules and Regulations, nor was there so shown as and for such name thereof a registered identification number as permitted by said Rules and Regulations.

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

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

Certain of said wool products were misbranded within the intent and meaning of the said Act and Rule 12 of the Rules and Regulations promulgated thereunder in that the merchandise contained two pieces, namely, skirts and coats, sold in combination which pieces were not labeled separately with the constituent fibers and the percentage thereof contained in said garments.

Certain of said wool products were misbranded in that the stamps, tags, labels or other marks of identification attached thereon named fibers not present in said garments.

PAR. 5. The aforesaid acts and practices and methods of respondents as alleged were and are in violation of Sections 3, 4 and 5 of the Wool Products Labeling Act of 1939, Rules 2, 3, 12 (a), 13, 24 and 25 of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in the Commission by said Acts, the Federal Trade Commission on February 21, 1951, issued and subsequently served upon the respondents named in the caption hereof 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 Acts. On March 23, 1951, respondents filed their answer to said complaint. On April 17, 1951, upon motion granted by a hearing examiner of the Commission, theretofore duly designated by it, respondents withdrew said original answer and filed in lieu thereof a substitute answer admitting all of the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts. Thereafter, on May 8, 1951, said hearing examiner filed his initial decision.

Within the time permitted by the Commission's rules of practice, counsel supporting the complaint filed with the Commission an appeal from said initial decision. Thereafter, this proceeding regularly came on for final hearing by the Commission upon this appeal and the brief in support thereof, and the Commission issued its order granting said appeal.

The Commission is of the opinion that the order to cease and desist contained in the initial decision is deficient in certain respects, including (1) the order does not prohibit respondents from removing or mutilating labels or other means of identification with intent to violate the provisions of the Wool Products Labeling Act of 1939, and (2) the order does not prohibit respondents from misrepresenting on such labels the character or amount of the constituent fibers contained in the wool products. The complaint alleges and respondents' answer admits that respondents have engaged in both of these illegal practices. Therefore, the Commission, being now fully advised in

the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, David's Specialty Shops, 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 225 West 34th Street, New York, New York. Corporate respondent is a retail store chain organization with several retail outlets located in the States of New York and Ohio.

Respondents, David Israel, Harry Israel, and Oscar Israel are president, treasurer, and secretary, 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, 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 the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled as "100% wool," whereas in truth and in fact said products did not contain 100% wool but contained substantial quantities of rayon fiber. The said wool products so labeled were further misbranded in that their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said Act, in the manner and form 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 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 Act and in the manner and form required by said Rules and Regulations, nor was there so shown as and for such name a registered identification number as permitted by said Rules and Regulations.

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

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

Certain of said wool products were misbranded within the intent and meaning of the said Act and Rule 12 of the Rules and Regulations promulgated thereunder in that the merchandise contained two pieces, namely, skirts and coats sold in combination, which pieces were not labeled separately with the constituent fibers and the percentages thereof contained in said garments.

Certain of said wool products were misbranded in that the stamps, tags, labels or other marks of identification attached thereon named fibers not present in said garments.

CONCLUSION

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

ORDER

It is ordered, That the respondent, David's Specialty Shops, Inc., a corporation, and its officers, and respondents, David Israel, Harry Israel and Oscar Israel, individually and as officers of said corporation, and their respective agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the aforesaid Acts, of ladies' skirts and coats, or other "wool products," as such products are defined in and subject to the Wool Products Labeling

Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products:

1. By misrepresenting on any stamp, tag, label or other means of identification the character or amount of the constituent fibers of any of said products.

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

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

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

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

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

3. By failing to label separately each garment or separate piece of merchandise subject to said Act whether two or more such garments or pieces be marketed together or in combination with each other.

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 said respondents and their officers, representatives, agents and employees, as aforesaid, directly or through any corporate or other device, in connection with the purchase, offering for sale, sale, or distribution of "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from causing or participating in the removal or mutilation of any stamp, tag, label, or other means

of identification affixed to any such "wool product" pursuant to the Wool Products Labeling Act of 1939, with intent to violate the provisions of said Act, and which stamp, tag, label, or other means of identification purports to contain all or any part of the information required by said Act.

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