whether in its original state or contained in other textile fiber products, as the terms "commerce," and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Fox River Mills, Inc., a corporation, and its officers, and Joseph R. Lessard, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions.

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.

In the Matter of

FRED MEYER, INC., ET AL.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(f) OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket 7492. Complaint, May 21, 1959—Decision, June 13, 1968

Order modifying an order dated July 9, 1963, 63 F.T.C. 1, pursuant to an opinion of the Supreme Court, 390 U.S. 341 (1968), and an order of the U.S. Court of Appeals, Ninth Circuit, of May 16, 1968, which prohibited a Portland, Oreg., supermarket chain from knowingly inducing discriminatory prices by including in the prohibition those retailers who buy through wholesalers as well as direct-buying retailers.

MODIFIED ORDER

Pursuant to the final decree of the United States Court of Appeals for the Ninth Circuit of July 1, 1966, and in conformity with the opinion of the Supreme Court of the United States in *Federal Trade Commission* v. *Fred Meyer, Inc., et al.*, 390 U.S. 341 (1968), and in accordance with the order of the United States Court of Appeals for the Ninth Circuit of May 16, 1968,

It is hereby ordered, That the order of the Commission of July 9, 1963 [63 F.T.C. 1], entered in the above-entitled matter be, and it hereby is, modified to read as follows:

It is ordered, That respondent Fred Meyer, Inc., a corporation, its officers, agents, representatives and employees, and Fred G. Meyer and Earle A. Chiles, individually and as officers of and in connection with activities related to the business of respondent Fred Meyer, Inc., in connection with the offering to purchase or purchase by or on behalf of respondent Fred Meyer, Inc., in commerce, as "commerce" is defined in the amended Clayton Act, of products for resale in outlets operated by respondent Fred Meyer, Inc., do forthwith cease and desist from:

Knowingly inducing, or knowingly receiving or accepting, in connection with any promotional scheme consisting of distribution of coupons to and return of coupons by consumers in connection with the purchase by consumers of products offered for resale in retail outlets of respondent Fred Meyer, Inc., or in connection with any comparable scheme, any discrimination in the price of such products by directly or indirectly inducing, receiving or accepting from any seller a net price respondents know or should know is:

(a) Below the net price at which such products of like grade and quality are being sold by such seller to any other purchaser with whom respondent Fred Meyer, Inc., competes, or with whose customer or customers said respondent competes, and

(b) Not a price differential which makes only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which products are sold and delivered by such seller, and

(c) Not a price change in response to changing conditions affecting the market for or marketability of such products, such as but not limited to actual or imminent deterioration of

perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned, and

(d) Not a price made in good faith to meet an equally low price of a competitor of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account all discounts, rebates, allowances, deductions, or other terms and conditions of sale by which net prices are effected.

It is further ordered, That respondent Fred Meyer, Inc., a corporation, its officers, agents, representatives and employees, and Fred G. Meyer and Earle A. Chiles, individually and as officers of and in connection with activities related to the business of respondent Fred Meyer, Inc., directly or through any corporate or other device in or in connection with any purchase by or on behalf of respondent Fred Meyer, Inc., in commerce, as "commerce" is defined in the Federal Trade Commission Act, of products for resale in outlets operated by respondent Fred Meyer, Inc., do forthwith cease and desist from:

Inducing or receiving anything of any value from any supplier as compensation for or in consideration of advertising, promotion, or display services or facilities furnished by or through Fred Meyer, Inc., in connection with any promotional scheme consisting of distribution of coupons to and return of coupons by consumers in connection with the purchase by consumers of products offered for resale in retail outlets of respondent Fred Meyer, Inc., or in connection with any comparable program, or in connection with any actual or purported promotion or special sale of particular products to be conducted by or on behalf of respondent Fred Meyer, Inc., when respondents know or should know that such compensation or consideration is not being offered or otherwise made available by such supplier on proportionally equal terms to all of its other customers, including retailer customers who do not purchase directly from such supplier, who compete with respondent Fred Meyer, Inc., in the sale of such supplier's products.

It is further ordered, That respondent Fred Meyer, Inc., a corporation, and its officers, and Fred G. Meyer and Earle A. Chiles, individually and as officers of corporate respondent, 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 set forth herein.

IN THE MATTER OF

ROYAL MOTORS, INC., ET AL.

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

Docket C-1347. Complaint, June 14, 1968—Decision, June 14, 1968

Consent order requiring a Washington, D.C., car dealer to cease misrepresenting that its used cars are new and making deceptive financing claims in advertising its automobiles.

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 Royal Motors, Inc., a corporation, and Raymond J. Anselmo, 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:

PARAGRAPH 1. Respondent Royal Motors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 4100 Georgia Avenue, NW., in the city of Washington, District of Columbia.

Respondent Raymond J. Anselmo is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertisting, offering for sale, sale and distribution of new and used automobiles to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said automobiles to be sold to purchasers thereof located in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said automobiles in com-

merce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their automobiles, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of interstate circulation, typical and illustrative but not all inclusive of which are the following:

Washington Post
Thurs. Jan. 5, 1967.

ROYAL KICKS OFF 1967 WITH A

CARRY-OVER DISPOSAL SALE

OF LEFTOVER '66 PLYMOUTHS and CHRYSLERS

AT USED CAR PRICES

PLYMOUTH VALIANT V-100 $1560

PLYMOUTH BARRACUDA $1960

PLYMOUTH BELVEDERE I V-8 $1860

PLYMOUTH BELVEDERE II V-8 $1960

PLYMOUTH BELVEDERE Satellite $1960

PLYMOUTH BELVEDERE Satellite $1960

PLYMOUTH FURY I $1860

PLYMOUTH FURY III $2260

PLYMOUTH FURY III $2260

CHRYSLER NEWPORT $2560

CHRYSLER NEWPORT $2660

CHRYSLER Town & Country Sta. Wgn. $3560

IMPERIAL CROWN $4260

IMPERIAL CROWN $4260

YES, THESE CARS HAVE BEEN DRIVEN!

$195 DOWN Can Deliver The Car of Your Choice at Royal

ROYAL

Washington Daily News
Wednesday, Dec. 28, 1966.

ROYAL'S YEAR-END

CLEARANCE

FINAL STOCK

OF LEFTOVER '66 PLYMOUTHS and CHRYSLERS

HURRY! HURRY!

PLYMOUTH VALIANT V-100 $1560

PLYMOUTH BARRACUDA $1960

PLYMOUTH BELVEDERE I V-8 $1860

PLYMOUTH BELVEDERE II V-8 $1960

PLYMOUTH BELVEDERE Satellite $1960

PLYMOUTH BELVEDERE Satellite $1960

PLYMOUTH FURY I $1860

PLYMOUTH FURY III $2260

PLYMOUTH FURY III $2260

CHRYSLER NEWPORT $2560

CHRYSLER NEWPORT $2660

CHRYSLER Town & Country Sta. Wgn. $3560

IMPERIAL CROWN $4260

IMPERIAL CROWN $4260

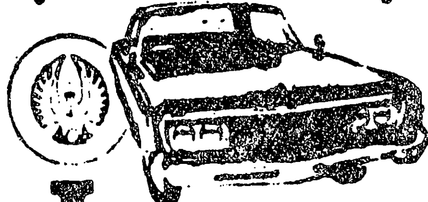
$195 DOWN Can Deliver The Car of Your Choice at Royal

ROYAL

GEORGIA AVE., N.W. TU 2-4800

Washington Post
Thurs. Jan. 5, 1967.

Royal's Annual Inventory Removal Sale!



Imperial
CLEARANCE

40% OFF

$495 DOWN

1966 IMPERIAL CROWN COUPE 2-DOOR
FACTORY AIR CONDITIONED. All leather interior, full power, including windows and seat, vinyl roof, radio, whitewall tires. Choice of three: Dark Red, Black or Ivory.
$4260

1966 IMPERIAL CROWN 4-DR. HARDTOP
FACTORY AIR CONDITIONED. All leather interior, full power including windows and seat, radio, whitewall tires and many other extras. Some with vinyl roofs. Choice of six: Black, White, Dark Blue and Dark Green.
$4260

1966 IMPERIAL LE BARON
FACTORY AIR CONDITIONED, plus all imaginable extras. Formal black with Medium Blue full hide leather interior.
$4980

CHRYSLER
• PLYMOUTH • CHRYSLER
• IMPERIAL • SIMCA
• SUNBEAM

4100 GEORGIA AVENUE N.W. • TU 2-4800

PAR. 5. By and through the use of the above statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, directly or by implication that:

1. The advertised automobiles are new automobiles left over from the previous model year.

2. The advertised automobiles will be financed on offer of the down payment stated.

PAR. 6. In truth and in fact:

1. Most of the automobiles referred to in the advertisements set out in Paragraph Four hereof, and other advertisements similar thereto but not specifically set forth herein, are not new automobiles left over from the previous model year. They are used automobiles which have been driven a substantial number of miles by reason of their previous sale or lease, by reason of their use as company official cars or as demonstrators, or by reason of their use as driver education automobiles at high schools in the metropolitan Washington, D.C., area.

2. The advertised automobiles were not financed on offer of the down payment stated. Frequently the amount of down payment advertised was insufficient and the customer was required to make up the deficiency or balance between the amount advertised and the amount actually required as down payment.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of new and used automobiles of the same general kind and nature as those sold by respondents.

PAR. 8. 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 respondents' automobiles by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

418-345—72——66

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Royal Motors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 4100 Georgia Avenue, NW., in the city of Washington, District of Columbia.

Respondent Raymond J. Anselmo is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Royal Motors, Inc., a corporation, and its officers, and Raymond J. Anselmo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of auto-

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

1. Representing, directly or by implication, that any vehicle is new when it has been used in any manner other than the limited use necessary in moving a new vehicle prior to delivery of such vehicle to the customer.

2. Advertising any used vehicle of the current or the previous model year without clearly and conspicuously disclosing in any and all advertising thereof that the vehicle is used.

3. Offering for sale or selling any vehicle of the current or the previous model year which has been used, without clearly and conspicuously disclosing by decal or sticker attached thereto that the vehicle has been used.

4. Advertising, offering for sale or selling any vehicle of the current or the previous model year which has been used for driver education, as a leased vehicle, as a company official car or as a demonstrator, without clearly and conspicuously disclosing such use in any and all advertising thereof and by decal or sticker conspicuously attached thereto: *Provided, however*, That in those instances in which vehicles are obtained by respondents and the use to which the vehicles have been put is not known, it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that in all such instances they have clearly disclosed the source from which the vehicle was obtained.

5. Misrepresenting, in any manner, the nature or extent of previous use of any vehicle offered for sale.

6. Representing, directly or by implication, a specified down payment amount, unless such amount is equal to or in excess of the minimum amount usually and customarily accepted as the full down payment.

7. Misrepresenting, in any manner, the amount which will be accepted as a down payment.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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.

IN THE MATTER OF

PUNCH CARD MACHINE TRAINING SERVICE, INC., ET AL.

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

Docket C-1348. Complaint, June 14, 1968—Decision, June 14, 1968

Consent order requiring two affiliated business machine schools located in Missouri and Tennessee to cease using deceptive offers of employment, exaggerating the demand for its graduates, misrepresenting that enrollments are limited, that lack of a high school diploma is no handicap, and that refunds will be made.

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 Punch Card Machine Training Service, Inc., a corporation, Punch Card Training of Memphis, Inc., a corporation, and Walter G. Ottman, Bette K. Ottman, Mary A. Vonck and Leona Thelen, individually and as officers of said corporations, 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 Punch Card Machine Training Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 318 East 10th Street, Kansas City, Missouri.

Punch Card Training of Memphis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 627 Adams Street, Memphis, Tennessee.

Respondents Walter G. Ottman, Bette K. Ottman, Mary A. Vonck and Leona Thelen are officers of the corporate respondents. They formulate, direct and control the acts, policies and practices of the corporate respondents, including the acts and practices hereinafter set forth. They each have an address at each of the corporate respondents' principal place of business.

The aforesaid respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of

courses of instruction intended to prepare students thereof for employment as IBM key punch machine, IBM tabulation machine, and computer operators and programmers, along with other courses. Said courses are pursued by correspondence through the United States mail, as well as by resident training at the respondents' schools in Missouri and Tennessee.

PAR. 3. In the course and conduct of their business, respondents have caused their courses of study and instruction to be sent from their places of business, located in the States of Missouri and Tennessee, to, into and through States of the United States other than the State of origin, to purchasers thereof located in such other States. Respondents also utilize the services of salesmen who call on prospective purchasers of the courses of instruction located in States other than the States of Missouri and Tennessee. They maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of study and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of courses of study and instruction of the same general kind and nature as those sold by the respondents.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents have caused to be published in newspapers distributed through the United States mail and by other means to prospective purchasers in the several States in which respondents do business, advertisements in the "Help Wanted" columns of such newspapers stating "See IBM Training Opportunities on the Amusement Page," with a display advertisement on the entertainment page of such newspaper of which the following are typical and illustrative, but not all inclusive:

(a) WANTED! TRAINEES.
Men and Women are greatly needed now to train for interesting positions as:
Tabulator Operators.
Office Equipment, Wiring Specialist.
Key Punch Operators.
Office Automation, Equipment Operators.
IBM MACHINE TRAINING—Persons selected will be trained in a program which need not interfere with present job. If you qualify training can be financed. Write today for more information. Please include home phone number. JOB OPPORTUNITIES.

* * * * * * *

(b) WANT A HIGH SALARY JOB?
IBM MACHINE TRAINING—needs men and women for:
Tabulating Operators.
Wiring Specialist.
Key Punch Operators.
Office Automation.
Keep your present job while you train for a better higher paid one. If you are selected and can qualify special financing can be arranged. * * *

(c) WANTED—TRAINEES IBM DATA PROCESSERS—Computer Programmers High Starting Salaries. Computer programmers, starting salaries $550. Experienced operators up to $20,000. Short training period. Must be high school graduate and train at own expense. Training will not interfere with present employment. Write, including phone number. PCMT Box No.

PAR. 6. By and through the use of the statements appearing in the advertisements referred to in Paragraph Five hereof, respondents have represented, and now represent, directly or by implication, that inquiries are solicited for the ultimate purpose of offering employment to qualified applicants, who will be trained to operate various IBM machines.

PAR. 7. In truth and in fact, inquiries are not solicited for the purpose of offering employment to qualified applicants, but for the sole purpose of obtaining leads to prospective purchasers of respondents' courses of instruction.

Therefore, the statements and representations as set forth in Paragraphs Five and Six hereof were, and are, false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the sale of their courses of instruction, respondents have made certain statements and representations by means of brochures and promotional materials and by oral statements of their salesmen and representatives, directly or by implication, to prospective purchasers of said courses of instruction.

Typical and illustrative, but not all inclusive of said statements and representations are the following:

1. Respondents provide a placement service which will guarantee or assure to each graduate employment of the type and in the field for which trained by respondents.

2. Graduates of respondents' schools will be placed in jobs in the geographical area of their choice.

3. A great demand by employers exists for graduates of respondents' schools, which demand is greater than respondents' ability to supply graduates to fill such jobs.

4. Respondents accept as students only persons who will be able to complete successfully their course or courses of instruction and training and thereafter will be qualified for employment of the type and in the field for which trained by respondents.

5. Respondents only accept as students those persons who enroll at the time the offer is made, or respondents only accept as students a limited number of persons from a specific geographical area.

6. The lack of a high school education is not a handicap or impediment for a person to be able to take and complete respondents' courses of instruction and training and to obtain subsequent employment of the type and in the field for which trained by respondents.

7. Persons completing respondents' courses of instruction and training will thereby have the training and experience to enable them to earn starting salaries of $400 to $600 per month or various other high amounts in employment of the type and in the field for which trained by respondents.

8. Respondents' school at Kansas City, Missouri, occupies the entire building in which it is located as pictured in respondents' catalogs or other materials.

9. Respondents will refund sums paid by or on behalf of a student whenever the student, before graduation, withdraws due to illness or is involuntarily withdrawn due to inability to complete courses or, after graduation, fails to secure employment.

PAR. 9. In truth and in fact:

1. Such placement service as is provided by respondents does not in fact find for every graduate desiring such assistance employment of the type and in the field for which he had been trained. In actual practice, many graduates are not placed at all, and many others find jobs in the automation field, or in other lines of work, solely as a result of their own efforts.

2. Respondents place few, if any, graduates of their schools in jobs in the geographical area of their choice.

3. No great demand by employers exists for graduates of respondents' schools. Many of respondents' graduates are unable to obtain employment of the type and in the field for which trained by respondents and respondents have graduated more students than they have been able to place in jobs.

4. Respondents do accept persons who will be unable to complete successfully their course or courses of instruction and training, or who after completion will be unqualified for employment of the type and in the field for which trained by respondents.

5. Respondents do not only accept as students those persons who enroll at the time the offer is made, and respondents do not only accept as students a limited number of persons or a limited number of persons from a specific geographical area. Respondents accept applicants for admission to their schools at any and all times and they place no limitation thereon.

6. Persons without a high school education have found it a handicap and an impediment in comprehending and in completing respondents' courses of instruction and training, and in obtaining employment of the type and in the field for which trained by respondents.

7. Persons completing respondents' courses of instruction and training do not receive the training and experience required to enable them to earn starting salaries of $400 to $600 or more per month, or like amounts, but typically receive substantially less.

8. Respondents' school at Kansas City, Missouri, does not occupy the entire building as pictured in respondents' catalog or other material but actually occupies space of less than one floor therein.

9. Respondents do not refund sums paid by or on behalf of a student who, before graduation, withdraws due to illness or is involuntarily withdrawn due to inability to complete courses or, after graduation, fails to secure employment. Respondents' contracts provide that no refunds will be made by respondents.

Therefore, the statements and representations as set forth in Paragraph Eight hereof were, and are, false, misleading and deceptive.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and to induce a substantial number thereof to subscribe to, and purchase, respondents' said courses of study and instruction by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation

of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Punch Card Machine Training Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 318 East 10th Street, Kansas City, Missouri.

Respondent Punch Card Training of Memphis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 627 Adams Street, Memphis, Tennessee.

Respondents Walter G. Ottman, Bette K. Ottman, Mary A. Vonck and Leona Thelen are officers of said corporations and their addresses are the same as that of said corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Punch Card Machine Training Service, Inc., a corporation, Punch Card Training of Memphis, Inc., a corporation, and their officers, and Walter G. Ottman, Bette K. Ottman, Mary A. Vonck and Leona Thelen, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of

courses of study, training and instruction in the operation of business machines or data processing machines or courses of study and instruction in any other subject or subjects, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that inquiries are solicited for the purpose of offering employment to qualified applicants: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that a bona fide offer of employment was made as represented.

2. Representing, directly or by implication, that respondents' placement service will guarantee or assure the placement of graduates in jobs for which they have been trained, or will find them jobs in the geographical areas of their choice; or misrepresenting, in any manner, their ability or their facilities for assisting graduates of their courses in finding employment, or the assistance actually afforded by respondents to graduates in obtaining employment.

3. Representing, directly or by implication, that a great demand by employers exists for graduates of respondents' schools or that such demand is greater than respondents' ability to supply graduates to fill such jobs; or misrepresenting, in any manner, the employment opportunities for graduates of respondents' schools or courses: *Provided, however*, That nothing herein shall be construed to prohibit the respondents from truthfully and nondeceptively stating that there is a great demand for experienced tabulating machine personnel with high school education in the Kansas City area and surrounding territory.

4. Representing, directly or by implication, that respondents accept only qualified persons for their courses of instruction and training or are selective as to which applicants they accept: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that a bona fide selection is made of applicants based on established guides and standards clearly disclosed in immediate conjunction with the representation made.

5. Representing, directly or by implication, that respondents only accept as students those persons who apply for enrollment in respondents' courses at the time the offer is made; or that enrollment therein cannot be accepted thereafter; or that only a limited number of students can be accepted for respondents' courses of instruction and training; or that only a specified number

of applicants responding to a particular advertisement of respondents or from a particular area can be accepted for enrollment in respondents' courses; or that there are any limitations on the number of students who can be enrolled.

6. Representing, directly or by implication, that the lack of a high school education is not a handicap or impediment for a person to take and complete respondents' course or courses of instruction or training or to obtain employment; or misrepresenting, in any manner, the educational or other requirements for such training and employment.

7. Representing, directly or by implication, that persons completing respondents' courses will earn starting or average salaries in excess of salaries actually and customarily paid to persons of like age, experience and training; or misrepresenting, in any manner, the earnings which will be realized by persons completing said courses of instruction.

8. Representing, directly or by implication, that respondents' school occupies all of the building in which it is located, or is larger than it in fact is, or that such school provides or has available physical facilities which are not, in fact, available.

9. Representing, directly or by implication, that respondents will refund sums paid by or in behalf of a student.

10. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondents' courses to purchasers; and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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.

IN THE MATTER OF

LEED'S LUGGAGE SHOPS, INC., ET AL.

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

Docket C-1349. Complaint, June 20, 1968—Decision, June 20, 1968

Consent order requiring a New York City retailer of leather and travel goods to cease making deceptive pricing and savings claims for its merchandise and misrepresenting its business status.

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 Leed's Luggage Shops, Inc., a corporation, and Aaron Horowitz, individually and as manager 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 Leed's Luggage 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 office and principal place of business located at 417 Fifth Avenue, New York, New York.

Respondent Aaron Horowitz is an individual and the manager of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of luggage, gifts and other leather and travel goods over the counter and by mail order at retail to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of the aforesaid merchandise, the respondents advertise, and have advertised, by means of catalogs, newspapers and other media which are and have been disseminated by and through the United States mails to prospective purchasers living in various States other than the State of New York. Said advertisements contain numerous statements and representations respecting prices and savings for said merchandise and their business status.

Among and typical, but not all inclusive, of said statements and representations are the following:

AGE OLD SYMBOL OF FINE LEATHER CRAFTSMANSHIP

Money Savers

List	*Special*
$52.50	$36.50
55.00	37.50
60.00	40.00
62.50	42.50
75.00	49.50

Money Savers.
From A Leather Specialist.

* * * * * * *

Clearance Sale

LADIES

Beauty Case: Reg. $19.95, Sale $13.95.
21 inch Weekend: Reg: $30, Sale $19.95.

MEN'S

21 inch Companion: Reg. $22.95, Sale $15.95.
21 inch Companion: Reg. $32.50, Sale $21.95.

STYLE

16 inch Zip Hat Box: Wt. 2 lbs., Reg. $22.50, Now $13.50.

Our own manufacturing facilities * * * plus direct world wide factory associates in England, France, Italy, West Germany and Japan—assures top quality merchandise at lowest prices.

Leed's will make attache cases in sizes and specifications to fit your particular requirements.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, respondents represent, and have represented, directly or by implication:

(a) That said higher price amounts designated as "List" are the prices regularly charged by the principal retail outlets in respondents' trade area;

(b) That said higher price amounts designated as "Reg." are the prices at which such articles of merchandise have been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent regular course of their business;

(c) That purchasers of respondents' merchandise save an amount equal to the difference between said higher prices and the corresponding lower prices.

(d) That respondents operate or control a factory or factories wherein certain articles of their said merchandise are manufactured.

(e) That as a manufacturer they are associated with foreign manufacturers of certain of their said articles of merchandise, which enables respondents to offer such merchandise at lower prices.

PAR. 6. In truth and in fact:

(a) The higher price amounts designated by "List" are not the prices regularly charged by the principal retail outlets in respondents' trade area.

(b) The higher price amounts designated as "Reg." are not the prices at which such articles of merchandise have been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent regular course of their business.

(c) Purchasers of respondents' merchandise do not save an amount equal to the difference between said higher prices and the corresponding lower prices.

(d) Respondents do not own, operate or control a factory or factories wherein any of their said articles of merchandise are manufactured.

(e) Respondents are not as a manufacturer associated with any foreign manufacturer of their said articles of merchandise so as to be able to offer merchandise from such foreign manufacturers at lower prices.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof, were and are false, misleading and deceptive.

PAR. 7. There is a belief on the part of members of the purchasing public that by dealing directly with the manufacturer, lower prices and other advantages may be obtained, a fact of which the Commission takes official notice.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 9. The use by the 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 state-

ments and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Leed's Luggage 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 office and principal place of business located at 417 Fifth Avenue, in the City of New York, State of New York.

Respondent Aaron Horowitz is an individual and the manager of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Leed's Luggage Shops, Inc., a corporation, and its officers, and Aaron Horowitz, individually and as manager of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of luggage, gifts or other leather or travel goods or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "List" or any word or words of similar import or meaning to refer to any amount unless substantial sales of such merchandise are being made at that or a higher price by principal retail outlets in respondents' trade area; or misrepresenting, in any manner, the price at which merchandise is sold in respondents' trade area.

2. Using the abbreviation "Reg." or any words or other abbreviations of similar import or meaning to refer to any amount which is in excess of the price at which such merchandise has been sold or openly and actively offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business; or misrepresenting, in any manner, the price at which such merchandise has been sold or offered for sale by respondents.

3. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise, or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of repondents' merchandise at retail.

4. Representing, directly or by implication, that they are manufacturers or that they own, operate or control a factory or other manufacturing facility or facilities or that they manufacture any of the merchandise offered for sale by them.

5. Representing, directly or by implication, that as a manufacturer they are associated with other manufacturers and thereby enabled to offer or sell goods at lower prices; or misrepresenting, in any manner, their trade connections, associations or status.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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.

Order

IN THE MATTER OF

THE GRAND UNION COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

Docket 8458. Complaint, Jan. 12, 1962—Decision, June 21, 1968

Order reopening proceeding and setting aside a cease and desist order dated June 10, 1965, 67 F.T.C. 999, which required a major food chain to divest certain retail grocery stores, the respondent having made all except one of the required divestitures, and the prohibitions against certain future acquisitions provided for in docket No. C-1350, the Commission has determined that the public interest would be served by vacating the cease and desist order.

ORDER GRANTING JOINT PETITION OF RESPONDENT AND COMPLAINT COUNSEL TO REOPEN PROCEEDING AND SET ASIDE ORDER TO CEASE AND DESIST

Respondent and complaint counsel, by a joint petition filed on April 8, 1968, have requested the Commission to reopen this proceeding and set aside the order to cease and desist issued therein on June 10, 1965 [67 F.T.C. 999]. Under the terms of that order respondent was required to divest certain supermarkets and was prohibited, for a period of 10 years, from making certain acquisitions of retail grocery stores without prior Commission approval. With the exception of one store for which no buyer has been found, respondent has completed the required divestiture.

Simultaneously with the submission of the joint petition, complaint counsel and respondent submitted for the Commission's consideration an Agreement Containing Consent Order to Cease and Desist in proposed settlement of an alleged violation of Section 7 of the amended Clayton Act. The cease and desist order provided for in that Agreement contains a prohibition against certain future acquisitions that is broader than, but in minor respects inconsistent with, the order entered in Docket No. 8458. For this reason, the parties urge that the order in Docket No. 8458 be set aside.

Having today entered the cease and desist order provided for in the above referenced Agreement (Docket No. C-1350 [p. 1050]), the Commission has determined that, in view of such changed conditions, the public interest would be served by vacating the order to cease and desist entered in Docket No. 8458. Accordingly,

It is ordered, That the order to cease and desist entered in Docket No. 8458 be, and it hereby is, set aside.

418-345—72——67

IN THE MATTER OF

THE GRAND UNION COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

Docket C-1350. Complaint, June 21, 1968—Decision, June 21, 1968

Consent order prohibiting a large grocery chain with headquarters in East Paterson, N.J., from acquiring for a period of 10 years, without prior approval of the Commission, any grocery store or chain of more than five units, or whose annual sales exceed $5 million, or whose combined annual sales of respondent and proposed acquired store exceeds 5 percent of the trade area sales.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Grand Union Company has violated the provisions of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18), through its acquisition of the assets and business of Stevens Markets, Inc., and it appearing that a proceeding by the Commission in respect thereto would be to the interest of the public, issues this complaint stating its charges as follows:

I. DEFINITIONS

1. "Food stores" are establishments primarily selling food for home preparation and consumption. This definition corresponds to Bureau of Census Major Group Classification No. 54.

2. "Grocery stores" are food store establishments primarily selling (1) a wide variety of canned or frozen foods such as vegetables, fruits and soups; (2) dry groceries, either packaged or in bulk, such as tea, coffee, cocoa, dried fruits, spices, sugar, flour and crackers; and (3) other processed food and nonedible grocery items. In addition, these establishments often sell smoked and prepared meats, fresh fish and poultry, fresh vegetables and fruits, and fresh or frozen meats. This definition corresponds to Bureau of Census Industry Classification No. 5411.

II. THE GRAND UNION COMPANY

3. The Grand Union Company is named a respondent herein and is hereafter referred to as "Grand Union." It is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 100 Broadway, East Paterson, New Jersey, 07407.

4. Grand Union engages principally in the grocery store business, operating 510 such stores with sales of $768 million in 1966 and ranking among the nation's 10 largest grocery store chains in that year. Grand Union also operated 31 Grand Way department stores in 1966, and engaged in shopping center development enterprises, Triple-S trading stamp distribution, and performance incentive program sales through subsidiary and affiliate corporations. Grand Union has generated an increasing cash flow for several years, rising to $19 million in 1966.

5. In 1963, Grand Union's Florida division operated 31 grocery stores, 27 of which were located in Dade and Broward Counties, Florida. Grand Union ranked third in sales among Dade County food chains and fifth in sales among Broward County food chains in 1963.

6. At all times relevant herein, Grand Union purchased products in interstate commerce and engaged in "commerce" within the meaning of the Clayton Act.

III. STEVENS MARKETS, INC.

7. Stevens Markets, Inc. (hereafter "Stevens"), prior to the acquisition of substantially all its assets and business by Grand Union, was a corporation organized and existing under the laws of the State of Florida with its principal office and place of business located at 5701 NW., 35th Ave., Miami, Florida 33142.

8. Stevens was the leading independent grocery store company in both Dade and Broward Counties, Florida, ranking sixth and seventh respectively among food chains in those counties in 1963. From its founding with one store in 1948, Stevens expanded to 9 modern grocery stores with sales of $31.7 million and profits of $17,000 in 1963.

9. At all times relevant herein, Stevens purchased products in interstate commerce and engaged in "commerce" within the meaning of the Clayton Act.

IV. NATURE OF TRADE AND COMMERCE

A. *Generally*

10. Food stores account for the largest single segment of retail trade in the United States. In 1963, food store sales were approximately $57 billion, or 23% of all retail trade in the United States. Grocery stores account for by far the largest portion of food store sales. In 1963, the 245,000 grocery stores in the United States represented 77% of the number of food store establishments. and their $53 billion in sales represented over 92% of all food store sales.

11. Grocery stores are recognized as a separate class of retail establishment, distinguished by their trade in a wide variety of food and other high-volume low-markup consumer goods.

12. Concentration in the grocery store industry is high and has been increasing. Between 1949 and 1963 the number of grocery stores in the nation declined from 359,000 to 245,000. During the same period the share of grocery store sales accounted for by the top twenty companies increased from 26% in 1948 to 34% in 1963.

13. Mergers and acquisitions have been responsible for a substantial portion of the increase in concentration in the grocery store industry. Between 1949 and 1964 the nation's top twenty grocery store companies acquired 297 companies operating 3,063 grocery stores with sales of $3.1 billion.

14. The competitive impact of mergers and concentration in the grocery store industry, and of the growth of national chains, has been felt both in local and regional markets on both the selling and buying side of the market.

One of the significant effects of the merger movement and the trend toward concentration in the grocery store industry has been that mergers have become a substitute for the entry of new competition. The merger movement has eliminated potential competition, has tended to remove the threat of entry and the restraining influence which entry has upon noncompetitive behavior, and has tended to discipline the market behavior of smaller competitors reluctant to enter into competitive warfare with chains many times their size and with many times their resources. The merger movement and the trend toward concentration have tended to dampen the vigor of competition by increasing an awareness of multimarket interdependence among grocery store chains which face one another in several markets.

On the buying side of the market, suppliers have tended to favor the large chains, including Grand Union, with preferences and advantages over other purchasers by reason of the chains' economic power as large buyers. The merger movement and the trend toward concentration have also weakened the ability of independent grocery store chains to compete and have tended to precipitate additional acquisitions and mergers and the disappearance of such independent chains from the grocery store and food store industries.

15. Grand Union has been a leading participant in the food and grocery store merger movement, with $197 million in acquired grocery store sales ranking it fifth in acquired sales among grocery store chains in the period 1949 to 1964. Grand Union's series of fifteen acquisitions between 1951 and 1958 were the subject to Commission proceed-

ings in Docket No. 8458 from January 1962 to June 1965. In August, 1965, Grand Union exchanged its supermarket in Orlando, Florida with Food Fair Stores Inc., the 4th largest national chain in 1966, for the Food Fair store at Winchester, Virginia; and in January, 1967, acquired from Stop & Shop, Inc., the nation's 14th largest chain, the fixtures and equipment of its stores located in Greenwich and Stamford, Connecticut.

B. *The Local Markets*

16. *The Greater Miami Marketing Area*, consisting of Dade County, Florida, has been among the fastest growing areas of the country, increasing from a population of 495,084 in 1950 to about 1,160,000 in 1966. Concentration in the sale of grocery and related products through food stores in the Greater Miami Marketing Area is high, with the four largest food store chains accounting for 48% of the $377 million in food store sales in 1963. Combined, third-ranked Grand Union and sixth-ranked Stevens accounted for 15% of 1963 food store sales in that area.

17. *The Greater Marketing Area of Broward* consists of Broward County, Florida, an area that has grown rapidly from about 84,000 people in 1950 to one-half million in 1966. The share of food store sales held by four leading chains increased from 54% in 1963 to 57% in 1966, a period during which fifth-ranked Grand Union and seventh-ranked Stevens combined to become the fourth largest food chain in that area by 1966.

V. THE VIOLATION OF THE CLAYTON ACT

18. On May 3, 1964, Grand Union acquired substantially all the assets and business of Stevens, pursuant to an agreement dated March 27, 1964, for a consideration in excess of $4.8 million.

EFFECTS OF THE VIOLATION CHARGED

19. The effects of the acquisition of Stevens by Grand Union, as alleged in paragraph 18, have been or may be substantially to lessen competition or to tend to create a monopoly in the sale of grocery and related products through food or grocery stores in the Greater Marketing Areas of Miami or Broward, or in portions thereof, in violation of Section 7 of the Clayton Act, in the following among other ways:

(a) Substantial actual or potential competition has been eliminated between Grand Union or Stevens;

(b) The combination of the assets and business of Stevens may so increase Grand Union's facilities, financial, market and buying power

as to provide decisive competitive advantages over independent food store and grocery store operators;

(c) New entry into the food store or grocery store business may be inhibited or prevented;

(d) The acquisition challenged herein, separately and in the context of the merger movement described in paragraphs 12 and 13, contributes to an overall tendency toward increasing concentration and arresting tendencies toward declining concentration in the food and grocery store industries and forms a part of a tendency toward oligopoly and a deterioration in the vigor of competition as described in paragraph 14;

(e) Members of the consuming public have been denied the benefits of free and unrestricted competition between Stevens and Grand Union.

20. The acquisition by respondent, as alleged above, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

Decision and Order

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 7 of the Clayton Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated Section 7 of the Clayton Act, as amended, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules,

the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Grand Union Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 Broadway, in the city of East Paterson, State of New Jersey 07407.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

I

It is ordered, That for a period of ten (10) years following the effective date of this Order, The Grand Union Company shall not (A) merge with or acquire, directly or indirectly, through subsidiaries, or in any other manner, except with the prior approval of the Commission upon written application, the whole or any part of any grocery store (an establishment classified in Industry No. 5411, Standard Industrial Classification Manual, 1967 revision, or a grocery department in a nonfood store), where such acquisition or merger involves (1) five or more grocery stores, (2) annual grocery store sales of more than five (5) million dollars, or (3) combined (respondent and the grocery stores to be acquired or merged) grocery store sales of more than five (5) percent of total grocery or food store sales in any city or county in the United States; and (B) without sixty (60) days prior notification to the Commission, merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any grocery store establishment for which prior approval is not required pursuant to subparagraph A.

II

Within thirty (30) days from the effective date of this Order, and annually thereafter until it has fully complied with this Order, Grand Union shall submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order.

III

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this Order to each person having authority to approve grocery store acquisitions and mergers.

IN THE MATTER OF

WINN-DIXIE STORES, INC.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

Docket C-1110. Complaint, Sept. 14, 1966—Decision, June 24, 1968

Order modifying a consent order dated September 14, 1966, 70 F.T.C. 611, which prohibited a chain grocery firm from acquiring any grocery stores without Commission approval, by limiting prohibited acquisitions to grocery chains with (1) five or more stores, (2) annual sales over $5 million, or (3) a combined market share of over 5 percent in any trade area.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER

Respondent, by petition filed February 21, 1968, has requested that this proceeding be reopened and that the order, which issued on September 14, 1966, be modified.

The agreement containing a consent order which was accepted by the Commission in final disposition of this matter provides, in part, that:

> * * * in the event that the Federal Trade Commission issues any Order or Rule which is less restrictive than the provisions of this Order, in any proceeding involving mergers or acquisitions by a grocery store chain, then the Commission shall, upon the application of respondent, pursuant to Rule 3.28 of the Commission's Rules of Practice, reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the restrictions imposed upon respondent herein into conformity with those imposed upon its competitors.

As grounds for its present request, respondent contends that assurances of voluntary compliance recently accepted by the Commission in disposition of two matters involving acquisitions by grocery store chains are "less restrictive" than its order, and that an assurance of voluntary compliance, upon acceptance by the Commission, is an "order" as that term is defined in the Administrative Procedure Act. The Chief, Division of Mergers, in his answer to respondent's petition, does not agree with this latter argument. However, with a minor revision agreed to by respondent, he does not oppose the modification requested.

The Commission has determined that the order should be modified for reasons other than those advanced by respondent.

By order recently issued, the Commission accepted an agreement containing a consent order in final disposition of a matter involving an acquisition by a grocery store chain, The Grand Union Company. Respondent under its present order is prohibited from making any

acquisition of any retail food or grocery stores in the United States, for a period of ten years, without prior Commission approval. Prior Commission approval under the *Grand Union* order is limited to certain categories of grocery store acquisitions, with the added requirement for sixty days prior notification to the Commission of any grocery store acquisition for which prior approval is not required. Thus, the order issued in the *Grand Union* matter is less restrictive than respondent's order.

Under the circumstances, the Commission is of the opinion that this proceeding should be reopened and the order modified to conform to the restrictions imposed in the *Grand Union* order. Accordingly,

It is ordered, That this matter be, and it hereby is, reopened.

It is further ordered, That the order issued in this matter on September 14, 1966, be, and it hereby is, modified to read as follows:

It is ordered, That, for a period of ten (10) years from November 14, 1966, Winn-Dixie Stores, Inc., shall not (A) merge with or acquire, directly or indirectly, through subsidiaries, or in any other manner, except with the prior approval of the Commission upon written application, the whole or any part of any grocery store (an establishment classified in Industry No. 5411, Standard Industrial Classification Manual, 1967 revision, or a grocery department in a nonfood store), where such acquisition or merger involves (1) five or more grocery stores, (2) annual grocery store sales of more than five (5) million dollars, or (3) combined (respondent and the grocery stores to be acquired or merged) grocery store sales of more than five (5) percent of total grocery or food store sales in any city or county in the United States; and (B) without sixty (60) days prior notification to the Commission, merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any grocery store establishment for which prior approval is not required pursuant to subparagraph A.

Within thirty (30) days from the effective date of this Order, and annually thereafter until it has fully complied with this Order, Winn-Dixie Stores, Inc., shall submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this Order to each person having authority to approve grocery store acquisitions and mergers.

IN THE MATTER OF

S.S.S. COMPANY ET AL.

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

Docket 8646. Complaint, Sept. 14, 1964—Decision, June 26, 1968

Order requiring an Atlanta, Ga., manufacturer of drug preparations and its advertising agency to cease misrepresenting that respondent's preparations will relieve tiredness or weakness unless expressly limited to a symptom caused by deficiency of vitamins supplied by such preparation, that the use of the preparation will aid the prevention of iron or vitamin deficiency, that iron deficiency anemia can be self-diagnosed or determined without medical or laboratory tests, and making other misleading claims for the effectiveness of "S.S.S. Tonic" or "S.S.S. Tablets."

COMPLAINT

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

PARAGRAPH 1. Respondent S.S.S. Company is a corporation, organized and existing under the laws of the State of Georgia, with its office and principal place of business located at 71 University Avenue, SW., in the city of Atlanta, State of Georgia.

Respondent Tucker Wayne & Company is a corporation, organized and existing under the laws of the State of Georgia, with its office and principal place of business located at 1175 Peachtree Street, NE., in the city of Atlanta, State of Georgia.

PAR. 2. Respondent S.S.S. Company, is now, and has been for more than one year last past, engaged in the sale and distribution of preparations containing ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designations used by respondent S.S.S. Company for the said preparations, the formulae thereof and directions for use are as follows:

1. Designation: S.S.S. Tonic

Formula: Contents:		*High potency dosage (3 tablespoons) contains*
(B_1) Thiamine	mg	5.0
(B_2) Riboflavin	mg	5.0
Niacinamide	mg	20.0
(B_{12}) Cyanocobalamine	mcg	0.6
Iron (as the Ammonium Citrate)	mg	100.0

Also contains: Queen's Delight (Stillingia Sylvatica), Swamp Sumac (Rhus Vernix), Sumac (Rhus Glabra). ALCOHOL 12 percent.

Directions:

ADULTS

(High-Potency Dose)—1 tablespoon three times daily, at mealtime, for a therapeutic dosage of iron, plus more than the minimum daily requirements of Vitamin B_1, B_2, Niacinamide, and supplemental amounts of Vitamin B_{12}.

CHILDREN

(6 to 12 years)—½ tablespoon three times daily, at mealtime.

2. Designation: S.S.S. Tablets

Formula: Contents of Vitamins, Minerals, etc.:		*High potency dose (2 tablets daily) provides*
Thiamine NO_3 (B_1)	mg	10
Riboflavin (B_2)	mg	4.8
Niacinamide	mg	60
Pyridoxine HCl (B_6)	mg	1
Vitamin B_{12} (Crystalline)	mcg	3
Calcium Pantothenate	mg	4
Vitamin C	mg	150
Iron (Ferrous Fumarate)	mg	100
Copper (Copper Sulphate Anhydrous)	mg	2

Plus the activity of S.S.S. Drug Extractives from Queen's Delight, Swamp Sumac and Sumac.

Directions:

High-potency (adult) dose of iron and Vitamins B_1, B_2, B_{12}: 1 tablet taken twice daily, at mealtime.

Sustaining (adult) dose supplying more than MDR of iron and important B-vitamins: 1 tablet daily at mealtime.

Children (6 to 12 years): 1 tablet daily at mealtime.

May be taken regularly according to directions to provide more than an adequate intake of iron and certain important B-vitamins.

The above designated preparations are sometimes referred to collectively as "S.S.S. Tonic."

PAR. 3. Respondent S.S.S. Company causes the said preparations, when sold, to be transported from its place of business in the State of Georgia to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of

trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

Respondent Tucker Wayne & Company, is now, and since January 1, 1963, has been, the advertising agency of the S.S.S. Company, and now prepares and places, and since January 1, 1963, has prepared and placed, for publication advertising material, including certain advertising hereinafter referred to, to promote the sale of the said preparations. In the conduct of its business, and at all times mentioned herein, respondent Tucker Wayne & Company has been in substantial competition, in commerce, with other corporations, firms and individuals in the advertising business.

PAR. 4. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparations 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, magazines 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, and in the District of Columbia, 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 said preparations; and have disseminated, and caused the dissemination of, advertisements concerning said preparations 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 said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Do you find yourself *missing out* on the fun in life? Do you feel dull, draggy * * * just "too tired" to do things? Then maybe you're just suffering from Iron Deficiency Anemia—*low blood power*. If so, what *you* need is *Three-S Tonic!* New-formula Three-S Tonic—now with B-vitamins—is rich in iron to help *build back* your blood power * * * *restore* your energy * * * help you *feel better fast!* Three-S Tonic goes to work within *24 hours*. And if you don't feel better in just *six* days * * * the Three-S Company will refund your money * * * every cent of it!

Yes, yes, yes * * * get S.S.S.! Get started on new-formula, iron-and-vitamin-enriched Three-S Tonic * * * in liquid or tablet form * * * *right away!* (Radio)

* * * * * * *

Get that young blood feeling. Remember when you felt like that? When you had that young blood feeling. Well you can have that pep and vitality again with S.S.S. Tonic, the Tonic that contains 10 times your minimum daily requirements or iron * * * and iron is what helps to build blood power, give you that young blood feeling. So if you've been tired and listness, suffering from iron deficiency anemia, take S.S.S. Tonic, in liquid or tablets * * * and if you don't feel better in just six days the S.S.S. Company will refund your money. (Radio)

* * * * * * *

Young blood. How long since you had that young blood feeling, the feeling you could work all day and dance all night? Too long? Then take S.S.S. Tonic, and if you've been tired, jumpy, run down, due to iron deficiency anemia, S.S.S. will help you get that young blood feeling in just six days or your money back. How? Listen. Vitamin enriched S.S.S. Tonic contains ten times your minimum daily requirements of iron. Iron to help build back the blood power that carries oxygen and nutrition to muscles and all parts of your body. That's where your pep and vitality come from * * * The conversion of oxygen and nutrition into energy. So, if you aren't getting enough iron in your diet, S.S.S. makes this unqualified guarantee. If, in six short days you aren't feeling stronger, happier, aren't getting that young blood feeling, every cent you paid for S.S.S. Tonic will be refunded by the S.S.S. Company. (Radio)

* * * * * * *

Feel weak, dog-tired? Lost your spark? Take *Three-S* . . . the tonic that starts giving you *more power per hour* . . . within 24 hours! (Radio)

* * * * * * *

New formula Three-S Tonic contains the elements you *need* to help *build back* your blood power * * * restore your energy. Important, *too* * * * Three-S Tonic helps you feel better *fast*. It goes to work within 24 hours! (Radio)

* * * * * * *

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly or by implication:

1. That the use of S.S.S. Tonic and S.S.S. Tablets will be of benefit, safe and effective in the treatment and relief of a deficiency of iron, iron deficiency anemia, tiredness, lack of pep, energy and strength, weakness, listlessness, run-down feeling and nervousness.

2. That the ingredients other than iron, as supplied by S.S.S. Tonic and S.S.S. Tablets, contribute to the effectiveness of these preparations in the treatment and relief of a deficiency of iron and iron deficiency anemia.

3. That the formulae for S.S.S. Tonic and S.S.S. Tablets and the ingredients contained therein are new medical and scientific discoveries and achievements.

4. That the use of S.S.S. Tonic and S.S.S. Tablets will increase the strength and energy in the body within 24 hours.

5. That the purchase price of S.S.S. Tonic and S.S.S. Tablets will be refunded unconditionally if the purchaser is not satisfied with the preparations.

PAR. 7. In truth and in fact:

1. Neither S.S.S. Tonic nor S.S.S. Tablets will be of benefit in the treatment or relief of tiredness, lack of pep, energy or strength, weakness, listlessness, run-down feeling or nervousness except in a small minority of persons whose tiredness, lack of pep, energy or strength, weakness, listlessness, run-down feeling or nervousness is due to a deficiency of one or more of the vitamins provided by these preparations or to a deficiency of iron or to iron-deficiency anemia.

2. None of the ingredients other than iron, as supplied by S.S.S. Tonic or S.S.S. Tablets, are of any benefit in the treatment or relief of a deficiency of iron or iron deficiency anemia.

3. Neither S.S.S. Tonic nor S.S.S. Tablets contain any vitamin, mineral or other ingredient or combination of ingredients, which is a new medical or scientific discovery or achievement.

4. Neither S.S.S. Tonic nor S.S.S. Tablets will increase strength or energy in the body within 24 hours.

5. The purchase price of S.S.S. Tonic or S.S.S. Tablets is not refunded unconditionally, but there are terms and conditions which must be complied with by a purchaser in order for him to secure a refund, which terms and conditions are not disclosed in the advertising.

Therefore, the advertisements referred to in Paragraph Five above, 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.* Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest, and do suggest, to persons viewing, hearing or reading such advertisements that in cases of persons of both sexes and all ages who experience tiredness, lack of pep, energy or strength, weakness, listlessness, run-down feeling or nervousness, there is a reasonable probability that these symptoms will respond to treatment by the use of these preparations: and have the capacity and tendency to suggest, and do suggest, that in cases of persons of both sexes and all ages who have a deficiency of iron or who have iron deficiency anemia, the preparations can be used safely and effectively in the treatment and relief of a deficiency of iron or of iron deficiency anemia and their symptoms. In the light of such statements and representations, said advertisements are misleading in a material

*Reported as amended by hearing examiner's order dated Nov. 28, 1966.

respect and therefore constitute false advertisements, as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material facts that in the great majority of persons, or of any age, sex or other group or class thereof, who experience tiredness, lack of pep, energy or strength, weakness, listnessness, run-down feeling or nervousness, these symptoms are not caused by a deficiency of one or more of the vitamins provided by S.S.S. Tonic or S.S.S. Tablets or by a deficiency of iron or iron deficiency anemia, and that in such persons the said preparations will be of no benefit.

PAR. 9. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Mr. Leroy M. Yarnoff, *Mr. William E. McMahon, II*, supporting the complaint.

Powell, Goldstein, Frazer & Murphy, Atlanta, Ga., by *Mr. Edward E. Dorsey* and *Mr. Wayne H. Shortridge* for the respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

OCTOBER 13, 1967

The Federal Trade Commission issued its complaint against respondents on September 14, 1964, charging them with violations of Sections 5 and 12 of the Federal Trade Commission Act. The respondents filed an answer in which they admitted certain allegations of the complaint but denied that they had violated either Section 5 or 12 of the Federal Trade Commission Act.

THE PLEADINGS

The Federal Trade Commission alleged in Paragraph Six of the complaint that the respondents had made certain representations in the advertisements of the products S.S.S. Tonic and S.S.S. Tablets. The complaint alleges that the representations are false and misleading since they make the following claims:

1. That the S.S.S. preparations will be of benefit in treating tiredness symptoms [1] without limiting these claims of relief to the small number of persons suffering from iron deficiency, iron deficiency anemia, or a deficiency of the vitamins contained in such preparations (Subpar. 1 of Pars. 6 and 7).

[1] For brevity, the term "tiredness symptoms" is used throughout this Initial Decision to include all such terms used in the complaint, including "tiredness, lack of pep, energy or strength, weakness, listlessness, run-down feeling or nervousness."

2. That the ingredients other than iron in the S.S.S. preparations contribute to the effectiveness of these preparations in the treatment or relief of iron deficiency or iron deficiency anemia (Subpar. 2 of Pars. 6 and 7).

3. That the S.S.S. preparations are "new" medical discoveries (Subpar. 3 of Pars. 6 and 7).

4. That the S.S.S. preparations will increase strength and energy in the body within 24 hours after ingestion (Subpar. 4 of Pars. 6 and 7).

5. That the guarantee for the S.S.S. preparations is unconditional (Subpar. 5 of Pars. 6 and 7).

Further, the Federal Trade Commission affirmatively alleges in Paragraph Eight of the Complaint that:

1. The advertisements for the S.S.S. preparations suggest:

(a) to all persons hearing the advertisements having tiredness symptoms that there is a reasonable probability that tiredness symptoms will respond to treatment by use of the S.S.S. preparations; and

(b) to all persons who have iron deficiency or iron deficiency anemia that the S.S.S. preparations are safe and effective in the treatment and relief of iron deficiency, iron deficiency anemia and their symptoms; and

2. The advertisements making such representations are false because they fail to reveal the material facts that in the great majority of persons, or any subgroup thereof who have tiredness symptoms, the symptoms are not caused by iron deficiency, iron deficiency anemia or a deficiency of one or more of the vitamins in the S.S.S. preparations; and in that great majority of persons, or any subgroup thereof, the S.S.S. preparations will be of no benefit.

In response to these allegations, respondents deny that the advertisements represent that the S.S.S. preparations will be of benefit in treating the tiredness symptoms without any limitations. Respondents contend that the advertisements for the S.S.S. preparations represent that the S.S.S. preparations are of benefit in treating tiredness symptoms only if tiredness symptoms are caused by iron deficiency or iron deficiency anemia and that this representation is true.

Respondents deny that there is any representation in its advertisements that the ingredients other than iron in the S.S.S. preparations are of benefit in the treatment or relief of iron deficiency or iron deficiency anemia. Respondents contend that no such claim is made and further that the advertisements merely state that the other ingredients are present in the products.

Respondents deny that the advertisements for the S.S.S. preparations represent that they are "new" medical and scientific discoveries.

Respondents deny that the advertisements represent that the S.S.S. preparations will increase strength and energy in the body within 24 hours.

Respondents also deny that the terms of the guarantee are not fully set forth on the cartons and labels of the preparations.[2]

Respondents also deny the allegations in Paragraph Eight of the complaint to the effect that respondents' advertising is false and misleading because it fails to reveal the allegedly material fact that in the great majority of persons, or any subgroup thereof, the tiredness symptoms are not caused by iron deficiency, iron deficiency anemia or a deficiency of one or more of the vitamins in the S.S.S. preparations.

This matter is before the hearing examiner for final consideration on the complaint, answer, evidence, the proposed findings of fact and conclusions and briefs filed by counsel for respondents and counsel supporting the complaint. Consideration has been given to the proposed findings of fact and conclusions and briefs submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected; and the hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusions drawn therefrom and issues the following order:

FINDINGS OF FACT

1. Respondent S.S.S. Company is a corporation organized, existing and doing business under the laws of the State of Georgia, with its principal office and place of business located at 71 University Avenue, SW., Atlanta, Georgia.

2. Respondent Tucker Wayne & Company is a corporation organized, existing and doing business under the laws of the State of Georgia, with its principal office and place of business located at 1175 Peachtree Street, NE., Atlanta, Georgia.

3. Respondent S.S.S. Company is now, and has been for more than one year last past, engaged in the sale and distribution of preparations containing ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

4. The designations used by respondent S.S.S. Company for said preparations, the formulae thereof and directions for use are as follows:

[2] Counsel supporting the complaint have proposed no findings of fact or proposed order to cease and desist pertaining to respondents' guarantee claims. Consequently, the hearing examiner considers this charge to have been abandoned during trial.

1. Designation: "New Formula S.S.S. Tonic"

Formula	High potency dosage (3 tablespoons) contains	Minimum daily requirement equivalent
Contents:		
(B_1) Thiamine	5.0 mg	5 times MDR.
(B_2) Riboflavin	2.4 mg	2 times MDR.
Niacinamide	20.0 mg	2 times MDR.
(B_{12}) Cyanocobalamine	0.6 mcg	(Not estab.).
Iron (as the Ammonium Citrate)	100.0 mg	10 times MDR.

NOTE.—Also contains: Queen's Delight (Stillingia Sylvatica); Swamp Sumac (Rhus Vernix); Sumac (Rhus Glabra); Alcohol 12 percent.

Directions:

ADULTS

(High-Potency Dose)—1 tablespoon three times daily, at mealtime, for a therapeutic dosage of iron, plus more than the minimum daily requirements of Vitamin B_1, B_2, Niacinamide, and supplemental amounts of Vitamin B_{12}.

CHILDREN

(6 to 12 years)—½ tablespoon three times daily, at mealtime.

2. *Designation: "New Formula S.S.S. Tablets"*

Formula	ACTIVE INGREDIENTS	
	High potency dose 2 tablets daily provides	Minimum daily requirement equivalent
Contents of Vitamins, Minerals, etc.:		
Thiamine NO_3 (B_1)	10 mg	10 times MDR.
Riboflavin (B_2)	4.8 mg	4 times MDR.
Niacinamide	60 mg	6 times MDR.
Pyridoxine HCL (B_6)	1 mg	Need Accepted.[1]
Vitamin B_{12} (Crystalline)	3 mcg	Need Accepted.[1]
Calcium Pantothenate	4 mg	([2]).
Vitamin C	150 mg	5 times MDR.
Iron (Ferrous Fumarate)	100 mg	10 times MDR.
Copper (Copper Sulphate Anhydrous).	2 mg	Need Accepted.[1]

[1] The need for daily intake is accepted, but minimum daily requirement is not established.

[2] The need in human nutrition is not established.

NOTE: MDR signifies the officially established minimum required daily intake for an adult.

NOTE.—Plus the activity of S.S.S. Drug Extractives from Queen's Delight, Swamp Sumac and Sumac.

Directions:

High-potency (adult) dose of iron and Vitamins B_1, B_2, B_{12}: 1 tablet taken twice daily, at mealtime.

Sustaining (adult) dose supplying more than MDR of iron and important B-vitamins: 1 tablet daily at mealtime.

Children (6 to 12 years): 1 tablet daily at mealtime.

May be taken regularly according to directions to provide more than an adequate intake of iron and certain important B-vitamins. (CX 13A and B and CX 14A and B; RX 1, 5)

5. Respondent S.S.S. Company causes the said preparations, when sold, to be transported from its place of business in the State of Georgia to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial, in excess of $2 million annually (Tr. 132).

6. Respondent Tucker Wayne & Company is now, and since January 1, 1963, has been preparing and placing for publication advertising material, including certain advertising, hereinafter referred to, to promote the sale of the said preparations. In the conduct of its business, and at all times mentioned herein, respondent Tucker Wayne & Company has been in substantial competition, in commerce, with other corporations, firms, and individuals in the advertising business.

7. In the course and conduct of their said business, respondents have disseminated, and have caused the dissemination of, certain advertisements concerning the said preparations 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, magazines, 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 and in the District of Columbia, which have 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 said preparations; and have disseminated, and have caused the dissemination of, advertisements concerning said preparations 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 said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

8. Among and typical of the statements contained in respondents' advertisements, disseminated as described above, is the following:

Do you find yourself *missing out* on the fun in life? Do you feel dull, draggy * * * just "too tired" to do things? Then maybe you're suffering from Iron Deficiency Anemia—*low blood power*. If so, what you need is *Three-S Tonic!* New-formula Three-S Tonic—now with B-vitamins—is rich in iron to help *build back* your blood power * * * *restore* your energy * * * help you *feel better fast!* Three-S Tonic goes to work within *24-hours*. And if you don't feel better in just *six days* * * * the Three-S Company will refund your money * * * every cent of it! So don't *miss out* on the fun in life. Don't *let* yourself feel "too tired" to enjoy things. If *you're* suffering from Iron Deficiency Anemia, take *Three-S Tonic!* Yes, yes, yes * * * get S.S.S.! Get started on new-formula, iron-and-vitamin-enriched Three-S Tonic * * * in liquid or tablet form * * * *right away!* (CX 2.)[3]

The majority of respondents' advertising consists of radio announcements given over stations located throughout the United States (CX 5C—5Z6; RX 11–16) and constitutes a substantial expenditure on the part of the S.S.S. Company in promoting and selling its products (Tr. 112–113). Respondents' advertising is directed to and reaches a market comprised primarily of rurally oriented people, such as Whites and Negroes living in rural areas, former rural Whites and Negroes living in urban areas and Spanish speaking Americans living in either rural or urban areas. (Tr. 144, 158–60, 188–89, 766–69, 928–32; RX 11–16.)

9. The first charge of false and misleading advertising in the complaint is that these ads falsely claim that the S.S.S. preparations will be of benefit for all tiredness symptoms whether arising from a deficiency of iron, iron deficiency anemia, or a deficiency of the vitamins contained in the preparations or from any other cause. Respondents contend that their advertisements simply claim that S.S.S. preparations will be beneficial in the relief of tiredness symptoms only if the tiredness symptoms are due to a deficiency of iron or iron deficiency anemia.

Preliminarily, neither the Commission complaint nor counsel in support of the complaint urge that respondents' preparations do not contain an adequate therapeutic dosage of iron and the vitamins in the preparations if taken as directed. In fact, counsel in support of the complaint agree that the preparations are adequate therapeutic dosages of both the iron and vitamins in the preparations if taken as directed for a sufficient period of time (CSC 66th and 72nd Proposed Findings).

10. In interpreting the ads themselves, the examiner is persuaded by a previous decision of the Commission which was affirmed on appeal to the Courts, *In the Matter of The J. B. Williams Company, Inc., et al.*, FTC Docket No. 8574, decided September 28, 1965 [68 F.T.C.

[3] All of respondents' radio advertisements are set forth in full in Appendix A, attached hereto and made a part of this finding p. 1080 herein.

481], *aff'd and enforced, The J. B. Williams Company, Inc., et al.* v. *F.T.C.*, 381 F. 2d 884 (6th Cir., 1967). The Commission and the Court in the *Williams* case found deception to exist when considering virtually identical television ads to those used by these respondents on radio. As in the *Williams* case, the respondents here heavily stress general, nonspecific symptoms of tiredness and claim that these symptoms can be alleviated and entirely eliminated by consuming their preparations. While the ads always mention the possibility of iron deficiency anemia or a deficiency of iron, by their very nature the ads suggest that the tiredness symptoms are due to lack of iron and will uniformly be eliminated by taking respondents' preparations. It is true that if one is deficient in iron or vitamins, the preparations may be beneficial; however, the tiredness symptoms which respondents' ads stress so heavily cannot be said to be generally attributed to a deficiency of iron. Tiredness symptoms are common complaints of many different diseases and disorders (Tr. 315, 346, 362, 387, 398, 537, 601, 831–32, 971, 1090, 1746, 1960). In fact these tiredness symptoms are not even reliable indications of the possible existence of iron deficiency or iron deficiency anemia. Generally such deficiency cannot be properly determined without medical tests conducted by or under the supervision of a physician (Tr. 346–7, 358, 366–68, 395, 543, 867, 1358–9, 1391, 1395, 1646, 1658–9, 2147).

Consequently, respondents' ads are false and misleading in claiming that their preparations will cure tiredness symptoms which may not even be remotely connected with iron or vitamin deficiency in most instances.

11. A discussion of iron metabolism, iron deficiency and iron deficiency anemia, their causes and remedies and the incidences of iron deficiency and iron deficiency anemia in the population is necessary in view of the last and later findings.

12. Iron is necessary for life and is present in the body in hemoglobin, myoglobin, certain other enzymes and plasma and as storage iron. The human body does not synthesize iron; therefore, all iron in the body must come from outside sources. The total amount of iron in the adult body varies within the range of 3.5 to 6 grams (Tr. 244–245, 249, 334, 1380, 1438, 1770; RX 56, p. 20). The largest amount of iron in the body is present in the hemoglobin, the red pigment of red blood cells. Hemoglobin is a protein which contains 0.34 percent iron and cannot be synthesized without iron. The important function of hemoglobin is the transport of oxygen from the lungs to the tissues and carbon dioxide from the tissues to the lungs (Tr. 254, 332–334, 797–798, 953; RX 56, pp. 21, 26). Myoglobin is an iron-containing protein which

gives red color to muscle tissue. It is presumed to supply oxygen to the muscle tissues of the body (Tr. 245; RX 56, pp. 26–27). A very minute amount of the total iron in the body is present in certain enzymes which perform certain important functions (Tr. 245, 1589–90; RX 56, pp. 21, 28–31). A very small amount of the total body iron is also present in the plasma, the fluid portion of the blood (Tr. 250, 332–33, 1189, 1588). Iron is stored in the body, principally in the bone marrow, liver and spleen, and in much lesser amount in other tissues. The storage iron is available when there is increased need for iron, such as occurs in bleeding, pregnancy and periods of very rapid growth. Storage iron may vary from zero to 20 or 30 grams but the normal amount of iron in storage is within the range of 0.5 gram to 1.5 grams (Tr. 249, 797, 1007, 1008, 1587–88, 1893, 1920).

13. The usual way in which iron finds its way into the human body is through the eating of food since most foods contain some iron. Meats and eggs are the common foods with substantial amounts of iron. The amount of iron in the average daily adult diet is between 6 and 20 milligrams (Tr. 255–256, 449–450, 871, 1471–72, 1892). Ingested iron is absorbed principally from the upper part of the small intestine into the mucosa in the ferrous form; it then passes to the bloodstream where it combines with a transport protein; it then goes to the liver and bone marrow and can be stored or made into hemoglobin, depending upon the need of the moment (Tr. 247, 1431–33). Red blood cells are formed in the bone marrow either as mature red blood cells or as immature cells known as reticulocytes. Red blood cells have an average life span of approximately 120 days. When a red cell dies, the iron in the cell is reutilized for the production of new red cells (Tr. 250, 333, 1381, 1432–35).

14. Iron is normally carefully conserved and reutilized, however, a small amount of iron, between 0.5 mg. and 1 mg. per day, is lost through cells shed from the skin and from the bowel, in the urine, and in the bile, the saliva, hair and sweat (Tr. 394, 539, 594, 800, 1169, 1375, 1437, 1737). Iron is also lost during pregnancy and lactation. The net loss of iron by a woman from a normal pregnancy, including bleeding at delivery as well as iron supplied to the child during pregnancy, is between 250 and 800 mg. During the period of lactation, the normal loss of iron by the mother approximates ½ mg. daily in the milk (Tr. 800–802, 1169, 1467).

15. The only other way that iron can be lost from the human body is through bleeding. This bleeding can result from many causes (Tr. 1168–71, 1296). However, the only natural physiological blood loss is from menstrual bleeding. Non-pregnant women during the

usual child-bearing years lose an additional one to two mg. per day on the average due to menstruation (Tr. 249, 539, 594, 1375–76, 1467). The only other time when there is a substantial demand for iron in the human body is during infancy, childhood and adolescence (Tr. 273, 540–41, 802, 1449, 1882).

16. Iron deficiency anemia is an anemia due to a deficiency of iron in the body (Tr. 270–71, 799, 954, 1048, 1101, 1166, 1285–1286, 1357). Iron deficiency is a broader term than iron deficiency anemia although it has frequently been used in the record as synonymous therewith. Iron deficiency includes both iron deficiency anemia and a state in which the iron stores have been exhausted, function of the iron in the body has been impaired but the deficiency is not sufficiently great to produce readily recognizable reduction in the hemoglobin level or red blood cell count (Tr. 341, 1439–43, 1638, 1873, 2111–12; RX 56, p. 94). Iron deficiency and iron deficiency anemia do not exist until after storage of iron has been exhausted and this usually takes months or years in a normal individual (Tr. 276, 340–41, 394–95, 539, 1637, 1771, 1893, 1920, 2029).

17. Normal levels of hemoglobin below which anemia may be presumed to exist differ for different groups in the population. While there were variances in these ranges given by the various experts who testified, the following are found to be the normal ranges given:

Adult males—12 to 18 grams of hemoglobin per 100 ml. of blood.

Adult females of the childbearing age—11 to 16 grams of hemoglobin per 100 ml. of blood.

Post-menopausal females—11 to 18 grams of hemoglobin per 100 ml. of blood.

Infants—10 to 12.5 grams of hemoglobin per 100 ml. of blood.

Children ages 6 to 12—11.5 to 12.5 grams of hemoglobin per 100 ml. of blood.

Adolescents—depends on length of time after puberty.

(Tr. 296–99, 580–81, 680, 855, 966, 1006, 1049, 1138–40, 1200–01, 1286, 1788, 1965–66, 2041, 2062, 2125.)

These ranges for hemoglobin content of the blood are merely ranges used by the medical profession as rules of thumb pertaining to most of the healthy individuals in the population. A given individual may be anemic with a hemoglobin within a normal range or may have a hemoglobin content outside these normal ranges without being either anemic or having too much hemoglobin or blood (Tr. 317, 349, 580, 1006).

18. Generally the causes of iron deficiency and iron deficiency anemia are (1) inadequate intake of iron; (2) poor absorption of iron; (3) excessive demand for iron; or (4) excessive loss of iron from the body through bleeding (Tr. 272, 955, 1167, 1217, 1288, 1761–62, 2050).

Inadequate intake of iron results from improper dietary habits and is principally found among alcoholics, food faddists and young women in the childbearing age who eat improperly because of considerations of their weight and appearance and among indigent people who cannot afford a proper diet. Also, some elderly people who live alone may not prepare proper food for themselves. In addition, some infants may be deficient in iron if kept on a strict milk diet which is low in iron content (Tr. 273, 538, 1062–63, 1119–20, 1135–36, 1177, 1290, 1367, 1387, 1809, 1946–48). Poor absorption of iron results from inability on the part of the person's stomach and intestines to absorb the iron from the food taken and transfer it to the blood so that it may be utilized in making additional hemoglobin (Tr. 368, 586–88, 1775). Excessive demand for iron as a cause of iron deficiency generally arises in only two situations; namely among rapidly growing adolescents and pregnant women. Excessive loss of iron from the body is always due to bleeding in some form. Among adult males, this bleeding is caused by such disorders as ulcers, hiatal hernia, diverticulosis, diverticulitis, lesions in the gastrointestinal tract, hemorrhoids and hookworm infestation in rural areas of the South (Tr. 880, 956, 1170–71, 1296, 1368). Excessive loss of iron among women of the childbearing age sometimes causes iron deficiency or iron deficiency anemia because of excessive bleeding during menses and loss of iron from the mother's body during pregnancy, delivery and lactation (Tr. 383, 386, 576, 635, 1049, 1169, 1288, 1361, 1616–17).

19. The experts who testified all agreed that no lay person can properly diagnose the existence of iron deficiency or iron deficiency anemia from any of the tiredness symptoms. Iron deficiency anemia frequently exists without causing any signs or symptoms and, as found above, the tiredness symptoms occur in a great number of diseases other than iron deficiency anemia (Tr. 282, 318, 366, 660, 684, 867, 1076, 1245, 1332, 1390, 1465, 1960, 2011).

20. There are a number of clinic and laboratory tests available and used by the medical profession to determine the existence of anemia and that a particular anemia is due to iron deficiency. The simplest and most common tests used are hemoglobin counts, hematocrit counts and red blood cell counts (Tr. 282–83, 347–50, 389, 805–06, 857, 1246–47, 1357, 1873). In addition, there are a number of medical tests which can be performed if there remains any question as to the existence of iron deficiency anemia. These include study of red cell indices, microscopic examination of the blood, study of bone marrow and examination of serum iron. Also the therapeutic trial of iron on a patient with examination of results can be utilized to determine if iron deficiency ane-

mia exists (Tr. 284–91, 350–58, 389–91, 442–43, 1195–96, 1246–47, 1358, 1440–42, 1589, 1736, 1767–68, 1873).

21. The record contains no precise figures as to what percentage of the United States population may be suffering from iron deficiency or iron deficiency anemia at any time. The evidence consists of testimony by experts who as a part of their medical practice or teaching are concerned with this and similar types of disorders. To arrive at a meaningful estimate with regard to the incidence of iron deficiency anemia, it is necessary to segregate the population into groups by age, sex, physiological state and by economic status.

The first group is adult males. In this group iron deficiency or iron deficiency anemia is virtually nonexistent. Counsel for respondents concede and the testimony establishes that no more than one percent to two percent of the total male population ever incurs iron deficiency. (Respondents' Proposed Finding No. 80.) The next grouping is females of the childbearing age. In these adolescent girls and women, iron deficiency anemia occurs with more frequency than in any other population group. The principal reason for this is blood loss during menses, pregnancy, childbirth and lactation. An inadequate intake of iron may also be a contributing factor to the larger number of anemic persons in this group. The record contains numerous estimates on the part of the experts which are in substantial disagreement. The examiner is of the opinion that approximately ten percent of this group may be iron deficient or have iron deficiency anemia at any one time. Some of the experts called testified that only a very small proportion of these women ever suffered from iron deficiency anemia at some time during this period in their lives (Tr. 393–94, 554–56, 614, 802, 1791–95; CX 41 A–H). Other experts testified that the number of iron deficient persons in this group was substantially greater, that it constituted a public health problem and that the prophylactic administration of iron to pregnant women is a common practice (Tr. 309–13, 804, 863, 964, 1105–06, 1378–79, 1761, 2111). In any event, while the incidence of iron deficiency anemia is undoubtedly higher in this group than others, the examiner is of the opinion that there is not such a great number in this group to warrant respondents making the broad advertising claims that they do in their advertising even as pertaining to this group. Another grouping of the population are infants and children. Iron deficiency anemia is virtually nonexistent in this group unless an infant has been fed solely a diet of milk which may be low in iron content (Tr. 273, 538, 681–82). In adolescent children, iron deficiency anemia likewise is very rare (Tr. 684–85, 1371). Another group discussed by

the experts are post-menopausal women. Persons in this group may be in a deficiency state carried over from the time of the menopause; however, this situation usually soon corrects itself. Iron deficiency may also arise because of inadequate diet as these women grow older. This can also arise with elderly men. The examiner, however, does not believe that the number of persons with iron deficiency and iron deficiency anemia in this group of the population can exceed approximately ten percent of this group (Tr. 1053, 1370, 1613, 1795–96). People in the lower social and economic strata of the United States population may be more prone to iron deficiency and iron deficiency anemia than those in the middle and upper strata. This may result from a poorer diet or lack of medical treatment. However, the record does not permit any findings which would distinguish this group from the general population as far as iron deficiency anemia is concerned. Of course, extreme poverty may cause near starvation but lack of iron is only one problem in this situation. The examiner finds that in this lower social and economic grouping no significant iron deficiency exists as distinguished from other population groups (Tr. 423–24, 2045).

22. A number of the same experts who testified in the *Williams* case (*supra*) also testified in this proceeding. None of those who appeared in this proceeding in any way changed his testimony from that given in the *Williams* proceeding. After examining the testimony in the *Williams* proceeding as to the incidence of iron deficiency and iron deficiency anemia in the population, the Sixth Circuit Court stated:

> Not all of the approximate ten percent of the population who have iron deficiency anemia have moderate to severe anemia, and consequently exhibit mild or no symptoms. While there are no statistics available as to the number of people who are tired and run-down, or the number of people who are tired and run-down due to iron deficiency anemia, there is direct testimony that only a minority of people with these symptoms exhibit these symptoms because of iron deficiency anemia. Considering this evidence along with the fact that these symptoms are common and non-specific, the Commission could reasonably infer, and there was substantial evidence to support the finding, that the majority of the people who have these symptoms, have them because of causes other than iron deficiency anemia.

In addition, concerning the ads in the *Williams* case which are virtually identical with the ads in this proceeding, the Court stated:

> Here the advertisements emphasize the fact that if you are often tired and run-down you will feel stronger fast by taking Geritol. The Commission, in looking at the overall impression created by the advertisements on the general public, could reasonably find these advertisements were false and misleading. The finding that the advertisements link common, non-specific symptoms with

iron deficiency anemia, and thereby create a false impression because most people with these symptoms are not suffering from iron deficiency anemia, is both reasonable and supported by substantial evidence.

23. The complaint charges that respondents' advertisements are deceptive in that they claim that the ingredients other than iron contribute to the effectiveness of the S.S.S. preparations in the treatment of iron deficiency and iron deficiency anemia. The only treatment for iron deficiency anemia is the administration of iron plus the correction of underlying causes for the deficiency if possible (Tr. 356, 363, 407, 602, 1451).

24. Respondents' advertisements do emphasize the fact that the S.S.S. preparations contain vitamins and leave the distinct impression that these vitamins make the preparations a better product in treating the tiredness symptoms and the possible iron deficiency anemia. The incidence of vitamin deficiency in the United States population is virtually nonexistent (Tr. 482, et seq., 535, 634, 827, 2053). Nor can the existence of the deficiency in the vitamins contained in the S.S.S. preparations properly be diagnosed without medical tests conducted by or under the supervision of a physician (Tr. 491, 501–02, 508, 516, 524, 527, 829, 867).

25. None of the vitamins in respondents' preparations are of any benefit whatsoever in the treatment of iron deficiency or iron deficiency anemia. There was some testimony that the administration of iron in the presence of Vitamin C might enhance the absorption of the iron. This testimony, however, is so vague that no finding can be based thereon (Tr. 228, 430, 563, 970–1015, 1654–57, 2066–67, 2141). It is true, however, that the vitamins contained in the S.S.S. preparations are present in sufficient quantity to constitute therapeutic dosages of such vitamins if any such deficiency exists. (See CSC Proposed Finding 72.)

26. Respondents' advertisements refer to their preparations as "New-formula Three-S Tonic." The complaint alleges that this is deceptive in that respondents' preparations are not new medical and scientific discoveries and achievements. The principal executive of respondent S.S.S. Company stated that the formula for the S.S.S. preparations was last changed in 1958 (Tr. 734). However, the respondents have continued to use the word "new" to describe their preparations up until the present. The reason for the use of this term was stated to be to distinguish respondents' present preparations from those in existence prior to 1958 since some of such old preparations are still sold upon request (Tr. 736–37). A product which has been on sale for nearly ten years cannot be considered to be new in any circum-

stances. Consequently, the continued use of this term by respondents is deceptive. In addition, respondents could quite readily distinguish their present products from the pre-1958 products if they so desire without any deception.

27. In their ads respondents emphasize that the S.S.S. preparations "help you *feel better fast!* Three-S Tonic goes to work within *24-hours.*" The complaint alleges that this is false and deceptive in that it claims that the use of the S.S.S. preparations will increase the strength and energy in the body within 24 hours. While some of the iron will undoubtedly be ingested in a matter of 24 hours, the testimony of the record makes it conclusive that there can be no increase in strength or decrease in the tiredness symptoms within 24 hours attributable to this (Tr. 503, 656, 658, 864–65). Nor will the vitamins contained in the S.S.S. preparations have such results within 24 hours (Tr. 496, 511, 518–19, 544, 551). The experts who testified on this point emphasized the need for continued administration of both iron or vitamins over a considerable period of time, months to years, to correct such deficiencies.

28. Paragraph Eight of the complaint alleges that respondents' ads are misleading first in that they claim that all persons having tiredness symptoms, regardless of cause, will, with reasonable probability, be relieved by taking the S.S.S. preparations. As found above, this allegation has been established by the evidence of record. However, Paragraph Eight charges in addition that respondents' ads are false for the further reason that they fail to reveal a material fact; namely, that in the majority of people the tiredness symptoms are not caused by iron deficiency, iron deficiency anemia, or a deficiency of any of the vitamins in S.S.S. preparations, and that, therefore, the preparations will be of no benefit.

29. As found above, the tiredness symptoms are general, nonspecific symptoms of a myriad of diseases other than iron deficiency or iron deficiency anemia. These symptoms can even result from such causes as stress, worry or boredom without any physiological cause.

Consequently, respondents' broad claims for the S.S.S. preparations must be considered deceptive.

In the *Williams* case (*supra*), the Court stated pertaining to such advertisements:

While the advertising does not make the affirmative representation that the majority of people who are tired and run-down are so because of iron deficiency anemia and the product Geritol will be an effective cure, there is substantial evidence to support the finding of the Commission that most tired people are not so because of iron deficiency anemia, and the failure to disclose this fact

is false and misleading because the advertisement creates the impression that the tired feeling is caused by something which Geritol can cure.

30. As to the charge that the respondents' ads are deceptive in not affirmatively disclosing the facts as to the actual incidence of iron deficiency, iron deficiency anemia or a deficiency of the vitamins in the preparations, the examiner is bound by the Commission and Circuit Court decision in the *Williams* case (*supra*).

In the *Williams* case, *supra*, the Sixth Circuit Court in discussing the affirmative disclosure provisions in the Commission's order in that case stated:

> Petitioners argue vigorously that the Commission does not have the legal power to require them to state the negative fact that "in the great majority of persons who experience such symptoms, these symptoms are not caused by a deficiency of one or more of the vitamins contained in the preparation or by iron deficiency or iron deficiency anemia;" and "for such persons the preparation will be of no benefit."
>
> We believe the evidence is clear that Geritol is of no benefit in the treatment of tiredness except in those cases where tiredness has been caused by a deficiency of the ingredients contained in Geritol. The fact that the great majority of people who experience tiredness symptoms do not suffer from any deficiency of the ingredients in Geritol is a "material fact" under the meaning of that term as used in Section 15 of the Federal Trade Commission Act and Petitioners' failure to reveal this fact in this day when the consumer is influenced by mass advertising utilizing highly developed arts of persuasion, renders it difficult for the typical consumer to know whether the product will in fact meet his needs unless he is told what the product will or will not do. This does not fall within the sphere of negative advertising, it merely presents to the consumer an opportunity to make an intelligent choice.

Consequently, it is apparent that as in the *Williams* case, respondents have deceived the public in failing to make such essential disclosures in their ads.

31. Paragraph Eight of the complaint also alleges that respondents' ads are deceptive since they claim that the preparations are safe and effective in the treatment and relief for all persons who have iron deficiency, iron deficiency anemia and their symptoms. The record establishes that this claim is true and counsel in support of the complaint apparently so concede. (See CSC Proposed Finding 66.) The iron in the S.S.S. preparations are proper therapeutic dosages and will relieve and eliminate iron deficiency and iron deficiency anemia and their symptoms if taken for a sufficient period of time.

CONCLUSIONS

1. Respondents' advertisements of the S.S.S. preparations are false and misleading in that they claim directly or by clear implication:

A. That the use of such preparations will in all cases be of benefit in treating tiredness symptoms whatever their cause.

B. That the vitamin and other ingredients in such preparations contribute to the effectiveness of these preparations in the treatment or relief of iron deficiency and iron deficiency anemia.

C. That iron deficiency, iron deficiency anemia, or vitamin deficiency can be diagnosed by the general public without the need of appropriate medical tests.

D. That the preparations are "new" products and "new" medical discoveries.

E. That the use of such preparations will increase strength and energy in the body within 24 hours after ingestion.

2. Respondents' advertisements of the S.S.S. preparations are false and misleading in that they claim directly or by implication that there is a reasonable probability that the tiredness symptoms of any person will be eliminated or alleviated by use of such preparations without revealing the fact that the majority of persons with such symptoms are not suffering from iron deficiency or iron deficiency anemia or a deficiency of the vitamins in such preparations and that, therefore, such preparations will be of no benefit to such persons.

3. The dissemination by the respondents of the false and deceptive advertisements, as found above, constitute unfair and deceptive acts and practices, in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That respondents S.S.S. Company, a corporation, and Tucker Wayne & Company, a corporation, and their officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated "S.S.S. Tonic" or the preparation designated "S.S.S. Tablets," or any other preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing the dissemination of, by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication that:

(a) The use of such preparations will be of benefit in the prevention, relief or treatment of tiredness, lack of pep, energy or strength, weakness, listlessness, run-down feeling or nervousness, or any other symptom unless such representa-

tion be expressly limited to a symptom or symptoms caused by a deficiency of one or more of the vitamins or iron provided by that preparation; and, further, unless such advertisement discloses clearly and conspicuously, in immediate or close proximity, and with equal prominence that in the majority of persons suffering from any such symptom or symptoms, the preparations will be of no benefit in the prevention, treatment or relief of such symptom or symptoms.

(b) The use of such preparations will be of benefit in the treatment or relief of iron deficiency or iron deficiency anemia in any specific group of people: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted under this prohibition for the respondents to establish that there is a reasonable probability that a majority of persons within such group suffers from iron deficiency or iron deficiency anemia.

(c) The presence of iron deficiency anemia or iron deficiency of any degree can be self-diagnosed.

(d) The presence of iron deficiency anemia or iron deficiency of any degree can generally be determined without medical tests conducted by or under the supervision of a physician.

(e) The presence of a deficiency of the B vitamins, or of any vitamin, can be self-diagnosed.

(f) The presence of a deficiency of the B vitamins, or of any vitamin, can generally be determined without medical tests conducted by or under the supervision of a physician.

(g) Any ingredient other than iron in S.S.S. Tonic or S.S.S. Tablets contributes to the effectiveness of these or similar preparations in the prevention, treatment or relief of iron deficiency or iron deficiency anemia or of symptoms represented directly or by implication to be caused by iron deficiency or iron deficiency anemia.

(h) There is any greater need for any one or more of the vitamins in S.S.S. Tonic or S.S.S. Tablets among persons suffering from iron deficiency or iron deficiency anemia than among persons not suffering from iron deficiency or iron deficiency anemia.

(i) The use of such preparations will increase the strength or energy of any part of the body in any amount of time less than that in which the consumer may actually experience improvement.

(j) The formula of S.S.S. Tonic or S.S.S. Tablets is "new" or the formulae or ingredients are new medical or scientific discoveries or achievements.

2. 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 advertisements which contain statements which are inconsistent with, negate or contradict any of the affirmative disclosures required by Paragraph 1 of this Order, or in any way obscure the meaning of such disclosures.

3. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited by Paragraphs 1 or 2 hereof, or which fails to comply with the affirmative requirements of Paragraph 1 hereof.

APPENDIX A

Announcement No. 63–13: 60 Seconds

Anncr.:

Do you find yourself *missing out* on the fun in life? Do you feel dull, draggy * * * just "too tired" to do things? Then maybe you're suffering from Iron Deficiency Anemia—*low blood power*. If so, what you need is *Three-S Tonic!*—now with B–vitamins—is rich in iron to help *build back* your blood power * * * *restore* your energy * * * help you *feel better fast!* Three-S Tonic goes to work within *24-hours*. And if you don't feel better in just *six days* * * * the Three-S Company will refund your money * * * every cent of it! So don't *miss out* on the fun in life. Don't let yourself feel "too tired" to enjoy things. If *you're* suffering from Iron Deficiency Anemia, take *Three-S Tonic!* Yes, yes, yes * * * get S.S.S.! Get started on new-formula, iron-and-vitamin-enriched Three-S Tonic * * * in liquid or table form * * * *right away!* (CX 2.)

Announcement No. 63–3

Get that young blood feeling. Like my new hairdo? Sure do. You know? What? If you could cook, I'd ask you to marry me. Get that young blood feeling. Remember when you felt like that? When you had that young blood feeling, well you can have that pep and vitality again with S.S.S. Tonic, the Tonic that contains 10 times your minimum daily requirements of iron * * * and iron is what helps to build blood power, gives you that young blood feeling. So if you've been tired and listless, suffering from iron deficiency anemia, take S.S.S. Tonic, in liquid or tablets * * * and if you don't feel better in just six days, the S.S.S. Company will refund your money. Yes, yes, yes, get S.S.S. Life is great, don't settle for less, get that young blood feeling with S.S.S. (CX 3.)

1058 Appendix A

ANNOUNCEMENT No. 63–2

Young blood. How long since you had that young blood feeling, the feeling you could work all day and dance all night? Too long? Then take S.S.S. Tonic, and if you've been tired, jumpy, run down, due to iron deficiency anemia, S.S.S. will help you get that young blood feeling in just six days or your money back. How? Listen. Vitamin enriched S.S.S. Tonic contains ten times your minimum daily requirements of iron. Iron to help build back the blood power that carries oxygen and nutrition to muscles and all parts of your body. That's where your pep and vitality come from * * * The conversion of oxygen and nutrition into energy. So, if you aren't getting enough iron in your diet S.S.S. makes this unqualified guarantee. If, in just six short days you aren't feeling stronger, happier, aren't getting that young blood feeling, every cent you paid for S.S.S. Tonic will be refunded by the S.S.S. Company. Yes, Yes, Yes, get S.S.S. Tonic, in liquid or tablets. And get that young blood feeling fast. (CX 4.)

ANNOUNCEMENT No. SSSR–63–16 : 60 SECONDS

ANNCR.:

Feel weak, dog-tired? Lost your spark? Take *Three-S* * * * the tonic that starts giving you *more power per hour* * * * within *24* hours! Just as your *car* needs good gasoline * * * your *body*, too, needs *good* fuel to convert into *energy*—a combination of oxygen and nutrition that's carried throughout your body by the hemoglobin in your blood. *Iron* is essential in making this hemoglobin. So when your diet is *low in iron* * * * when you suffer from *iron deficiency anemia* * * * your body may not get enough fuel to spark you through a busy day. But new-formula, vitamin-enriched *Three-S Tonic* contains *ten times* your minimum daily requirements of iron. It helps to build *reserve* vitality! And Three-S goes to work *fast* * * * you feel better in just *six days* or the Three-S Company will refund your money! Yes, yes, yes * * * get S.S.S. Tonic *today* * * * in liquid or tablet form! (CX 6, 8, 9.)

ANNOUNCEMENT No. 63–14 : 60 SECONDS

ANNCR.:

When you're strong and healthy, you feel like *doing* things! You have *pep* and *energy* to spare. But when you have low blood power * * * *Iron Deficiency Anemia* * * * you become dull, draggy * * * feel *tired* all over * * * and have to *force* yourself to do your work. And that's when you need * * * iron-rich, vitamin-fortified * * * *Three-S Tonic!* New-formula Three-S Tonic contains the elements you need to help *build back* your blood power * * * *restore* your energy. Important, *too* * * * Three-S Tonic helps you feel better *fast*. It goes to work within 24 hours! Yes, yes, yes * * * S.S.S. makes it a promise. If you don't feel better in just *six days*, your money will be *refunded* by the Three-S Company! So if you're suffering from Iron Deficiency Anemia, don't wait! Get started on new-formula Three-S Tonic * * * in liquid or tablet form * * * *right away!* (CX 7.)

ANNOUNCEMENT No. 63–10

How long has it been since *you* had that happy, wideawake, *young blood feeling? Too* long? Then take *Three-S Tonic!* If you've been tired, rundown due to Iron Deficiency Anemia * * * Three-S will help you *regain* that young blood

feeling in *just six days*, or your money back! Hard to believe? Then listen. Vitamin-enriched Three-S Tonic contains ten times your minimum daily requirements of iron. And *iron* is what helps to *build back blood power* * * * restore pep and vitality. So if *you* aren't getting enough iron in your diet, Three-S makes you this unqualified guarantee: If in just six short days you aren't feeling *stronger* and *happier* * * * if you aren't getting that young blood feeling * * * the Three-S Company will give you back *every cent* you paid for Three-S Tonic! See the guarantee on the label. Yes, yes, yes * * * get S.S.S. Tonic—in liquid or tablets—*today* * * * and get that young blood feeling * * * fast! (CX 10.)

Announcement No. 63–14

Have you ever watched youngsters at play, and then said to yourself: "Oh, to be young again * * * to feel like *that!*" Well, maybe you *can* feel *younger* again * * * with Three-S Tonic! Iron-and-vitamin-enriched Three-S Tonic can help *give* you that "young blood feeling!" You see, as we grow older, many of us don't get the daily iron we need * * * we develop Iron Deficiency Anemia. The Blood can't maintain that rich, "young" condition to give you all the pep and energy you need. But when you take wonderful, new-formula Three-S Tonic * * * you *get* the iron you need * * * *plus* essential vitamins and special natural ingredients to help restore vim and vigor! With Three-S Tonic, *you get back* that "young blood feeling" * * * and you *get* it back in just six days, or get your money back * * * the Three-S Company will refund every cent you paid! See the guarantee on the label. Yes, Yes, Yes * * * get S.S.S. Tonic *today* * * * in liquid or tablet form! (CX 11.)

Announcement No. 63–17

When your car needs spark plugs * * * it won't go. It just won't start! Sometimes, your body is the same way. It loses its spark * * * and you feel weak, tired-all-over. When that happens * * * and you're suffering from iron deficiency anemia * * * you need Three-S Tonic! New-formula Three-S Tonic is enriched with important B-vitamins and iron * * * to help produce extra energy * * * energy to get you started * * * keep you going! What's more, Three-S Tonic helps to build reserve vitality. It contains ten times your minimum daily requirements of iron. So if you suffer from iron deficiency anemia * * * if your body needs that extra spark to keep it going through a busy day * * * try Three-S Tonic. It starts to work within 24 hours. And if you don't feel better within six days * * * the Three-S Company will refund your money. Yes, yes, yes * * * get S.S.S. Tonic today * * * in liquid or tablet form. (CX 12.)

Opinion of the Commission

By Elman, *Commissioner:*

I

The complaint in this matter, issued September 14, 1964, charges respondents, the S.S.S. Company, manufacturer of S.S.S. tonic and tablets, and Tucker Wayne & Company, advertising agency for these products, with having violated Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52.

It is alleged that respondents made a number of false and misleading representations in selling their preparations. Among other charges, the complaint alleges that respondents represent that the S.S.S. preparations will be of benefit in treating tiredness symptoms without disclosing that relief will only be afforded those whose tiredness is attributable to iron deficiency, iron deficiency anemia or a deficiency of the vitamins contained in the preparations. Also challenged were representations that the S.S.S. preparations are new medical discoveries, will increase strength and energy within 24 hours, and are unconditionally guaranteed.[1] Respondents filed an answer admitting certain of the allegations in the complaint but denying that they had violated the Federal Trade Commission Act.

Extensive hearings were held after which the hearing examiner entered an initial decision upholding most of the allegations of the complaint and dismissing for want of evidence the charge that respondents failed to honor their guarantees. He entered an order similar to, but somewhat narrower than, the one requested by complaint counsel.

Respondents appeal from this decision contending primarily that their advertisements do not misrepresent the effectiveness of their products, that there is no adequate evidentiary basis in the record for imposing the affirmative disclosure requirements of the order, that portions of the order are contrary to the decision of the Court of Appeals in *J. B. Williams Co., Inc.* v. *Federal Trade Commission*,[2] a case similar to this one, and that portions of the order are vague or unsupported by the evidence. Complaint counsel challenge portions of the examiner's order as being too narrow and request that certain of the examiner's findings of fact be modified and that additional findings be made.

For the reasons stated below, we grant the appeal of complaint counsel in part, deny respondents' appeal, and modify the order. Except to the extent they are inconsistent with findings made in this opinion, the findings of the hearing examiner are amply supported by the record and are adopted as the findings of the Commission.

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[1] A charge that since iron deficiency anemia is usually caused by bleeding from some serious disease or disorder, use of respondents' preparations "may mask the signs and symptoms of said deficiency or anemia and thereby permit the progression of such disease or disorder," was dropped from the complaint, on motion of complaint counsel, before any hearings were held.

[2] 381 F.2d 884 (6th Cir. 1967). That case involved Geritol, a widely advertised iron preparation.

II

S.S.S. tonic and tablets contain iron, vitamins and various herbs for flavor. They are widely advertised and sold in the United States; sales volume is in excess of $2 million annually. Respondents' advertisements of these preparations, the majority of which are radio announcements, follow a fairly standard format. Opening with questions emphasizing tiredness, lack of pep or spark, or absence of that "young blood feeling," the commercials go on to suggest that these symptoms are due to iron deficiency anemia, and state that the S.S.S. preparations will eliminate the problem, restoring energy and vitality, that the products will go to work within 24 hours, implying that their effects will be felt in that time, and that the purchase price will be refunded if the consumer does not feel better within six days.[3]

Having independently reviewed the challenged advertisements, we agree with the hearing examiner that the representations made, which are similar if not identical to those made in the *J. B. Williams* case, are false and misleading. These commercials strongly emphasize general tiredness symptoms that are felt by many people and claim that these symptoms can be alleviated or entirely eliminated by using the S.S.S. preparations. The examiner found that this claim was misleading because many people suffering from tiredness are not iron deficient and will derive no benefit from the S.S.S. preparations. However, respondents argue that since their advertisements also mention iron deficiency anemia—for example, some of the advertisements state that "if you've been tired, jumpy, run-down, due to iron deficiency anemia, S.S.S. will help you get that young blood feeling in just six days"—there can be no deception. We do not agree.

It is well settled that in determining the impression created by an advertisement "the Commission need not confine itself to the literal meaning of the words used but may look to the overall impact of the entire commercial"[4] and that "the important criterion in determining

[3] Typical of these announcements is the following:

"Do you find yourself *missing out* on the fun in life? Do you feel dull, draggy * * * just 'too tired' to do things? Then maybe you're suffering from Iron Deficiency Anemia—*low blood power*. If so, what you need is *Three-S Tonic!* New-formula Three-S Tonic—now with B-vitamins—is rich in iron to help *build back* your blood power * * * *restore* your energy * * * help you *feel better fast!* Three-S Tonic goes to work within *24 hours*. And if you don't feel better in just six days * * * the Three-S Company will refund your money * * * every cent of it! So don't *miss out* on the fun in life. Don't *let* yourself feel 'too tired' to enjoy things. If *you're* suffering from Iron Deficiency Anemia, take *Three-S Tonic!* Yes, yes, yes * * * get S.S.S.! Get started on new-formula, iron-and-vitamin-enriched Three-S Tonic * * * in liquid or tablet form * * * *right away!*" (CX 2.)

Other examples are appended to the initial decision of the hearing examiner.

[4] *Garter Prods. Inc.* v. *Federal Trade Commission*, 323 F. 2d 523, 528 (5th Cir. 1963).

the meaning of an advertisement is the net impression that it is likely to make on the general populace." [5]

There can be little doubt as to the impression that these advertisements are likely to make on the general populace. Each advertisement attempts to get the listener's attention by asking questions concerning tiredness and lack of pep and each then links these common nonspecific symptoms, felt by a great many people, with iron deficiency anemia. Despite the brief reference to iron deficiency, the overall impression created is that people who experience these symptoms are iron deficient or anemic and will benefit from the S.S.S. preparations.[6]

It is equally clear that this impression is false and misleading. While it is true that one deficient in iron or vitamins may benefit from taking these products, it is not true, and there is no basis in the record for inferring, that the tiredness symptoms which respondents stress so heavily are generally attributable to a deficiency of iron. Apart from the great number of perfectly healthy individuals who experience tiredness symptoms merely because they are bored or overworked, or for some other reason unrelated to disease or physical disorder,[7] that "tired, rundown, dull, draggy feeling" is a symptom of many diseases or disorders, and is not peculiar to iron deficiency or iron deficiency anemia.[8] Indeed, a person suffering from iron deficiency or iron deficiency anemia may exhibit no tiredness symptoms [9] and properly con-

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[5] *National Bakers Serv., Inc.* v. *Federal Trade Commission,* 329 F. 2d 365, 367 (7th Cir. 1964), citing *Aronberg* v. *Federal Trade Commission,* 132 F. 2d 165, 167 (7th Cir. 1942); see *Kalwajtys* v. *Federal Trade Commission,* 237 F. 2d 654, 656 (7th Cir. 1956), *cert. denied,* 353 U.S. 1025 (1957); *P. Lorillard Co.* v. *Federal Trade Commission,* 186 F. 2d 52, 58 (4th Cir. 1950); Handler, *The Control of False Advertising Under the Wheeler-Lea Act,* 6 Law & Contemp. Prob. 91, 99–102 (1939).

[6] Respondents' advertisements also state or suggest that users of the S.S.S. products will begin to experience relief from these symptoms within 24 hours. As respondents concede (Appeal Br. p. 30) the examiner's finding that this representation is false, that "there can be no increase in strength or decrease in the tiredness symptoms within 24 hours attributable to" the S.S.S. preparations, is amply supported by the evidence and excision of this claim is proper. Initial decision p. 1076; see, *e.g.,* R. 496, 503 (Dr. Darby); 656–57 (Dr. Ruffin). We note that the parties have agreed that there is an error in the fourth sentence of finding 27 on page 1076 of the initial decision, which is quoted above in part. The sentence is hereby amended to read:

"While some of the ingested iron would undoubtedly be absorbed and incorporated into the red blood cells in a matter of 24 hours, the testimony in the record makes it conclusive that there can be no increase in strength or decrease in the tiredness symptoms within 24 hours attributable to this."

[7] See, *e.g.,* R. 387 (Dr. S. Schwartz); 1090 (Dr. Briggs); 1651–52 (Dr. Beutler); 1746 (Dr. Arrowsmith); 1835 (Dr. McHardy).

[8] See, *e.g.,* R. 315 (Dr. Williams); 362 (Dr. Gendel); 387 (Dr. S. Schwartz); 1005 (Dr. Horwitz); 1090 (Dr. Briggs); 1390–91, 95 (Dr. H. Schwartz); 1658–59 (Dr. Beutler); 1834–35 (Dr. McHardy); 2147 (Dr. Holly); initial decision, pp. 1069, 1072.

[9] See, *e.g.,* R. 315 (Dr. Williams); 346 (Dr. Gendel); 388–89 (Dr. S. Schwartz); 833–34 (Dr. Halpern); 1149–50 (Dr. Rosenthal); 1391 (Dr. H. Schwartz); 1478 (Dr. Wallerstein); 1646, 1658–59 (Dr. Beutler); 1835 (Dr. McHardy).

ducted medical and laboratory tests are almost always necessary to determine whether a patient is suffering from those conditions—accurate self-diagnosis by a layman is impossible.[10]

In short, the record makes clear that only a minority of people suffering from tiredness and lack of energy exhibit these symptoms because of iron deficiency or iron deficiency anemia; in most cases these symptoms are attributable to causes other than iron deficiency. Reviewing a record essentially similar to that in the instant case,[11] the Court of Appeals in the *J. B. Williams* case stated:

> Not all of the approximate ten percent of the population who have iron deficiency anemia have moderate to severe anemia, and consequently exhibit mild or no symptoms. While there are no statistics available as to the number of people who are tired and run-down, or the number of people who are tired and run-down due to iron deficiency anemia, there is direct testimony that only a minority of people with these symptoms exhibit these symptoms because of iron deficiency anemia. Considering this evidence along with the fact that these symptoms are common and non-specific, the Commission could reasonably infer, and there was substantial evidence to support the finding, that the majority of the people who have these symptoms, have them because of causes other than iron deficiency anemia. (381 F. 2d at 889.)

We conclude that by creating the false impression that the S.S.S. preparations are a quick remedy and are useful and beneficial for all or many of those persons experiencing the common, nonspecific tiredness symptoms, which are widely—indeed, almost universally—felt in our society, respondents' advertisements have violated the Federal Trade Commission Act.

III

A number of additional grounds are put forward by respondents to support their contention that their advertisements are not misleading and that entry of an order similar to that entered by the hearing examiner would be improper. They argue that their advertised money back guarantee, promising the purchaser that if he does not feel better within six days he can get a full refund of the purchase price, adequately puts potential customers on notice that "there do exist tiredness symptoms which will not be relieved by the S.S.S. preparations." [12] They contend, further, that since the guarantee was apparently honored, dissatisfied customers would suffer no economic loss.

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[10] See, *e.g.*, R. 346–52 (Dr. Gendel); 543 (Dr. Darby); 867–68 (Dr. Halpern); 1076–77 (Dr. Briggs); 1358–59 (Dr. H. Schwartz); 1650 (Dr. Beutler); 1960 (Dr. Teem); 2148–49 (Dr. Holly); initial decision, p. 1069.

[11] A number of the same experts who testified in that proceeding also testified here and none of those who appeared changed his testimony in any way even tangentially material, nor do the views of those experts differ significantly from the views of most of the experts who appeared only in this proceeding.

[12] Appeal Br. p. 7.

We need not dwell long on these arguments. The advertised guarantee is more likely to be regarded by the public not as minimizing or qualifying the claims made for the product but as bolstering those claims, creating the impression that the representations as to the efficacy of the S.S.S. products are so certain and accurate that the seller can confidently offer such a guarantee.[13] Far from curing any deception, the statements concerning the guarantee contribute to the false and misleading impression created by the advertisements.

Moreover, there is no merit to the notion that the availability of a refund permits sellers to make any inflated, fabricated, or untrue claims for their products that they wish. On that theory, respondents would be free to proclaim their S.S.S. preparations to be a cure for colds, cancer, or any other ailment, and, by offering a refund, escape any liability under the Federal Trade Commission Act. Human nature and inertia being what it is, many people who buy the S.S.S. preparations and get no benefits therefrom will not bother to seek a refund, simply accepting their loss or chalking it up to experience.[14] If respondent's view of the law were correct, it would be possible to market a worthless product and make a profit based on the difference between selling costs and the number of refunds granted. We hold that the offer of a money-back guarantee does not in any way cure or overcome the deception involved in respondents' advertising.

Respondents next contend that there are numerous errors and defects in the order entered by the hearing examiner. The order requires respondents to cease and desist from representing that:

The use of [the S.S.S.] * * * preparations will be of benefit in the prevention, relief or treatment of tiredness, lack of pep, energy or strength, weakness, listlessness, run-down feeling or nervousness, or any other symptom unless such representation be expressly limited to a symptom or symptoms caused by a deficiency of one or more of the vitamins or iron provided by that preparation; and, further, unless such advertisement discloses clearly and conspicuously, in immediate or close proximity, and with equal prominence that in the majority of persons suffering from any such symptom or symptoms, the preparations will be of no benefit in the prevention, treatment or relief of such symptom or symptoms.

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[13] For example, one advertisement (CX 12) states: "Three-S Tonic helps you feel better *fast*. It goes to work within 24 hours! Yes, yes, yes * * * S.S.S. makes it a promise. If you don't feel better in just *six days*, your money will be refunded by the Three-S Company!" The Commission is not unfamiliar with such use of an advertised guarantee as an affirmative representation of material facts. See, *e.g.*, Guides Against Deceptive Advertising of Guarantees, Part VII (1960).

[14] It is for this reason that we reject respondents' argument that their advertising causes no economic loss. We reach this conclusion quite apart from the obvious fact that respondents' false advertising, by diverting sales from respondents' competitors in commerce, constitutes an unfair method of competition proscribed by Section 5.

Respondents argue that imposition of these affirmative disclosure requirements would be an abuse of discretion since this is not an extreme case and since their products are not dangerous.[15] They contend that the record does not support the conclusion that such disclosures are necessary. Complaint counsel argue, on the other hand, that the order should be modified to require disclosure that the preparations will be of no benefit to the "great majority" of persons suffering from tiredness symptoms.

It is clear that an order requiring affirmative disclosures is not an extraordinary or unusual remedy to be applied only in extreme cases. Even if it were, we think that such disclosures should properly be ordered here. Affirmative disclosures are appropriate whenever reasonably necessary to prevent deception and not merely when the product involved is dangerous.[16]

The overwhelming weight of the evidence in the record supports the examiner's conclusion that any representations that the S.S.S. products are helpful in treating the tiredness symptoms must be accompanied by affirmative disclosure both that these products are of value only in combatting tiredness caused by a deficiency of the iron or vitamins that they provide and that the great majority of persons experiencing tiredness symptoms will derive no benefit from these products.[17] Indeed, our review of the record confirms that, if anything, the examiner's findings, which are now attacked by respondents, concerning the prevalence of iron deficiency in the United States are overly generous to respondents.

In considering this question it is necessary to draw a distinction between prevalence of iron deficiency or iron deficiency anemia—that is, the number or percentage of persons in a particular group suffering from these conditions at any given point of time[18]—which is the important statistic for present purposes, and the incidence or cumulative incidence of these disorders—that is, the number of new cases occurring within a particular group over a period of time. As the examiner found and as virtually all the witnesses testified, iron defi-

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[15] Complaint counsel have argued on this appeal that the examiner erred in finding that the S.S.S. preparations are safe and effective in the treatment of iron deficiency or iron deficiency anemia. We find no need, however, to reexamine or review the examiner's finding in this regard.

[16] See, *e.g.*, *Ward Laboratories, Inc.* v. *Federal Trade Commission*, 276 F. 2d 952, 954–55 (2d Cir.), *cert. denied*, 364 U.S. 827 (1960); *Keele Hair & Scalp Specialists, Inc.* v. *Federal Trade Commission*, 275 F. 2d 18, 23 (5th Cir. 1966); see also Federal Trade Commission, Statement of Basis and Purpose Accompanying the Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes 87–89 (1964).

[17] We hold, *infra*, that other disclosures are also necessary when such representations are made.

[18] Some of the witnesses referred to this concept not as prevalence but as "incidence at any one time."

ciency or iron deficiency anemia is virtually nonexistent among adult males; no more than one or at best two percent of this group ever incurs iron deficiency, and the number afflicted with this condition at any one time is extremely small. There is also little doubt that iron deficiency is infrequent among infants and children.

On the other hand, while iron deficiency is found most frequently among women of childbearing age, there is some conflict in the record as to its exact prevalence. There is evidence that the prevalence of the condition in this group is insubstantial,[19] but there is also evidence that its cumulative incidence may be 10–20 percent [20] or even as high as 30–40 percent.[21] The examiner's finding that approximately ten percent of this group may be iron deficient at any one time may be a little high, but the evidence is not so clear that we think it necessary to reject his finding. Finally, we accept the examiner's finding that the maximum prevalence of iron deficiency in post-menopausal females is ten percent, although here again we think this figure may be too generous to respondents.[22]

Since the evidence if anything is even less favorable to respondents than the evidence in the *J. B. Williams* case, we adhere to the conclusion reached in that case that at any given time less, and probably a great deal less, than ten percent of the entire population suffers from iron deficiency or iron deficiency anemia.

In the face of this evidence, respondents' argument that the record does not support the conclusion that the great majority of persons who suffer from tiredness symptoms are not suffering from iron deficiency or iron deficiency anemia borders on the frivolous. We recognize that iron deficiency is, medically speaking, not uncommon or rare, that it afflicts more people than do a number of other well known diseases or conditions, and that it may be a public health problem. We also do not question that treatment with iron preparations, even preparations containing fewer ingredients than S.S.S. tonic or tablets and costing less,[23] may be a relatively safe and effective means for dealing

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[19] See, *e.g.*, R. 554–56 (Dr. Darby).

[20] See, *e.g.*, R. 1447 (Dr. Wallerstein).

[21] See, *e.g.*, R. 1612–13, 1658 (Dr. Beutler) ; 1984 (Dr. Brewer) ; Dr. Beutler gave these incidence figures for women of childbearing age in low-income groups. He estimated the prevalence of iron deficiency among well-to-do women as "perhaps five or six percent" (R. 1612–13) and the prevalence among poor women as 20–30 percent. R. 1658.

[22] See, *e.g.*, R. 1053 (incidence is one percent in post-menopausal females and adult males) (Dr. Briggs) ; 1613, 1658 (incidence drops off to under ten percent or under five percent within a few years of menopause) (Dr. Beutler) ; 1795–96 (incidence ten to twelve percent in women over age 60) (Dr. McHardy).

[23] See, *e.g.*, R. 1002–03 (Dr. Horowitz). Asked whether he prescribed or would prescribe the S.S.S. preparation for his patients, this witness, called by respondents, replied:

"No. * * * I think they are getting a lot that is unnecessary. If the problem is iron deficiency, then I don't think that the additional vitamins are beneficial and I don't feel the need to burden them with the cost."

See also R. 2140 (Dr. Holly).

with this condition. This proceeding is not intended to, and will not, drive the S.S.S. preparations off the market, depriving consumers of a useful remedy for iron deficiency. However, when the products are represented not as a cure for iron deficiency but as a treatment for tiredness and lack of pep, both the fact that they will be of no benefit to the great majority of persons suffering from such symptoms and the fact that they are useful only to those persons whose symptoms are due to these disorders or to a deficiency of the vitamins contained in the S.S.S. preparations, are clearly material and must be disclosed. As the court held in the *J. B. Williams* case:

> The fact that the great majority of people who experience tiredness symptoms do not suffer from any deficiency of the ingredients in Geritol is a "material fact" under the meaning of that term as used in Section 15 of the Federal Trade Commission Act and Petitioners' failure to reveal this fact in this day when the consumer is influenced by mass advertising utilizing highly developed arts of persuasion, renders it difficult for the typical consumer to know whether the product will in fact meet his needs unless he is told what the product will or will not do. This does not fall within the sphere of negative advertising, it merely presents to the consumer an opportunity to make an intelligent choice. 381 F.2d at 890 (footnote omitted).

Respondents argue that, even if otherwise permissible, these affirmative disclosure provisions of the order subvert the Congressional policy favoring self-medication on a trial-and-error basis. They contend that other provisions of the order dealing with self-diagnosis of iron or vitamin deficiency [24] fly in the face of that policy, as it was expressed in the opinion of the Court of Appeals in the *J. B. Williams* case. Discussing a prohibition similar to the self-diagnosis provisions here at issue, the court said:

> The danger to be remedied here has been fully and adequately taken care of in the other requirements of the Order. We can find no Congressional policy against self-medication on a trial and error basis where the consumer is fully informed and the product is safe as Geritol is conceded to be. In fact, Congressional policy is to encourage such self-help. In effect the Commission's Order 1(f) tends to place Geritol in the prescription drug field. We do not consider it within the power of the Federal Trade Commission to remove Geritol from the area of proprietary drugs and place it in the area of prescription drugs. 381 F.2d at 891.

In analyzing this question, it is necessary to distinguish between self-diagnosis and self-medication. The two concepts are not the same. Self-

[24] Sections 1(c)–1(f) of the order.

diagnosis may be possible for a condition for which self-medication is impossible. For example, a layman who has suffered a compound leg fracture can readily observe it but is unable to treat or remedy the condition. On the other hand, self-medication may be perfectly appropriate for a condition which cannot be self-diagnosed. A diabetic may treat himself with insulin but this fact does not indicate that diabetes may be self-diagnosed.

As we have noted, the evidence in this case overwhelmingly supports the conclusion that iron deficiency and iron deficiency anemia cannot be self-diagnosed.[25] The evidence also supports the examiner's parallel conclusion that vitamin deficiency is virtually nonexistent and "cannot properly be diagnosed without medical tests conducted by or under the supervision of a physician." [26] Representations to the contrary are false and deceptive and cannot be condoned on the ground that Congressional policy favors self-medication on a trial-and-error basis. Provisions in the examiner's order forbidding respondents from making such false representations, even when their advertisements do not mention tiredness, are necessary and will be included in the final order. Nor do we believe that a prohibition of such representations, which is essential if the Commission's order is to be effective in protecting the public and insuring that purchasers of respondents' products are fully informed before buying, will place the S.S.S. preparations in the prescription drug field. Nothing in the order will prohibit respondents from representing that the S.S.S. preparations are effective in treating a properly diagnosed case of iron deficiency or iron deficiency anemia. On the contrary, our order is intended to encourage respondents to utilize truthful representations such as these instead of relying on falsehoods, misstatements, or half-truths that are misleading because material facts are omitted.

For similar reasons, we reject respondents' argument that requiring affirmative disclosure of all material facts when the S.S.S. preparations are advertised as remedies for tiredness interferes with the Congressional policy favoring self-medication. The short answer to this contention is that the very authority that respondents cite in support of this proposition, the opinion of the Court of Appeals in the *J. B. Williams* case, upholds an order including disclosure provisions similar to those here challenged by respondents.[27] Moreover, in addition to upholding the disclosure provisions of the order, the court indi-

[25] See notes 7–10, *supra;* initial decision pp. 1069, 1072.
[26] See initial decision, p. 1075.
[27] See p. 1090, *supra.*

cated that the Congressional policy referred to extended only to "self-medication on a trial and error basis where the consumer is fully informed and the product is safe as Geritol is conceded to be." 381 F.2d at 891.

The purpose of the disclosure provisions in this order, as in the *J. B. Williams* order, is to insure that the consumer is in fact fully informed. Respondents' advertisements create the false impression that tiredness is generally or frequently attributable to iron deficiency or iron deficiency anemia. In effect, when the reader is asked to draw the conclusion that his tiredness is attributable to iron deficiency, he is being asked to engage in self-diagnosis. We do not hold in this case that such an invitation to self-diagnosis is prohibited. However, we agree with the court in the *J. B. Williams* case that where an advertisement for a proprietary drug seeks to sell the product on the basis of such self-diagnosis, the consumer must be fully and honestly informed of the material facts.

If self-medication is to be encouraged, it is important that there not be a wrong diagnosis. If each of us is invited to become his own doctor and to choose among the various remedies offered for sale to the public, a clear obligation rests on the seller to disclose all the relevant facts concerning his product, including its dangers if any and the limits of its efficacy. This need is illustrated by the present case, where respondents admit that among the principal groups to whom their advertising is directed are the urban and rural poor—who are less likely to get the medical attention they need, who are more likely to be uneducated and uninformed, and who are thus most likely to be victimized by improper self-medication resulting from false and misleading advertising.

We are adding to paragraph 1(a) of the order, which deals with the tiredness symptoms, the requirement that when the S.S.S. products are represented as a cure for tiredness, or as a cure for vitamin or iron deficiency causing tiredness, respondents must also disclose that such deficiencies cannot be self-diagnosed but can be determined only by medical or laboratory tests conducted by or under the supervision of a doctor. Our order will require respondents to disclose all the material facts when their advertisements invite people to conclude that their tiredness is related to an iron or vitamin deficiency which can be remedied by the S.S.S. products.

We repeat that the order is not intended to discourage the sale of respondents' products, but to encourage that they be advertised truthfully and honestly. Where a seller of a proprietary drug, or any other

product, confines himself to such advertising, he serves his own as well as the public interest.

IV

We now turn to the remaining questions, all of which concern the scope of the order. Prohibition 1(b) of the hearing examiner's order bars respondents from representing that their preparations will be of benefit in the treatment of iron deficiency or iron deficiency anemia in any particular population group unless there is a reasonable probability that a majority of persons within such group suffers from these disorders. This section of the order is designed to prevent respondents from falsely representing expressly or by implication that particular groups are likely to have a need for their products. For example, the statement "Men over thirty—take S.S.S. Tonic for iron deficiency" falsely suggests that men over thirty are likely to need iron and to benefit from the S.S.S. preparation. On the other hand, we agree with the examiner that advertising directed to a population group in which the prevalence of iron deficiency is high would not be deceptive in this respect. In order to permit respondents sufficient flexibility if they choose to direct their advertising appeals to particular groups we have added a second proviso to the order entered by the examiner. If respondents show either that their advertising is directed to a population group the majority of which is reasonably likely to be iron deficient or that their advertising does no more than truthfully and accurately represent the percentage of people in the group addressed who are likely to be suffering from iron deficiency, this section of the order would not be violated.

Respondents argue that placing on them the burden of proving that their advertisements fall within one of these provisos in any enforcement proceeding is impermissible. We do not agree. The record indicates that it is likely that there is no major population group the majority of whose members are iron deficient at any one time. The record and our own extensive experience with deceptive advertising also suggest that appeals directed to any particular population group could easily, even if inadvertently, create a false or misleading impression as to the need of members of that group for the S.S.S. products. Rather than broadly forbid all such representations we have decided to draw the order more selectively, permitting respondents sufficient leeway so that they may make honest representations concerning the need for their products. However, if this provision is not to become a nullity, and if this entire proceeding is not to be rendered nugatory, the burden of proving the truth of any such representations must be on respond-

ents. Answering an argument similar to that made by these respondents, the Court of Appeals for the First Circuit stated:

> We will add, however, in view of the strenuous opposition expressed by respondent * * * to the so-called "imposition of a burden" of showing extenuation, that respondent has misconceived the principle. The Commission has allowed it an escape, rather than imposed a burden. *Colgate-Palmolive Co.* v. *Federal Trade Commission*, 326 F. 2d 517, 523 (1st Cir. 1963).

On appeal, the order involved in that case was upheld by the Supreme Court.[28] We conclude that it is not unfair to hold respondents to account if they choose to walk perilously close to the line separating legal from illegal conduct. "Having been caught violating the Act, respondents 'must expect some fencing in.' "[29]

Respondents also challenge provisions of the order forbidding any misrepresentations concerning the efficacy of the vitamins and herbs in the S.S.S. preparations in treating iron deficiency or iron deficiency anemia and barring any misrepresentations as to the need for those ingredients among persons suffering from iron deficiency. These provisions are said to be unsupported by the evidence and unduly vague.

As the examiner found, the evidence does not support respondents' contention below, not pressed on this appeal, that the vitamin C found in the S.S.S. preparations enhances the absorption of iron.[30] Nor does the evidence establish that persons suffering from iron deficiency are also likely to need vitamins. The evidence does establish, on the other hand, that iron, and only iron, is effective in treating iron deficiency or iron deficiency anemia—the administration of other drugs, herbs, or vitamins, is unnecessary.[31] Yet respondents have represented in the advertising and labeling for their products that the S.S.S. preparations are an effective remedy for tiredness and iron deficiency in part because they are "vitamin fortified" or "vitamin enriched," that the elements in S.S.S. including the vitamins "help *build back* your blood power," that S.S.S. contains "essential vitamins and special natural ingredients to help restore vim and vigor" and that the S.S.S. preparations also provide "the activity of S.S.S. Drug Extractives from Queen's Delight, Swamp Sumac and Sumac."[32]

[28] *Federal Trade Commission* v. *Colgate-Palmolive Co.*, 380 U.S. 374 (1965).

[29] *Federal Trade Commission* v. *Colgate-Palmolive Co., supra,* at 395, quoting *Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 431 (1957); see *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 473–75 (1952).

[30] Initial Decision pp. 7075–76: see R. 228 (Dr. Williams); 563 (Dr. Darby); 970, 1015 (Dr. Horowitz); 1653–55 (Dr. Beutler); 2066–67 (Dr. Clements); 2140–41 (Dr. Holly).

[31] See, *e.g.*, R. 363 (Dr. Gendel); 407 (Dr. S. Schwartz); 1002–03 (Dr. Horowitz); 1451–52 (Dr. Wallerstein); 2066–67 (Dr. Clements); 2140–41 (Dr. Holly).

[32] See, *e.g.*, CX 4, 6, 7, 11, 13A.

These advertisements clearly imply both that the vitamins or other ingredients in S.S.S. tonic and tablets, in addition to the iron contained in these preparations, contribute to the effectiveness of these preparations in treating, relieving, or curing tiredness or iron deficiency and that persons suffering from tiredness or iron deficiency are especially likely to suffer from vitamin deficiency. In consequence, the impression is created that, for one reason or another, vitamins will be of benefit to persons to whom the advertising is addressed. The order is narrowly and carefully drawn to proscribe these false and deceptive representations. While we fail to see in what respect the order may be regarded as vague, we point out that if respondents entertain any doubts as to what is required of them they are free to consult informally with the Commission's staff or to utilize the advisory opinion procedure under Section 3.61(c) of the Commission's Rules to obtain a definitive construction of the Commission's order without risking a civil penalty proceeding.

Finally, we must consider issues raised by the appeal of complaint counsel. The principal question before us is whether the order should require respondents to disclose in their advertising that "in adults, other than pregnant women, iron deficiency or iron deficiency anemia almost never develops in the absence of bleeding, hidden or obvious." Of the four principal causes of iron deficiency or iron deficiency anemia enumerated by the hearing examiner,[33] it seems clear, and we find, that excessive loss of iron through bleeding is by far the most common among adults other than pregnant women.[34] However, since bleeding may be, and in many cases is, hidden, a person suffering iron deficiency due to excessive blood loss may be unaware that he is losing blood and that he may be suffering from anemia. The purpose of our order is to require respondents truthfully to represent their products so that consumers may make an informed judgment in deciding whether to purchase the S.S.S. preparations. Since blood loss frequently is not manifest, disclosure that anemia is most often attributable to blood loss would not enhance the effectiveness of the order in achieving that objective. Moreover, in view of complaint counsel's decision to strike from the complaint the so-called "masking" charge which was predicated in part on the same facts as are relied on to support the contentions under discussion, we are somewhat reluctant to reintroduce the issue obliquely on this appeal.

[33] These are inadequate intake of iron, poor absorption of iron, excessive demand for iron, and excessive loss of iron from the body through bleeding. See initial decision, pp. 1071–1072.

[34] See, *e.g.*, R. 368–69 (Dr. Gendel); 405–06 (Dr. S. Schwartz); 538–39 (Dr. Darby); 1217 (Dr. Trobaugh); 1387 (Dr. H. Schwartz).

On the other hand, the record amply supports the conclusion that the herbs in respondents' preparations are of no therapeutic value despite respondents' representations to the contrary.[35] We therefore agree with complaint counsel that representations as to the therapeutic value of these herbs should be forbidden.

The appeal of respondents is denied. The appeal of complaint counsel is granted in part and denied in part. The findings and conclusions of the hearing examiner, except to the extent they are inconsistent with this opinion, are adopted as the findings and conclusions of the Commission. The examiner's order is modified and, as so modified, adopted as the order of the Commission.

Final Order

This matter has been heard by the Commission on the cross-appeals of complaint counsel and respondents from the initial decision of the hearing examiner filed on October 13, 1967. The Commission has rendered its decision denying respondents' appeal in all respects, granting complaint counsel's appeal in part, and adopting the findings of the hearing examiner to the extent that they are not inconsistent with the opinion accompanying this order. Other findings of fact and conclusions of law made by the Commission are contained in that opinion. For the reasons therein stated, the Commission has determined that the order entered by the hearing examiner should be modified and, as so modified, adopted and issued by the Commission as its final order. Accordingly,

It is ordered, That respondents S.S.S. Company, a corporation, and Tucker Wayne & Company, a corporation, and their officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the preparation designated "S.S.S. Tonic" or the preparation designated "S.S.S. Tablets," or any other preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing the dissemination of, by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that:

    (a) The use of such preparations will be of benefit in the prevention, relief or treatment of tiredness, lack of pep,

[35] Compare Respondents' Proposed Finding of Fact 5 with CX 13A.

energy or strength, weakness, listlessness, run-down feeling or nervousness, or any other symptom, unless such representation is expressly limited to a symptom or symptoms caused by a deficiency of one or more of the vitamins or iron provided by such preparations; and, further, unless such advertisement also discloses clearly and conspicuously, in immediate or close proximity, and with equal prominence, to any such representations:

(1) That, in the great majority of persons suffering from any such symptom or symptoms, the preparations will be of no benefit in the prevention, treatment or relief of such symptom or symptoms; and

(2) That the presence of iron deficiency anemia or iron deficiency of any degree cannot be self-diagnosed and can be determined only by means of medical or laboratory tests conducted by or under the supervision of a physician; and

(3) That the presence of a deficiency of the B vitamins, or of any vitamin, cannot be self-diagnosed and can be determined only by means of medical or laboratory tests conducted by or under the supervision of a physician.

(b) The use of such preparations will be of benefit in the prevention, relief or treatment of iron or vitamin deficiency or iron deficiency anemia in any specific or described group of people: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted under this prohibition for respondents affirmatively to show:

(1) That there is a reasonable probability that a majority of persons within such group suffers from iron or vitamin deficiency or iron deficiency anemia; or

(2) That their advertising did no more than truthfully and accurately represent the percentage of persons in a specific population group who suffer from iron or vitamin deficiency or iron deficiency anemia.

(c) The presence of iron deficiency anemia or iron deficiency of any degree can be self-diagnosed.

(d) The presence of iron deficiency anemia or iron deficiency of any degree can generally be determined without medical or laboratory tests conducted by or under the supervision of a physician.

(e) The presence of a deficiency of the B vitamins, or of any vitamin, can be self-diagnosed.

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(f) The presence of a deficiency of the B vitamins, or of any vitamin, can generally be determined without medical tests conducted by or under the supervision of a physician.

(g) Any ingredient other than iron in S.S.S. Tonic or S.S.S. Tablets contributes to the effectiveness of these or similar preparations in the prevention, relief or treatment of iron deficiency or iron deficiency anemia or of symptoms represented directly or by implication to be caused by iron deficiency or iron deficiency anemia.

(h) There is any greater need for any one or more of the vitamins in S.S.S. Tonic or S.S.S. Tablets among persons suffering from iron deficiency or iron deficiency anemia than among persons not suffering from iron deficiency or iron deficiency anemia.

(i) The use of such preparations will increase the strength or energy of any part of the body in any period or amount of time less than that in which the consumer may actually experience improvement.

(j) The formula of S.S.S. Tonic or S.S.S. Tablets is "new" or the formulae or ingredients are new medical or scientific discoveries or achievements.

(k) The herbs in S.S.S. Tonic or S.S.S. Tablets are of any therapeutic benefit or value.

2. 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 advertisements which contain statements which are inconsistent with, negate, contradict, or dilute any of the affirmative disclosures required by Paragraph 1 of this Order, or which in any way obscure the meaning or effect of such required disclosures.

3. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited by Paragraphs 1 or 2 hereof, or which fails to comply with the affirmative requirements of Paragraph 1 hereof.

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 written report setting forth in detail the manner and form of their compliance with this order.