

Complaint

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(e) Refusing to sell to dealers or distributors because of the price at which they are known to be, or suspected of, buying respondent's products from any other person.

*Provided, however,* That nothing contained in this Order shall be construed to prohibit respondent from petitioning the Commission to reopen and alter, modify, or set aside, in whole or in part, any provision of this Order on the ground that conditions of fact have so changed as to require such action in the public interest.

*It is further ordered,* That respondent, formerly Sandura Company but recently renamed Del Penn Company, a corporation, shall, within sixty (60) days after service upon it of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Commissioner MacIntyre not concurring.

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IN THE MATTER OF

REVCO D.S., INC., ET AL.

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket 8576. Complaint, June 13, 1963—Decision, June 28, 1965*

Order requiring a discount drug store chain with retail stores in Michigan, Ohio, and West Virginia, to cease representing falsely in advertisements in newspapers, by radio and television broadcasts, or any other means, that their drugs, foods, cosmetics and devices have been approved or endorsed by an independent research or testing organization engaged in determining the merits of such merchandise, and that they own, operate, or control manufacturing or laboratory facilities.

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 Revco, D.S., Inc., a corporation, and Standard Drug Company, a corporation, doing business as Revco Discount Drug Centers, Bernard Shulman, individually and as an officer of each of said corporations, W. B. Doner and Company, a corporation, and Charles F. Rosen, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

1. Putting into effect, maintaining, or enforcing any merchandising or distribution plan or policy under which contracts, agreements, or understandings are entered into with dealers in or distributors of its products which have the purpose or effect of:

(a) Fixing, establishing, or maintaining the prices at which such products may be sold by dealers or distributors; or

(b) Requiring or inducing any dealer or distributor to assist respondent, by means of reports or otherwise, in preventing or restricting any other dealer or distributor from selling respondent's products at any price selected by said other dealer or distributor; or

(c) Requiring or inducing any dealer or distributor to assist respondent, by means of reports or otherwise, in preventing or restricting any other dealer or distributor from buying respondent's products from any person at any available price; or

(d) Requiring or inducing any dealer or distributor to resell to respondent any unsold stock of respondent's products in the event that business relations between respondent and the distributor or dealer are terminated: *Provided*, That respondent shall not be prohibited from repurchasing such unsold stock at the request of a distributor or dealer or from obtaining an option from a distributor or dealer to repurchase such unsold stock in the event that the distributor or dealer is unable to meet his financial obligations to respondent.

2. Entering into, continuing, or enforcing, or attempting to enforce, any contract, agreement, or understanding with any dealer in or distributor of its products for the purpose or with the effect of establishing or maintaining any merchandising or distribution plan or policy prohibited by paragraph 1 of this order.

3. Engaging, for a period of two years following the date this order shall have become final, either as part of any contracts, agreements, or understandings with any dealers in or distributors of its products, or individually and unilaterally, in the practice of:

(a) Issuing franchises or licenses to dealers or distributors; or

(b) Circulating lists of dealers or distributors of its products to such dealers or distributors; or

(c) Affixing to its products numbers or other identifying marks which designate specific wrapped rolls or other commercially sized items sold as individual units to distributors or dealers; or

(d) Refusing to sell to dealers or distributors because of the price at which they are known to be, or suspected of, selling respondent's products; or

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sale of the merchandise hereinafter mentioned. Respondent Charles F. Rosen is an Officer of this corporate respondent and is the account executive for the respondents referred to in Paragraph One, above. This individual respondent participates in and is primarily responsible for certain acts and practices of this corporate respondent, including those hereinafter set forth. His address is the same as that of the said corporate respondent.

PAR. 5. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 6. In the course and conduct of their said businesses, the respondents have disseminated and caused the dissemination of certain advertisements concerning foods, drugs, cosmetics and devices by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising media, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States, having sufficient power to carry such broadcasts across State lines for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the said foods, drugs, cosmetics and devices; and have disseminated and caused the dissemination of advertisements concerning the said foods, drugs, cosmetics and devices by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the said foods, drugs, cosmetics and devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

New REVCO Merchandising Policies Provide 30%-70% SAVINGS ON PRESCRIPTIONS.

Compare Revco Formula 1—ingredients and potencies with the other nationally advertised brand of this 1-per-day vitamin. Then check Revco's price—you'll find you save up to 1.77 on the retail list price of the comparable well-known brand.

<p>Buy Miles' ONE - A - DAY 100's—Retail List 2.94 YOU PAY ONLY 2.00 You Save Up To .94</p>
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<p>COMPARE PRICES</p>
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<p>Buy Revco FORMULA 1 100's—Value 2.94 YOU PAY ONLY 1.17 You Save Up To 1.77</p>
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PARAGRAPH 1. Respondent Revco, D.S., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 5555 Concord Avenue, Detroit, Michigan. Respondent Standard Drug Company, doing business as Revco Discount Drug Centers, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 6803 Pearl Road, Cleveland, Ohio. Respondent Bernard Shulman is an officer of each of these corporations. This individual formulates, controls and directs the policies, acts and practices of these corporate respondents, including the acts and practices hereinafter set forth. The address of this individual respondent is the same as that of the corporate respondent Revco, D.S., Inc.

PAR. 2. Through the corporate respondent Revco, D.S., Inc., and fourteen (14) wholly-owned subsidiaries, including the corporate respondent Standard Drug Company, the respondents referred to in Paragraph One hereof own and operate a number of retail drug stores within the States of Michigan, Ohio and West Virginia.

These respondents are now, and for some time last past have been, engaged in the sale and distribution of various articles of merchandise which come within the classification of foods, drugs, cosmetics and devices, as such terms are defined in the Federal Trade Commission Act.

PAR. 3. The respondents referred to in Paragraph One hereof cause their said merchandise, when sold, to be transported from their place of business in the State of Michigan to their several stores located in various other States of the United States for sale to the purchasing public. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. Respondent W. B. Doner and Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at Washington Boulevard Building, 234 State Street, Detroit, Michigan. This respondent is an advertising agency and is now, and for some time last past has been, the advertising representatives of the respondents referred to in Paragraph One, above. As such, it prepares and places, and has prepared and placed, for publication, advertising material as hereinafter set forth, to promote the

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2. That purchasers of prescriptions will save between 30% and 70% of the usual and customary prices charged by competitors for identical merchandise in the trade area or areas where the said representations are made.

3. That the prices designated "retail list" and "retail" as used in connection with or with reference to merchandise to which respondents compared the prices of their own merchandise, are the prices at which such compared or similar merchandise is usually and customarily sold in the trade area or areas where the representations are made, and that the difference between the higher stated prices for such compared or similar merchandise and respondents' lower advertised prices for their own merchandise is the amount saved by purchasers.

4. That purchasers of respondents' merchandise will save 50% to 70% of the usual and customary prices charged by competitors for compared or similar merchandise in the trade area or areas where the said representations are made.

In truth and in fact, the amounts set out in connection with the words and terms "value," "retail," "retail list," "other" and "chart price" were not the prices at which the merchandise referred to was usually and customarily sold at retail in the trade areas where the representations were made, but were in excess of the prices at which such merchandise was generally sold in such trade areas; purchasers would not realize a savings of the difference between the said higher and lower price amounts; and purchasers would not save between 30% and 70% of the prices at which the merchandise referred to is generally sold in such trade areas.

Moreover, the amounts set out in connection with the words "retail list" and "retail" for merchandise to which respondents compared the prices of their own merchandise were not the prices at which such compared or similar merchandise was usually and customarily sold at retail in the trade areas where the representations were made, but were in excess of the prices at which such compared or similar merchandise was generally sold in such trade areas; purchasers would not realize a savings of the difference between said higher prices and the lower advertised prices for respondents' own merchandise; and purchasers would not save between 50% and 70% of the prices at which compared or similar merchandise is generally sold in such areas.

Therefore, the foregoing representations by respondents were and are false, misleading and deceptive.

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Compare these typical Rx prices \* \* \*

PROOF OF REVCO SAVINGS!

ITEM*	25's		100's	
	Chart Price	REVCO	Chart Price	REVCO
Butazolidin.....	\$3. 80	\$1. 75	\$10. 70	\$6. 58

\*Chart price is suggested retail price determined from commonly used pricing chart.

Buy Revco Formula 1				
250's.....			Value.....	6. 47
You Pay Only.....				2. 64
You Save Up to.....				3. 83
Buy Revco Formula 77				
100's.....			Value.....	7. 45
You Pay Only.....				2. 58
			You Save.....	4. 87
Buy Revco Formula 22				
100's.....			Retail.....	5. 08
You Pay Only.....				2. 44
			You Save.....	2. 64
Squibb Theragram-m; 100's size.....			Retail.....	7. 89
Everyday Discount Price.....				5. 45
Butazolidin 100's.....			Other*.....	10. 70
			Revco.....	6. 58
			You Save.....	4. 12

\*Other price determined from a commonly used pricing chart.

\* \* \* savings up to 70%.

You'll save up to 70 percent \* \* \*

For instance, if you use 1-milligram Librium Tablets, you may pay as much as \$12.80 per hundred. At Revco you pay only seven eighty-eight. Revco Discount Drug Centers save you 50 to 70 percent.

Through the use of the said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication:

1. That the prices designated "value," "retail," "retail list," "other," and "chart price" are the prices at which the merchandise referred to is usually and customarily sold at retail in the trade area or areas where the representations are made, and that the difference between the higher stated prices and respondents' lower advertised prices is the amount saved by purchasers.

Therefore, the foregoing representations were, and are false, misleading and deceptive.

PAR. 11. A substantial portion of the purchasing public prefers to deal directly with manufacturers in the belief that certain advantages accrue therefrom, including, but not limited to, lower prices, a fact of which the Commission takes official notice.

PAR. 12. In the course and conduct of their businesses, respondents have made certain statements and representations, by means of advertisements disseminated as aforesaid, respecting the number of testimonials which have been received from customers. Included among such statements and representations is the following:

People to People Proof:

(Photographs and Testimonials from 23 persons)—Plus 575,000 more in the first four weeks.

Through the use of the aforesaid statements and representations, respondents have represented, directly and by implication, that they have received in excess of 575,000 testimonials.

In truth and in fact, respondents have received substantially less than 575,000 testimonials.

Therefore, the foregoing representations were and are false, misleading and deceptive.

PAR. 13. In the course and conduct of their businesses, respondents have represented, by means of advertisements disseminated as aforesaid, that an independent research organization had purchased "drugs" from Revco stores and had also purchased identical "drugs" from competitors in the trade areas where the representations were made. Respondents have further represented in said advertising that on the basis of such shopping and comparison, the drugs sold by the respondents referred to in Paragraph One hereof had been certified by the said research organization as being priced below the prices generally charged by competitors for identical drugs.

In truth and in fact, the said research organization did not make purchases or comparisons as represented.

The certification published by respondents in said advertisements differs substantially and materially from the certification issued by the said research organization.

Therefore, the foregoing representations by respondents were, and are false, misleading and deceptive.

PAR. 14. Respondents' aforesaid advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their businesses, respondents have, through the use of words and a seal of approval bearing the name "Consumer Protective Institute," published in advertising disseminated as aforesaid, represented directly and by implication, that said merchandise has earned the said seal of approval because the said merchandise meets certain minimum standards, has certain qualities or merits, and has been examined and tested by Consumer Protective Institute; that Consumer Protective Institute is an independent research or testing organization; that Consumer Protective Institute is an institute; and that Consumer Protective Institute is an organization whose business is the protection of consumers.

In truth and in fact, the aforesaid merchandise has not earned the said seal of approval, nor was it required to meet any standards, possess any qualities or merits, nor was it examined or tested in any manner. Consumer Protective Institute is not an independent research or testing organization, nor is it an institute, nor is it engaged in a business any part of which is intended to protect or benefit consumers. Consumer Protective Institute was created and is owned, controlled and operated by respondent Charles F. Rosen for the sole benefit of respondents.

Therefore, the foregoing representations were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of their businesses, as set forth in Paragraph Six hereof, respondents have, through the use of words and a seal of approval issued by Scientific Associates, Inc., published in advertising disseminated as aforesaid, represented directly and by implication, that such merchandise had been tested, assayed or analyzed quantitatively and/or qualitatively by the said Scientific Associates, Inc., and that the said merchandise met certain minimum standards or had certain qualities or merits.

In truth and in fact, the said merchandise was not tested, assayed or analyzed by the said Scientific Associates, Inc.

Therefore, the foregoing representations were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of their businesses, respondents have, through the use of photographs and accompanying text, published in advertising disseminated as aforesaid, represented directly and by implication, that the respondents referred to in Paragraph One hereof own, operate or control manufacturing or laboratory facilities.

In truth and in fact such respondents do not own, operate or control any manufacturing or laboratory facilities.



by the parties. These have been carefully reviewed and considered, and such proposed findings and conclusions which are not herein adopted either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters. The facts hereinafter set forth are based on the entire record consisting of a stipulation of facts, a record of nearly 2800 pages, and numerous exhibits.

In the caption of the complaint the name of the first-named respondent therein is shown and punctuated as follows: "Revco. D.S., Inc." In Paragraph One of the complaint and in the proposed "Order" attached to the complaint, the name of the same respondent is punctuated as follows: "Revco, D.S., Inc." The parties being agreed that the correct punctuation of the name of said respondent calls for the elimination of the period and/or comma that now appears in the complaint after the name "Revco," the complaint pursuant to oral motion is hereby amended to show the correct punctuation of the first-named respondent herein to be as follows: "Revco D.S., Inc." (Tr. 124, 134, 223-224.)

#### FINDINGS OF FACT

##### 1. Background Facts

Revco D.S., Inc., the key respondent herein, is a company engaged in the operation of chain retail drug stores in the States of Michigan, Ohio, and West Virginia. This respondent, hereinafter referred to as Revco, is a Michigan corporation, with office and principal place of business at 5555 Concord Avenue, Detroit, Michigan. It was incorporated on February 8, 1956, under the name of Regal D.S., Inc., but its name was subsequently changed to its present name of Revco D.S., Inc. It might be stated incidentally that the name Revco is an acronym of "Registered Vitamin Company," a previously related business enterprise and that the "D.S." after Revco is an abbreviation for words "Discount Drug Stores." At all times herein material the correct corporate name of Revco has been and is Revco D.S., Inc. (CX 1, pars. 1, 2, 4, 8; Tr. 223-224-225, 465.)

The history of Revco is largely the personal chronical of the business life and activities of its 38 year old founder, president and chairman of its board of directors, respondent Bernard Shulman. His address is the same as Revco's. Mr. Shulman, a registered pharmacist, owned and operated a single conventional-type drug store in Detroit for a period of years prior to 1956. In the early part of 1956 he decided to change his operations to a discount self-service drug

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## Initial Decision

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of foods, drugs, cosmetics, and devices, by reason of said erroneous and mistaken belief.

PAR. 16. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Garland Ferguson, Mr. Francis J. Charlton, and Mr. A. David Cook* for the Commission.

*Lane, Krottinger and Santora*, by *Mr. Ernest C. T. Santora, Mr. Leonard Lane, and Mr. John E. Purdy* for respondents, Revco D.S., Inc., Standard Drug Company and Mr. Bernard Shulman.

*Covington & Burling* by *Mr. Harry L. Schneiderman and Mr. John E. Vanderstar* for respondent W. B. Doner and Company.

*Scharfeld, Bechhoefer, Baron & Stambler* by *Mr. Arthur Stambler* for respondent *Mr. Charles F. Rosen*.

## INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

JUNE 29, 1964

The general issue in this proceeding with respect to the first three above-named respondents is whether certain representations made by them in advertisements are false and misleading in violation of the Federal Trade Commission Act.<sup>1</sup> The issue as to the falsity or truthfulness of the same representations is also applicable to the last two of the above-named respondents but they also assert the defense that they are not responsible for the making of the said representations. The specific issues under the pleadings will be dealt with serially below.

The complaint herein was issued on June 13, 1963. A three day prehearing conference was held in the matter in December, 1963. Hearing was commenced on February 4, 1964, at Detroit, Michigan and concluded at Cleveland, Ohio on February 26, 1964, with all but four days of the hearing taking place at Cleveland. Thereafter proposed findings of fact, conclusions of law, and arguments were filed

<sup>1</sup> Section 5(a)(1) of the Act, here pertinent, reads: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

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Revco's entrance into the Ohio market was chiefly through the acquisition on July 1, 1961, of all of the outstanding stock of respondent Standard Drug Company, an old and well-known retail chain drug store company, hereinafter called Standard. Through this acquisition Revco took over 41 Standard drug stores, most of which were located in Cleveland and its suburbs. Respondent Standard Drug Company, an Ohio corporation with office and principal place of business at 6803 Pearl Road, Cleveland, Ohio, retained its name after it became a wholly-owned subsidiary of Revco. However, on October 14, 1961, it registered the trade name "Revco Discount Drug Centers" with the secretary of the State of Ohio, and since approximately October 1, 1961, its stores have been doing business under that name. (Tr. 367; CX 1, par. 9.) After the acquisitions, Revco closed down 10 of the 41 Standard drug stores. The gross sales of Revco's subsidiary, Standard, was \$7,410,000 for the six-month period October 1, 1961, through March 31, 1962. (CX 93.) Revco's total sales for the year 1962, including that of Standard and all other Revco subsidiaries, was in excess of \$17,400,000. (CX 4, p. 2, and CX 93.)

Prior to its acquisition of Standard, Revco had initially entered the retail drug store market in Cleveland by opening two drug stores therein, the first in 1958 and the second in 1959, operated under the name of Hudson Vitamin and Cosmetics Distributors and later changed to Hudson Distributors, Inc., a Revco subsidiary, which as will be shown below is involved in actions to test the constitutionality of the Ohio Fair Trade Act of 1959. (CX 4, p. 9; CX 1, par. 14; Tr. 129.)

For all times herein pertinent all stores owned by Revco or any of its subsidiaries have been operated under the trade name of "Revco Discount Drug Centers." (CX 1, par. 9; CX 4, p. 1; Tr. 233.)

Of the 49 drug stores controlled by Revco, six are owned directly by Revco; 31 by Standard; and the remainder by other wholly-owned Revco subsidiaries. None of the subsidiaries, other than Standard, own more than one drug store. (CX 1, pars. 11, 13, 14; Tr. 232, 234.) All of the stores are supplied with their wares from a warehouse maintained by Revco at Detroit, including the stores of Standard, which buys substantially all of its merchandise from Revco. (CX 1, pars. 11 and 12.) Shulman is president of each of the Revco subsidiaries, including respondent Standard. (Tr. 232.)

Respondent Shulman formulates, controls and directs the policies, acts, and practices of the corporate respondents herein, Revco and Standard, and also of the wholly-owned subsidiaries of Revco which

store operation and determined to conduct the new operation under a policy of "high volume, low overhead, low margin method of merchandising." He opened four such discount drug stores in Detroit in 1956. (CX 4 at pp. 2 and 9; CX 1, par. 1; Tr. 227, 301.)

By the end of 1960 the number of Revco operated drug stores had increased to twenty. (CX 1, par. 8.) At the time the Stipulation of Facts herein (CX 1) was executed in January 1964, Revco, and its wholly-owned subsidiaries, owned a total of 49 stores. By that time Revco had geographically extended its operations into the States of West Virginia and Ohio. (CX 1, par. 11.)

At the date of the issuance of the complaint herein on June 13, 1963, Revco, and its wholly-owned subsidiaries, had 16 stores in Detroit and suburbs, one store in Wheeling, West Virginia, and 31 stores in Ohio, chiefly in Cleveland and its suburbs. (CX 1, par. 14, as modified by oral stipulation; Tr. 24, 130-131, 235; CX 1, pars. 12 and 13; Tr. 234.) Under policies established by Shulman, Revco drug stores have no lunch counters, magazine racks, cigar counters, charge accounts and delivery service. The stores are primarily vendors of vitamins, prescriptions, non-prescription drugs, cosmetics and sundry drug items. All purchases and inventories of the store are controlled from Revco's home office. Revco advertises its stores as "America's Only *Total* Discount Drug Chain" (emphasis as in advertisements) which its advertisements explain as meaning that Revco's "discount" prices prevail everyday and not only for special sales; this advertisement claim is shown merely as background; the claim has not been placed in issue by the pleadings. (CX 2, pp. 1, 2, 20-42; CX 3, pp. 1, 2, 21-29, 32-35, 42-51, CX 4, pp. 1, 2, 9; CX 5; CX 92; CX 99 A-C.) Respondents Revco, Standard and Shulman through the operation of these stores have been and are now engaged in the sale and distribution of various articles of merchandise which come within the classification of foods, cosmetics and devices, as such terms are defined in the Federal Trade Commission Act. (CX 1, par. 2.)

Respondents Revco, Standard Drug and Shulman, cause the said merchandise, when sold, to be transported from their place of business in the State of Michigan to their several stores located in Ohio and West Virginia for sale to the purchasing public. These respondents maintain, and at all times mentioned herein, maintained, a course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial. (CX 1, par. 3.)

2, 3, 4.) Most of the record herein pertains to such advertisements and the relationship thereof to the charges under paragraphs 6 and 7 of the complaint. Thus under the said paragraphs of the complaint our concern will be chiefly with the truthfulness or falsity of respondents' advertisements in Ohio, more particularly in and around Cleveland. Respondents' advertisements of a similar nature as disseminated in the Detroit area are involved herein to only a minor degree. There are, however, certain additional charges under paragraphs 8 through 13 of the complaint which relate to respondents' advertising practices in both Michigan and Ohio. No evidence was presented by complaint counsel to tie in the operations of the single Revco operated drug store in West Virginia with any of the allegations of the complaint.

Ohio is a fair trade State by virtue of the enactment in 1959 of the Ohio Fair Trade Act. Hudson Distributors, Inc., a Michigan corporation and subsidiary (CX 1, par. 14) of Revco with a store operation in Cleveland as heretofore noted, brought two actions in the courts of Ohio for declaratory judgments that the Ohio Fair Trade Act is invalid and unconstitutional, naming as defendants Eli Lilly Company and The Upjohn Company, respectively, in each of said actions. Both of these defendants had complied with the Ohio Fair Trade Act but Hudson had entered into no written contracts with either. The Supreme Court of Ohio in an opinion entered on May 8, 1963, found the Ohio Fair Trade Act of 1959 constitutional. (For copy of Act, see RX 1 A-H.) *Hudson Distributors, Inc., v. The Upjohn Company and Eli Lilly Company*, 174 Ohio St. 487. The United States Supreme Court, having accepted jurisdiction of appeals from the said opinion of the Supreme Court of Ohio on the question of whether the McGuire Act, 66 Stat. 632, 15 U.S.C. § 45(a)(1)-(5), permits the application and enforcement of the Ohio Fair Trade Act against Hudson in support of Upjohn's and Lilly's systems of retail price maintenance, rendered an opinion (32 U.S.L. Week 4419) on June 1, 1964, holding that the Ohio Act, as applied to the facts of these two cases, comes within the provisions of the McGuire Act exempting certain resale price systems from the prohibitions of the Sherman Act, 26 Stat. 209, 15 U.S.C. § 1. In its opinion, the United States Supreme Court states: "The undisputed facts show that Lilly had established a system of resale price maintenance involving written contracts with some 1,400 Ohio retailers." Michigan has no fair trade act applicable to non-signers. (CX 4, p. 2; RX 14, p. 1; RX 15, p. 1; Tr. 2634.)

