

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

DECEMBER 24, 1931, TO JULY 17, 1932

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MEMBERS OF THE FEDERAL TRADE COMMISSION
AS OF JULY 17, 1932

WILLIAM E. HUMPHREY, *Chairman.*

Took oath of office February 25, 1925, and February 5, 1932.¹

CHARLES H. MARCH.

Took oath of office February 1, 1929.

EDGAR A. McCULLOCH.

Took oath of office February 11, 1927.

GARLAND S. FERGUSON, Jr.

Took oath of office November 14, 1927, and January 9, 1928.¹

CHARLES W. HUNT.

Took oath of office June 16, 1924, September 23, 1925,² and March 16, 1926.¹

OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

¹ Second term.

² Recess appointment.

ACKNOWLEDGMENT

This volume has been prepared and edited by Richard S. Ely, of the Commission's staff.



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<p>Petitions for review filed in Circuit Court of Appeals for the Sixth Circuit on January 6, 1932, by six separate respondents against whom group orders involving substantially the same practices and set of facts issued as of April 16, 1931 (15 F.T.C. 38, 47-60). Commission's orders set aside May 4, 1932. 58 F. (2d) 581. Judgment of the Court of Appeals reversed February 6, 1933. 288 U.S. 212, 53 Sup. Ct. Rep. 335.</p>		
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FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, DECEMBER 24, 1931, TO JULY 17, 1932

IN THE MATTER OF

STANDARD EDUCATION SOCIETY ET AL.

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

Docket 1574. Complaint, Dec. 4, 1929¹—Decision, Dec. 24, 1931

- Where two corporations under common ownership and control, and three individuals, officers, and operators thereof, long engaged in the sale of an encyclopedia, "extension service" or supplement therefor, and so-called research service, selling through salesmen and on the subscription plan,
- (a) Falsely represented in letters sent solely to secure prospect's names, and to conceal their own occupation as booksellers, through use of letterhead and signature of one "Chas. E. Knapp, publicity manager," that addressee prospect had been selected as one of a "diversified list of well connected representative people" of his city to receive, with the compliments of the publisher, as a "legitimate advertising expense prior to general publicity," one of a few sets of the encyclopedia thus being placed with such representative people, to make a bona fide original owners' list of such "recently completed encyclopedia," setting forth, among other things, that "we find it a distinct advantage to have a few sets placed with representative people before starting our campaign," and requesting addressee to confirm and return inclosed post card as preliminary to receiving complete details, and to treat "foregoing as personal and confidential";
 - (b) Represented to prospects secured as aforesaid and otherwise that the encyclopedia, or encyclopedia and standard works of fiction at times included therewith, were free and given as an advertising plan, and to teachers or club and society women, that the prospect had been specially selected and the only return desired for the gift was permission to use their names for advertising and as references, and, generally, that the only charge was for the loose-leaf extension service, furnished at \$69.50 or \$89.50, facts being figures aforesaid constituted regular price for work, and services, depending upon whether or not sold with fiction, as aforesaid;
 - (c) Falsely represented the work to banker prospects as dealing with financial matters and kept up to date in said respects by the loose-leaf extension service, and to college or university professors as the latest encyclopedia, bringing all technical and scientific subjects to date, and a successor to the New International Encyclopedia, and the extension service as taking the place of Dun & Bradstreet, or such magazines as the Literary Digest and the Review of Reviews, as the case might be;
 - (d) Set forth in their advertising matter and on the back of their contracts alleged testimonials from men connected with institutions of learning in the United States, from physicians, club women, newspaper editors, and

¹ Supplemental complaint.

Complaint

16 F. T. C.

- others, facts being testimonials in question were garbled, unauthorized, and, when made at all, made in connection with a different work gotten out many years theretofore;
- (e) Made use of the corporate name of one of the two corporations aforesaid, recently organized to provide an instrumentality through which to carry on various practices herein involved, and of a new title, to sell said old work as and for a new one, and exploit, in connection therewith and under such captions as "something NEW under the sun," "ALWAYS UP TO DATE," "what others say," misleading, unauthorized, and inapplicable testimonials as above described, without disclosing to prospective purchasers publication in question was the identical, old one theretofore sold and distributed by them, and thereby brought about purchase of said old publication as and for a separate and distinct new one;
- (f) Set forth in the prospectus of the aforesaid encyclopedia and on the flyleaves of the volumes under the caption "contributors and reviewers" names of noted educators, facts being many of the people thus referred to had neither contributed nor reviewed articles for publication in question; and
- (g) Falsely represented regular price of \$69.50 for work and service as a reduced price, and regular price as \$150 or \$200, and, set forth "Special introductory enrollment. This is a life-time scholarship," in red ink upon the contract forms used in exploiting, under the name "Standard Extension University," a branch business represented as a correspondence school, and represented such pretended special price as given to ten students only and regular price as \$250, facts being the \$98 to \$135 charged during years concerned constituted the regular price to all;

With result that prospective customers were induced by aforesaid false and misleading representations and statements and in reliance thereon to purchase said books and services and (1) trade was thereby diverted from competitors not using such false and misleading methods, statements, and representations, (2) the public was prejudiced against the subscription book industry as a whole, and it was made difficult for competitors to obtain interviews for soliciting, and (3) loss of public confidence was brought about in representations of competitors who do not employ such methods or misrepresentations:

Held, That such practices, under the conditions and circumstances above set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

Longworthy, Stevens, McKeag & McCornack, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Standard Education Society, a Minnesota corporation, engaged for more than five years last past in the compilation and/or production of sets of encyclopedias or reference works and/or so-called extension services in connection therewith, and in the sale thereof to purchasers in States other than Illinois, and with principal

1

Complaint

place of business in Chicago, respondent Standard Encyclopedia Corporation, an Illinois corporation organized to engage in the sale of the same encyclopedia, etc., theretofore sold by the first named corporation, except for certain revisions, respondent Stanford, president, general manager, director, and principal stock owner of respondent Standard Education Society, and president of respondent Standard Encyclopedia Corporation, and respondents W. H. Ward and A. J. Greener, stockholders and directors of respondent Standard Education Society, and, in the case of the former, secretary thereof, and, together with respondent Stanford, the directors and sole stockholders of respondent Standard Encyclopedia Corporation, with offering falsely as free products or services included in price charged, claiming and using official and other indorsements and testimonials, falsely and/or without authority, and misrepresenting nature, identity and prices of product and service, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, distribute, among prospective customers circular letters and other literature in which they represent that complimentary sets of their "Standard Reference Work" or "New Standard Encyclopedia," will be distributed among a few representative people before respondents institute their sales campaign and that the cost in connection therewith is absorbed by their advertising appropriation, stating further that their loose-leaf extension service, which keeps said work, recently completed by some of the best known editors in the United States and splendidly indorsed by leading schools and colleges, constantly up-to-date, is a most attractive feature thereof, and will be supplied to recipients of the complimentary sets (bound in artcraft de luxe edition) on the same terms as regular subscribers, and requesting recipients of such circulars or literature to treat foregoing offer as personal and confidential. Respondents further represent, through salesmen and otherwise, that they will present a certain number of their aforesaid works to prospective customers, upon condition that they subscribe to and purchase loose-leaf extension service for a specified sum and period of time, said sum being represented as a special price, offered as an advertising matter, to a limited number of residents in a given community and/or as a price much lower than the price regularly charged for the books and/or service.

The facts are that respondents have not and do not set aside a number of their books, to be given free for advertising purposes, as above set forth, sum mentioned is their usual and customary price to all who can be induced to purchase, and it is not their prac-

tice to confine their offers to a certain number, designated to receive the sets, or any form of service, free, but their practice and intention was and is to dispose of their products to the general public in each community and at the same price or figure.

Respondents further, as charged, represent through their salesmen and through circulars and otherwise that they will give free, as a premium, certain books or sets of well-known authors to their subscribers, and make use of alleged testimonials of prominent educators, and of others known to the prospective customer, and represent that their publications have been authorized and indorsed by numerous State boards of education, facts being that cost of aforesaid premiums is included in subscription price, and the alleged testimonials "were not authorized or made by and/or used with the knowledge and approval of said educators, or approved by the various State boards of education as alleged."

Respondents further, as charged, falsely represent that their said reference works or sets were recently completed, and copyrighted in 1926, and advertise same and the loose-leaf and revision services as "Standard Reference Work," published by Standard Education Society, and "National Encyclopedia, published by National Encyclopedia Company," and head their contracts, in connection with their so-called "Standard Extension University," with words, in red ink, on top thereof, "Special Introductory Enrollment—this is a life-time scholarship," and represent customary prices of their aforesaid works and products to prospective purchasers as being certain specified prices, facts being that aforesaid "Standard Reference Work" and "National Encyclopedia," while advertised and sold under different titles were the same or substantially so, their so-called contract offer was in no sense special, but the same that was used by them in selling their courses, and pretended regular prices were fictitious and grossly exaggerated and far in excess of their usual prices, at which they "actually offered or offer or expect to sell the same, and greatly in excess of the real value of same."

Such acts and things "above alleged to have done by respondents are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on February 25, 1929, issued and served

1

Findings

its complaint upon respondents, Standard Education Society, a corporation, and H. M. Stanford, individually and as president of respondent, Standard Education Society, charging them with unfair methods of competition in interstate commerce in violation of the provisions of said act.

The respondents having entered their appearance and filed their answers to the said complaint, hearings were had and evidence was introduced on behalf of the Commission before a trial examiner theretofore duly appointed.

The evidence introduced on behalf of the Commission developed the fact that in August, 1929, a new corporation, the Standard Encyclopedia Corporation had been formed by the shareholders of respondent, Standard Education Society. This new corporation was engaged in selling a revision of the encyclopedias or reference works theretofore sold by respondent, Standard Education Society. Respondent, Standard Education Society, ceased publishing and offering for sale its encyclopedias or reference works in August, 1929, except that it continued to offer for sale and sell the stock then on hand.

On December 4, 1929, the Federal Trade Commission issued and served its supplemental complaint upon the respondents, Standard Education Society, a corporation, Standard Encyclopedia Corporation, H. M. Stanford, individually and as president and director of Standard Education Society and as president and director of Standard Encyclopedia Corporation, W. H. Ward, individually and as director of Standard Encyclopedia Corporation and as secretary and director of Standard Education Society, and A. J. Greener, individually and as director of Standard Encyclopedia Corporation, and as director of Standard Education Society, charging them with unfair methods of competition in interstate commerce in violation of the provisions of said act.

The respondents having entered their appearance and filed their answers to the supplemental complaint, hearings were had and testimony was heard and evidence received in support of the charges stated in the supplemental complaint and in opposition thereto before a trial examiner theretofore duly appointed and said trial examiner having filed his findings of fact herein and counsel for the respondent having filed his exceptions thereto,

Thereupon this proceeding came on for final hearing before the Commission on the brief and oral argument of the counsel for the Commission and brief of counsel for the respondent, counsel for respondent not presenting himself for oral argument, although he was duly notified thereof, and the Commission having fully con-

sidered the record and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Standard Education Society is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota with its principal place of business located in the city of Chicago, State of Illinois.

PAR. 2. Respondent Standard Encyclopedia Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal place of business located in the city of Chicago, State of Illinois.

PAR. 3. Respondent H. M. Stanford is president and general manager, a director and owner of 250½ shares of the 536 shares of stock of the Standard Education Society outstanding, and was an incorporator of and is acting as and has held himself out as president of respondent, Standard Encyclopedia Corporation.

PAR. 4. Respondent W. H. Ward is secretary, a director, and the owner of 250½ shares of stock in the Standard Education Society. He is also a director and was one of the incorporators of respondent, Standard Encyclopedia Corporation.

PAR. 5. Respondent A. J. Greener is a stockholder in the Standard Education Society holding 35 shares of the outstanding stock of 536 shares of said corporation and is now and has been for many years in charge of the financial affairs of said corporation as comptroller, auditor, and manager, and the said A. J. Greener is one of the incorporators of respondent, Standard Encyclopedia Corporation. Respondents H. M. Stanford, W. H. Ward, and A. J. Greener are the managers and sole stockholders of respondent Standard Education Society, and the managers and sole incorporators of respondent Standard Encyclopedia Corporation.

PAR. 6. In 1909 there was incorporated under the name Welles Bros. Publishing Co. a corporation which published and distributed a work under the name and style of Aiton's Encyclopedia. About the year 1912 the name of the work was changed to Standard Reference Work. In the year 1917 the name of the corporation, Welles Bros. Publishing Co. was changed to Standard Education Society and, under this latter name and style, continued to publish, sell, and distribute in interstate commerce the books styled Standard Reference Work. The Standard Education Society shipped from the State of Illinois and from other States its encyclopedias or reference works and its so-called extension service, in connection

therewith, into various States of the United States other than the State of Illinois. On or about August, 1929, the respondents, H. M. Stanford, W. H. Ward, and A. J. Greener caused to be incorporated as an eleemosynary institution a corporation under the name and style of Standard Encyclopedia Corporation, and having organized this corporation, the three individual respondents proceeded to change the name of the reference work or encyclopedia which they had theretofore caused to be published and sold as Standard Reference Work to New Standard Encyclopedia. From on or about August, 1929, respondent Standard Encyclopedia Corporation, acting through respondents Stanford, Ward, and Greener, has published or caused to be published, and has sold and caused to be transported from the State of Illinois into and through States of the United States other than Illinois its sets of encyclopedias or reference works and/or so-called extension services to purchasers thereof located in a State or States of the United States other than the State of Illinois.

PAR. 7. Respondents offer for sale and sell works of fiction by well-known authors, in connection and combination with the encyclopedia, reference works, and extension service published, offered for sale, and sold by them.

PAR. 8. The individual respondents herein, acting by and through the corporate respondents which they control and direct and the corporate respondents herein, in the course and conduct of their business as heretofore set out, are and at all times herein referred to have been in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of sets of encyclopedias or general reference works.

PAR. 9. Respondents Standard Education Society and Standard Encyclopedia Corporation and respondents H. M. Stanford, W. H. Ward, and A. J. Greener, acting by and through the corporate respondents herein are in competition with other corporations, individuals, and partnerships engaged in publishing and offering for sale, selling and distributing in interstate commerce in the United States various encyclopedias or reference works, among others the S. L. Weedon Co., of Cleveland, Ohio, publisher of the New Students Reference Work, which is offered for sale and sold as a subscription book direct to the consuming public by sales agents. The S. L. Weedon Co. employs on an average one hundred agents who cover the entire United States, offering for sale and selling the New Students Reference Work published by the S. L. Weedon Co. These agents do not misrepresent the New Students Reference Work which has been planned by school people for school children. The said

agents do not misrepresent the contents or the price or the terms of payment of the New Students Reference Work.

PAR. 10. Respondents herein sell their publications at retail to the public by salesmen on the subscription plan. Respondent Standard Education Society publishes and sells in this manner a work known as the Standard Reference Work. Respondent Standard Encyclopedia Corporation publishes and sells in this manner a work known as the New Standard Encyclopedia. Both the Standard Reference Work and the New Standard Encyclopedia consist of ten volumes with content material arranged alphabetically on unnumbered pages. Accompanying the ten-volume set when delivered to a purchaser are a loose-leaf binder and, in some instances, loose-leaf material for insertion therein. In some instances respondents include in their offer and sell to purchasers a number of works of fiction. The usual price for either the Standard Reference Work or the New Standard Encyclopedia is \$69.50. The usual price for the Standard Reference Work or the New Standard Encyclopedia when the fiction works are included in the offer is \$89. The usual terms of sale are \$6.95 cash with the order and \$6.95 monthly when the price of the offer is \$69.50. The usual terms of sale when the price of the offer is \$89 is \$8.90 cash with the order and \$8.90 a month.

PAR. 11. Lists of names of prospects are obtained by respondents and a letter, a copy of which is set forth hereinafter, is sent to said prospects. Accompanying the letter is a postal card addressed to one of respondents' agents confirming the name and address to whom the letter is sent, which card such person is asked to initial and return. The postal cards so returned are given to respondents' salesmen and representatives, whereupon such salesmen and representatives call upon and attempt to sell said persons respondents' publication. If the salesman makes the sale he requires the purchaser to sign a contract or order. In some instances a copy of the order is furnished the purchaser and in some instances no copy of the order is given to the purchaser. The respondent, pursuant to orders for said books previously received as hereinbefore stated, causes said books to be shipped from its place of business in the city of Chicago, State of Illinois, or from its place of business in other States of the United States to the different purchasers thereof located throughout the various States of the United States and in different States from the State of origin of such shipment.

PAR. 12. The letter heretofore referred to, which respondents send to prospects, is as follows:

I am preparing a diversified list of well connected representative people of your city as a bona fide Original Owner's list of a recently completed encyclo-

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pedia which covers the entire range of human knowledge, giving full credit to things which are American in contrast to 95 per cent of the encyclopedias being sold in the United States to-day which are of foreign origin.

I am authorized to present you with a complete, full bound set of this new work, artcraft de luxe edition, with the compliments of the publishers. We find it a distinct advantage to have a few sets placed with representative people before starting our sales campaign. The great merchant, Mr. John Wanamaker once said: "A favorable comment from a pleased user is more valuable to a business than a page of newspaper advertising."

The above procedure is a legitimate advertising expense prior to general publicity.

Kindly initial and return the inclosed card, confirming the correctness of address (or make corrections) and the writer will see that you are supplied with the complete details without cost or obligation.

Please treat the foregoing as personal and confidential.

These letters are sent out under the letterhead of

CHARLES E. KNAPP

189 W. Madison Street, Chicago

and are signed "Chas. E. Knapp, Publicity Manager."

Said letters are false and misleading in that the letters represent to those receiving them that respondents will give them a set of either the New Standard Encyclopedia or the Standard Reference Work free of cost as an advertising feature and the addressees of said letters initial and return the inclosed postal card in that belief. In fact respondents do not give away any sets of encyclopedias as an advertising feature and do not give any sets of their encyclopedias to anyone who receives said letters, but said encyclopedias are sold by respondents in connection with loose-leaf supplements and a research service, payment for all three items being included in the purchase price of \$69.50 (when fiction books are included as aforesaid the price is \$89). Said letters are used solely and intentionally by respondents for the purpose of obtaining the names of prospects upon whom respondents' salesmen can call for the purpose of soliciting them to purchase the said Standard Reference Work or the said New Standard Encyclopedia. The letterhead used on said letters has been adopted by respondents to conceal the fact that they are selling books.

PAR. 13. The respondents having caused the above letter to be mailed to prospects in many localities, thereafter directed and instructed their agents to call upon the prospects to whom the letters had been sent, and upon other prospects, and to said prospects the said agents made the following representations:

1. That they represent the Standard Education Society of Chicago, or the Standard Encyclopedia Corporation.

2. That they are giving away a set of books; that they are not selling anything; that the books are free; that the books are being given free as an advertising plan.

3. Should the prospect be a banker, the agent represents that the work deals in financial matters. That the loose-leaf extension service keeps all financial matters up to date; that both take the place of Dun and Bradstreet. Should the prospect be a professor in some college or university, the agent represents that the work is the very latest encyclopedia; that it brings all technical and scientific subjects up to date, and, in some instances, that the work is a successor to the New International Encyclopedia. Should the prospect be a teacher or club and society woman, the agents represent that such prospect has been specially selected, and that the only return desired for the gift is permission to use the name of the prospect for advertising purposes and as reference.

4. To all classes of prospects, the agents of the respondents represent that the Standard Reference Work or the New Standard Encyclopedia is being given free and that said prospects are paying only for the loose-leaf extension service.

5. The agents of respondents represent to some prospects that the price of \$69.50 is a reduced price, and that the regular price of the books and the extension service is \$150, sometimes even as high as \$200.

6. The agents of respondents represent to prospects that the loose-leaf extension service will take the place of such magazines as the Literary Digest and the Review of Reviews.

7. The agents of the respondents represent to prospects that certain sets of books by well-known authors such as Rinehart, Kipling, O. Henry, Stevenson, or various combinations of these and other books will be given together with the Standard Reference Work or the New Standard Encyclopedia absolutely free and that the loose-leaf extension service will be furnished at a cost of \$89.

The statements made by respondents in circular letters and through their agents that the Standard Reference Work would be given away free are false, deceptive, and misleading; the books were never given away free. The statement of agents of respondents that the Reference Work was being given as part of an advertising plan is false, deceptive, and misleading.

The statement of the agents of respondents that the Standard Reference Work deals in financial matters, that the loose-leaf extension service keeps all financial matters up to date, that both of these take the place of Dun and Bradstreet; that the work is the very latest encyclopedia; that it brings all technical and scientific subjects

up to date; that the work is a successor to the New International Encyclopedia; that the prospect had been specially selected; that the only return desired for the gift is permission to use the name of the prospect, are each and every one of them false, deceptive, and misleading statements.

The statement of the agents of respondents that the Standard Reference Work or the New Standard Encyclopedia is being given free and that the prospects are paying only for the loose-leaf extension service are false, misleading, and deceptive statements.

The statements made by agents of the respondents that the price of \$69.50 is a reduced price; that the regular price of the books and extension service is \$150 or sometimes even as high as \$200 are false, deceptive, and misleading statements as \$69.50 is the regular standard price for the Standard Reference Work or the New Standard Encyclopedia, the loose-leaf service and the ten years' research privileges.

The statements of agents of respondents that the loose-leaf extension service will take the place of magazines such as the Literary Digest and Review of Reviews are false, deceptive, and misleading statements. The so-called loose-leaf extension service can not in any way take the place of these or other similar magazines.

The statements made by agents of respondents that sets of fiction together with the Standard Reference Work or the New Standard Encyclopedia would be given absolutely free and that they are selling only the loose-leaf service for \$89, are false, deceptive, and misleading; \$89 being the regular price to anyone for the Standard Reference Work or the New Standard Encyclopedia, the loose-leaf service and various assortments of fiction by various authors. The representations and statements made by the agents of respondents as aforesaid are made by said agents within the scope of respondents' business. The respondents know that such representations and statements were being made by their agents and consented thereto.

PAR. 14. The respondents, Standard Education Society, H. M. Stanford, W. H. Ward, and A. J. Greener, in their advertising matter and on the backs of their contracts make use of certain alleged testimonials from men connected with institutions of learning in the United States, from physicians, club women, newspaper editors, and others. Many of these alleged testimonials are garbled, unauthorized, and have been made, when made at all, to cover a previous work, Aiton's Encyclopedia, which was a work quite different in form, in material and in purpose from the Standard Reference Work. These same testimonials have been used year after year from 1912 to 1930 as expressions of opinion of eminent men as to the Standard Reference Work.

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PAR. 15. Respondents, Stanford, Ward, and Greener, have had their attention called to these practices by men whose names had been so used but notwithstanding such notice these respondents continued said practices in exaggerated form and made use of their creature, respondent Standard Encyclopedia Corporation and its publication the so-called New Standard Encyclopedia as the vehicle for continuing this method of misrepresentation. In the advertising matter for the New Standard Encyclopedia the following statements appear:

AT LAST!—THERE IS SOMETHING NEW UNDER THE SUN
THE NEW STANDARD ENCYCLOPEDIA IS ALIVE
ALWAYS UP-TO-DATE

and under a heading, "What others say!" respondents purport to give statements made of and concerning the New Standard Encyclopedia.

Below in parallel columns are set forth some of the statements made by the respondents of and concerning the Standard Reference Work and circulated at least as early as 1925 and some of the statements made by the respondents of and concerning the New Standard Encyclopedia in 1930.

Alleged testimonials in favor of Standard Reference Work circulated at least as far back as 1925.

UNIVERSITY OF NOTRE DAME,
PAUL R. BYRNE,
Reference Librarian:

For answering questions in a hurry the Standard Reference Work is most helpful. The matter is given in such concise form that it takes little time for the user to get right to the point wanted. This set of books is used continually by the students, as well as the reference staff.

UNIVERSITY OF MICHIGAN MEDICAL
SCHOOL,
O. M. COPE, *Assistant Professor
of Physiology:*

I am enjoying very much my Standard Reference Work, particularly in its use for my daughters in high school. The feature that appeals most to me is the method of keeping the work up to date without becoming either too cumbersome or too complicated for practical use.

Alleged testimonials in favor of the New Standard Encyclopedia circulated in 1930.

UNIVERSITY OF NOTRE DAME,
PAUL R. BYRNE,
Reference Librarian:

For answering questions in a hurry the New Standard Encyclopedia is most helpful. The matter is given in such concise form that it takes little time for the user to get right to the point wanted. This set of books is used continually by the students, as well as the reference staff.

UNIVERSITY OF MICHIGAN MEDICAL
SCHOOL,
O. M. COPE, *Assistant Professor
of Physiology:*

I am enjoying very much my New Standard Encyclopedia, particularly in its use for my daughters in high school. The feature that appeals most to me is the method of keeping the work up to date without becoming either too cumbersome or too complicated for practical use.

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In addition to the two instances above, the respondents make use in the same advertisement of the names Stanley L. Clark, city editor, Observer-Dispatch, Utica, N. Y., J. F. Montague, M. D., secretary and treasurer American Proctologic Society, Charles J. Higgs, M. D., Wilkes-Barre, Pa., Elizabeth Kenney, president, Business and Professional Women's Club, Waterloo, Iowa.

None of these men or this woman ever wrote any testimonial or recommendation of or concerning the New Standard Encyclopedia. The representations that these men and this woman wrote the recommendations for the so-called New Standard Encyclopedia are false, deceptive, and misleading.

The statement in the above advertisement, "At last! There is something NEW under the sun" is false and misleading in its application to the so-called New Standard Encyclopedia. This work is not new except for the name and the covers. It is the old Standard Reference Work revised.

PAR. 16. The respondent Standard Education Society in conjunction with the respondents H. M. Stanford, W. H. Ward, and A. J. Greener, in addition to publishing, selling, and transporting or causing to be transported in interstate commerce a work entitled Standard Reference Work, have also caused to be printed, sold and distributed in interstate commerce a work which they have entitled National Encyclopedia and in the sale of this publication under the name National Encyclopedia used the same methods above described and do not disclose to the prospective purchasers the fact that the said National Encyclopedia is the identical publication sold and distributed by these respondents under the name Standard Reference Work, thus causing some purchasers to buy the said National Encyclopedia in the belief that the same is a separate and distinct publication.

PAR. 17. The respondents for the purpose of selling their publications, Standard Reference Work and New Standard Encyclopedia, show in the prospectus and on the fly-leaves of their volumes a list headed "Contributors and Reviewers," and under this heading place the names of educators who are known to be men of repute. In such lists they include many who have not been either contributors or reviewers to either the Standard Reference Work or to the New Standard Encyclopedia. Albert W. Rankin of the University of Minnesota, William H. Sheppard, instructor in the public schools, Minneapolis, W. M. West, professor of history, University of Minnesota for 20 years prior to 1912, Monsignor Edward A. Pace, vice rector 38 years, Catholic University, Washington, D. C., and general secretary of the Catholic University of America, Dr. Frank W.

Ballou, superintendent of schools of the District of Columbia, are included in these lists. None of these men either contributed articles or reviewed articles for publication in respondent's works.

PAR. 18. The respondents in the course and conduct of their business and in addition to their distributing in commerce the Standard Reference Work, the National Encyclopedia, and the New Standard Encyclopedia have also a branch business which they exploit under the name Standard Extension University, represented as a correspondence school. For the purpose of selling this course of instruction they prepared a form of contract upon which appears in red ink the words "Special introductory enrollment. This is a life-time scholarship." The Standard Extension University was started in 1924 and the original price to anyone for its course was during 1924, \$98. In 1925 the price for its course to anyone was \$120, and in 1927 it was \$135. The agents of the respondents, however, represented to the various prospects upon whom they called that these prices were special introductory prices and that the usual price of the course was \$250. The agents of respondents further represented that the special price was given to ten students only and advised the prospect that the introductory offer would not be continued after the agent had secured the ten students.

The representations made by respondents' agents that the course in the Standard Extension University is being sold at a special price, that the said price is limited to a certain number of students, and that the price represents a "special introductory enrollment" are false, misleading, and deceptive. The course was offered to everyone at the same price.

PAR. 19. The foregoing representations, sales methods, and statements were used and made by agents of respondents in the course and conduct of respondents' business. Many representations and statements made by such agents while so employed were false as heretofore set out. Prospective customers to whom respondents' agents made said false representations and false statements and on whom said sales methods were used, relied upon the representations and statements made by said agents as aforesaid, and purchased books and the extension service and the home study courses offered for sale and sold by respondents in the belief that the said representations and statements made by respondents' agents were true. In many instances persons purchased respondents' books and the extension service in reliance upon the said false representations and false statements, when such persons would not have purchased the said books or extension service but for the false statements and false representations made by respondents' agents in the course and conduct of their

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business as aforesaid, all of which is to the damage and injury of the said purchasing public, and tends to and does divert trade from competitors of respondents not using said false and misleading sales methods, statements, and representations.

PAR. 20. Respondent Standard Encyclopedia Corporation was organized by the individual respondents herein in August, 1929, approximately six months after the issuance of the original complaint herein by the Federal Trade Commission. The Commission concludes and infers from the record in this case and so finds that this corporation was organized by the individual respondents for the purpose of evading any order that might be issued by the Federal Trade Commission against the respondent Standard Education Society. The Commission also concludes and infers from the entire record and so finds that the individual respondents herein, H. M. Stanford, W. H. Ward, and A. J. Greener, have been using and are using the corporate respondents herein to carry on their business in the manner and form hereinbefore set out.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce. The use by respondents of the methods of sale as hereinbefore found by the Commission has the capacity and tendency to and does in fact injure competitors who do not use such methods of sale because (1) it diverts to respondents from their competitors sales of encyclopedias to persons who believe said false representations as made by respondents to be true and who purchase respondents' encyclopedias in and because of such belief, (2) it prejudices the public against the subscription book industry as a whole and makes it difficult for respondents' competitors to obtain interviews for the purpose of soliciting the sale of their encyclopedias and (3) it causes the public to lose confidence in the representations of competing publishers who do not use such methods or make such representations. The practices of said respondents under the conditions and circumstances described in the foregoing findings constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and the testimony taken and briefs filed herein, and oral

argument by the attorney for the Commission, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Standard Education Society, a corporation, Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener, and each of them, their officers, agents, representatives, and employees in connection with the offering for sale of any books, set of books or publications in commerce among the several States of the United States or in the District of Columbia, cease and desist from:

(1) Advertising or representing in any manner to purchasers or prospective purchasers that any books or set of books offered for sale and sold by them will be given free of cost to said purchasers or prospective purchasers, when such is not the fact.

(2) Advertising or representing in any manner that a certain number of sets or any set of books offered for sale or sold by them has been reserved to be given away free of cost to selected persons as a means of advertising; or for any other purpose, when such is not the fact.

(3) Advertising or representing in any manner that purchasers or prospective purchasers of respondents' publications are only buying or paying for loose-leaf supplements intended to keep the set of books up-to-date for a period of ten years, when such is not the fact.

(4) Advertising or representing in any manner that respondents' publication is a recently completed, new, and up-to-date encyclopedia, when such is not the fact.

(5) Selling or offering for sale any set of books of the same text and content material under more than one name or title.

(6) Advertising or representing in any manner that the usual price at which respondents' publications are sold is higher than the price at which they are offered in such advertisements or representations, when such is not the fact.

(7) Advertising or representing any person as a contributor to or editor of any set of books or publication who has not performed services in making or preparing contributions to or who has not performed services in the editing of such books or publication and consented that he may be held out to the public as a contributor or as an editor or assistant editor.

(8) Advertising or representing that any person has given testimonials or recommendations for and concerning respondents' publications, when such is not the fact.

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(9) Publishing or causing to be published and circulated testimonials or recommendations of and concerning respondents' publications alleged to have been made by any person when such testimonials or recommendations have not been made by such person.

It is further ordered, That the respondents, Standard Education Society, a corporation, H. M. Stanford, W. H. Ward, and A. J. Greener and each of them, their officers, agents, representatives, and employees in connection with the offering for sale of any home study course of instruction in commerce among the several States of the United States or in the District of Columbia do cease and desist from:

Advertising or representing in any manner to purchasers or prospective purchasers that the course of instruction is offered for sale and sold to the purchasers or prospective purchasers as a "Special introductory enrollment," and at a specially reduced price, when such is not the fact.

It is further ordered, That respondents shall within 60 days from the date of the service upon them of the order herein, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

Complaint

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IN THE MATTER OF
JOSEPH SCULLER

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

Docket 1890. Complaint, Jan. 5, 1931—Decision, Jan. 29, 1932

Where an individual engaged in sale of watches, rings, diamonds, and a variety of jewelry and similar articles at wholesale and retail, set forth upon the letterheads employed by him in carrying on his aforesaid business, the words "Manufacturing and Wholesale Jeweler Importer of Diamonds and Swiss Watches," notwithstanding fact said individual neither owned, operated, nor controlled a plant or machinery for manufacture of jewelry dealt in by him and was not an importer of diamonds or Swiss watches; with result of misleading and deceiving retailers of jewelry and of aforesaid articles into believing said individual to be a manufacturer and importer as above set forth and of thereby diverting sales of articles concerned from competitors who as manufacturers, or dealers only, or as importers, or nonimporting dealers, truthfully represent their operations and status, and with further effect of misleading and deceiving purchasing public into buying from retailers, said individual's watches, jewelry, and diamonds in the mistaken belief that in so doing they were saving the profit of a wholesaler, and of thereby injuring competition of a substantial character and to a substantial extent; all to the prejudice and injury of competitors and the public:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Edward L. Smith for the Commission.

Mr. Waymon B. McLesky, of Columbus, Ohio, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in sale at wholesale and at retail of watches, rings, diamonds, and a variety of jewelry and gift articles and with principal place of business in Columbus, Ohio, with misrepresenting business status and advertising falsely or misleadingly in said respect; in that for more than one year last past, neither owning, operating, nor controlling any plant, factory, or machinery for manufacture of articles dealt in by him as above set forth and by him obtained from sources within the United States, he has displayed the legend, "Manufacturing and Wholesale Jeweler,

Importer of Diamonds and Swiss Watches," on circulars, letterheads, cards, and other printed matter distributed through traveling salesmen and otherwise to customers and prospective customers in States other than Ohio, with effect of misleading and deceiving the public into believing him to be a manufacturer or importer of the articles dealt in by him as aforesaid, and thereby of diverting sales from competitors who do not manufacture the articles dealt in by them, and from retailers who neither misrepresent themselves as manufacturers nor as importers; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Joseph Sculler, an individual, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer to said complaint, hearings were had before a trial examiner of the Federal Trade Commission, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint. Thereafter counsel for respondent waived the taking of testimony in defense of the charges stated in the complaint and waived the service of a brief in support of the charges of the complaint, waived the filing of a brief in defense of the allegations in the complaint and oral argument, whereupon this proceeding came on for final hearing before the Federal Trade Commission, and the Commission having considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph Sculler, is an individual trading under his own name and having his principal place of business in the city of Columbus, State of Ohio, where he is now and for several years last past has been engaged in the business of selling and distributing, at wholesale and retail, watches, rings, diamonds, and a variety of jewelry and similar articles in interstate commerce. Respondent causes and has caused said articles when sold to be shipped from his place of business in the city of Columbus, State of Ohio, to purchasers thereof located in the State of Ohio and to purchasers thereof located in other States of the United States. In the course of his said business, respondent is now and has been

at all times hereinafter mentioned, in competition with other individuals, and with firms, partnerships, and corporations engaged in the sale and distribution, at wholesale and retail, of watches, rings, diamonds, and a variety of jewelry and such similar articles, in interstate commerce.

PAR. 2. In the course and conduct of his business as aforesaid, respondent in soliciting the sale of and in selling in interstate commerce, the articles hereinabove mentioned, has caused letterheads to be distributed in interstate commerce to customers and prospective customers located in States other than the State of Ohio. Said letterhead contained the following:

Manufacturing and Wholesale

JEWELER

Importer of Diamonds and Swiss Watches

The aforesaid representation by means of respondent's letterheads was made continuously by respondent for several years until after the issuance of the aforesaid complaint.

In truth and in fact respondent is not and never has been a manufacturing jeweler and he does not own, operate nor control, nor has he ever owned, operated or controlled a plant, factory or machinery for the manufacture of the jewelry which he sells and distributes in interstate commerce. In truth and in fact respondent is not, nor has he ever been, an importer of diamonds or of Swiss watches. The jewelry dealt in by respondent has been manufactured by others and the diamonds and Swiss watches which he has sold and distributed have been bought by him from importers of such diamonds and of Swiss watches.

PAR. 3. There are among the competitors of respondent, described in paragraph 1 hereof, manufacturers of jewelry similar to that which respondent sells, who truthfully represent that they are manufacturing jewelers, and there are among the competitors of respondent, described in paragraph 1 hereof, wholesalers and retailers who do not manufacture the jewelry which they sell and who do not represent that they are the manufacturers of such jewelry; and there are also among the competitors of respondent, described in paragraph 1 hereof, importers of diamonds and Swiss watches who truthfully represent that they are importers of diamonds and Swiss watches; and there are also among the competitors of respondent, described in paragraph 1 hereof, dealers in diamonds and Swiss watches who do not import such diamonds and Swiss watches and who do not represent that they are importers of diamonds and Swiss watches.

PAR. 4. The effect of the acts and representations of the respondent as above described is and has been to mislead and deceive retailers of

jewelry and of diamonds and Swiss watches into the belief and understanding that the respondent manufactures the jewelry which he advertises and sells and that he imports the diamonds and Swiss watches which he sells and thereby to divert sales of such articles from the competitors of respondent described in paragraph 3 hereof; further effects of the aforesaid acts and representations of the respondent as above described, are to mislead and deceive the purchasing public into the belief that in purchasing from retailers of respondent's Swiss watches, jewelry, and diamonds they are saving the profit of a wholesaler and thus to injure substantial competition to a substantial extent.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice and injury of the competitors of the respondent and of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, the testimony and evidence submitted, and a brief in support of the allegations of the complaint (respondent having waived the offering of testimony in defense of the allegations of the complaint, and having waived the service of a brief in support of the charges of the complaint, waived the filing of a brief in defense of the allegations of the complaint and oral argument) and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is hereby ordered, That the respondent, Joseph Sculler, his representatives, agents, servants, and employees forthwith cease and

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desist, in connection with the sale and distribution of jewelry in interstate commerce, from representing in any way whatsoever that he, the said respondent, is a manufacturing jeweler, until and unless he becomes actually engaged in the regular course of his business in the manufacture of jewelry.

It is hereby further ordered, That the respondent, Joseph Sculler, his representatives, agents, servants, and employees forthwith cease and desist, in connection with the sale and distribution of diamonds in interstate commerce, from representing in any way whatsoever that he, the said respondent, is an importer of diamonds, until and unless he becomes actually engaged in the regular course of his business in the importing of diamonds.

And it is hereby further ordered, That the respondent, Joseph Sculler, his representatives, agents, servants, and employees forthwith cease and desist, in connection with the sale and distribution of Swiss watches in interstate commerce, from representing in any way whatsoever that he, the said respondent, is an importer of Swiss watches, until and unless he becomes actually engaged in the regular course of his business in the importation of Swiss watches.

And it is hereby further ordered, That the respondent, Joseph Sculler, within 30 days after the date of service upon him of this order, shall file with this Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

MACDONALD T. GREENE AND WALTER T. GREENE,
 COPARTNERS, TRADING UNDER THE FIRM NAME
 AND STYLE "DAKOTA ALFALFA GROWERS"

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

Docket 1967. Complaint, Aug. 28, 1931—Order, Jan. 29, 1932

Consent order requiring respondent partners, engaged as "Dakota Alfalfa Growers," in purchase of "Grimm," "Cossack," and "Common (Dakota No. 12)" alfalfa seed from Dakota Growers Finance Association, and in sale of said seed to seed houses, farmers' elevator and grain companies, etc., for resale to consumers, to cease and desist, as in said order set forth, from (1) using words "U. S. Registry" misleadingly on their containers; (2) falsely representing (a) said seed as coming to consumer direct from grower, or growers' cooperative, or place of production, with but one profit, or as grown from specially selected fields, and (b) themselves or their said vendor as a State sponsored cooperative improvement association; and (3) from attaching to their containers tags falsely indicating through colors employed, quality, variety, and official inspection and certification of seed therein contained.

Mr. PGad B. Morehouse for the Commission.

Morgan & Eastman, of Mitchell, S. Dak., for respondents.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that MacDonald T. Greene and Walter T. Greene, copartners trading under the firm name and style Dakota Alfalfa Growers, hereinafter referred to as respondents, have been and are now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, MacDonald T. Greene and Walter T. Greene, are copartners, trading under the firm name and style Dakota Alfalfa Growers, with principal place of business at the city of Mitchell, in the State of South Dakota, and are at the same time executive officers of Dakota Growers Finance Association, a cooperative marketing association, incorporated November 8, 1926, under the laws

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of the State of South Dakota, and having the same principal office as that of respondents. Respondents are now, and for more than two years last past have been engaged in the business of buying three varieties of alfalfa seed known as Grimm, Cossack, and Common (Dakota No. 12), from the Dakota Growers' Finance Association, and reselling the same to seed dealers, seed houses, farmers' elevator companies and farmers' grain companies, each of which in turn sells to the consumer. When sold, respondents cause said seed to be shipped from their principal place of business in South Dakota, in, through and to various other States of the United States for delivery to the purchasers thereof. In the course and conduct of their business as aforesaid, respondents are and have been in competition with other individuals, partnerships, corporations, and associations engaged in the sale and distribution in interstate commerce of alfalfa seed of the varieties known as Grimm, Cossack, and Common (Dakota No. 12).

PAR. 2. To the farmer or other consumer, a knowledge of the source or origin of alfalfa seed is a factor of great importance for agricultural reasons widely known and approved. In the course and conduct of their business as aforesaid, respondents cause the said alfalfa seed to be marketed and sold in canvas bags bearing upon the face of each in large letters, among other representations, the words and figures following: "U. S. Registry 223047—Dakota Alfalfa Growers—Worlds Best Seed—Mitchell, S. D. Warehouse," and containing inside a card on which is printed by respondents "The contents of this bag are protected against substitution by U. S. Registry," thereby tending to deceive prospective purchasers, and through the latter, the consuming public into the beliefs that said seed so marketed and sold is of an origin inspected, verified, and certified to by a Federal seed inspector under authority of the United States Department of Agriculture, and that the said seed so marketed and sold is registered in some bureau or department of the United States Government, whereas in truth and in fact the said seed is not of an origin inspected, verified, and certified to by a Federal seed inspector under authority of the United States Department of Agriculture, and the only registry number or registration involved is a trademark registration by respondents of their firm name and style.

PAR. 3. In the course and conduct of their business as aforesaid, by the use of the name Dakota Alfalfa Growers on the bags in which said seed is marketed and sold, as well as on stationery, advertising and other printed matter used by them to solicit sales, and by the use of the words "The seed contained in this bag reached you direct from the growers" in conjunction with the statement "It is from

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a Growers' Cooperative Association whose interest is the development of hardy alfalfa," on the tags attached to said bags, respondents represent to the purchasers and prospective purchasers that the said seed is grown by the sellers thereof and shipped directly from its place of production to the said purchasers with but one profit and cause the purchasing public to believe that the Dakota Alfalfa Growers and the Dakota Growers' Finance Association aforesaid have a character, object, and purpose similar to that of various State-sponsored crop improvement associations existing and operating in the State of South Dakota and elsewhere, which have for their object the improvement in quality, purity of variety, and verification of origin of alfalfa seed, whereas in truth and in fact, respondents do not raise any alfalfa seed either under the firm name and style of Dakota Alfalfa Growers, nor as executive officers of the Dakota Growers' Finance Association, a corporation, but the seed in question is raised by various farmer members of this association and delivered by them to the latter under a cooperative marketing agreement for the purpose of procuring the best possible price therefor, and the seed is then sold to respondents who resell the same using the foregoing representations.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have represented and do represent to purchasers and prospective purchasers that the said alfalfa seed is grown by members of a cooperative growers' association upon fields of virgin Dakota soil specially selected because of the quality thereof and at the same time represent that the selected fields "range from 12 to 40 years standing," thereby intending and meaning to say that said fields have had a stand or crop of alfalfa thereon continuously for from 12 to 40 years last past. These said representations are material concerning the value of the said alfalfa seed produced thereon by reason of the well-recognized importance of purity of variety, pedigree, freedom from noxious weeds and hardiness, and tend to mislead the purchasers and prospective purchasers into the belief that of the fields in which said seed originated some selection has been made by respondents which is calculated to improve the purity of variety, pedigree, freedom from noxious weeds, and hardiness of the crop to be grown from said seed, whereas in truth and in fact any person or persons engaged in the production of agricultural products to be handled by or through the Dakota Growers' Finance Association aforesaid may and do become members upon signing a membership agreement accepted and approved by the board of directors or the secretary of the association and upon the payment of a membership fee of \$1, and no selection is made by respondents

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from among such membership for the purpose of improving or maintaining the purity of variety, pedigree, freedom from noxious weeds or hardness of said seed.

PAR. 5. Because of the considered importance of maintaining and improving the pedigree, purity of variety and hardness of alfalfa seed grown in the States of Idaho, Montana, South Dakota, and Utah, the producers thereof, for sale and distribution in interstate commerce in competition with the respondents, through various crop improvement associations, have for a number of years last past, and prior to the use thereof by respondents, attached to the bags or sacks in which said seed is so packed, distributed, and sold, blue tags and red tags, which, respectively, through extensive use have come to and do indicate to the purchaser the highest and next highest quality alfalfa seed of the Grimm or Cossack varieties together with inspection and certification of origin under state supervision.

Respondents, in the course and conduct of their business, have been and are using in a similar manner tags of identical blue color on bags containing alfalfa seed of either Grimm, Cossack, or Dakota No. 12 (common) of a high grade, and tags of identical red color on bags containing Dakota No. 12 (common) alfalfa seed of a lower grade. Such seed so packed and labeled is sold and distributed by respondents in interstate commerce in a territory coextensive with that in which their competitors, aforesaid, sell and distribute the same products.

The adoption and use of the aforesaid colored tags by respondents in the manner aforesaid has the tendency to mislead prospective purchasers and purchasers into the belief that said seed is of the same purity of variety and pedigree and has been subjected to the same careful verification of origin as the alfalfa seed packed, sold, and distributed in interstate commerce by the members of the various crop improvement associations, aforesaid, when such is not the case and that in purchasing from respondents alfalfa seed under a blue or red tag the purchaser is purchasing alfalfa seed of the highest quality Grimm or Cossack varieties, without Dakota No. 12 (common), or any mixture thereof, when in truth and in fact such is not the case.

The use by respondents of the blue and red labels or tags in the manner aforesaid in conjunction with the misleading practices and misrepresentations and methods hereinbefore set out in paragraphs numbered 2, 3, and 4 of this complaint, have the tendency to mislead the purchaser with respect to the purity, quality, pedigree, variety, and value of their product, aforesaid, and all has the tendency unfairly to divert and does divert trade in interstate commerce from respondents' competitors to respondents.

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PAR. 6. The acts and things above alleged to have been done and the false and misleading representations and practices made and done by respondents are to the prejudice of the public and to the competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the written waiver of respondents of taking of testimony, findings as to facts, filing of briefs, oral argument and all other intervening procedure as well as the consent of said respondents that an order shall issue herein for them to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises having thereupon concluded that respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, MacDonald T. Greene and Walter T. Greene, and each of them, individually and as co-partners, trading under the firm name and style Dakota Alfalfa Growers, their agents, representatives, servants, and employees, in connection with all alfalfa seed, marketed and sold by them in interstate commerce, do cease and desist from:

(1) Using the words "U. S. Registry" on the containers, bags, or packages in which such seed is sold, or on tags, cards, or labels attached thereto, without at the same time plainly showing that said words refer to a trade-mark registration in the United States Patent Office.

(2) Representing in any way that said seed comes to the consumer direct from the growers or direct from a growers cooperative association; or that the seed therein packed is grown by the sellers and shipped directly from the seed's place of production to the said purchasers by the producers thereof with but one profit, when such is not the case.

(3) Representing in any manner whatsoever that either Dakota Alfalfa Growers or the Dakota Finance Association is a State-sponsored cooperative improvement association, when such is not the case.

(4) Representing that said seed is grown from specially selected fields unless and until some actual selection of such fields is made to

maintain or improve the purity of variety, pedigree, freedom from noxious weeds and hardness of said seed.

(5) From attaching to the bags or sacks, in which said seed is so packed, distributed, and sold, tags of the identical shade of blue or red which through extensive use have come to and do indicate to the purchaser that said bags and sacks contain the highest and next highest quality of alfalfa seed of the Grimm or Cossack varieties together with inspection and certification of origin under State supervision when such bags or sacks do not contain, respectively, the highest and next highest quality of alfalfa seed of said varieties and have not been inspected and certified under State supervision as to origin and do contain alfalfa seed known as Dakota No. 12 (common), unless and until respondents, in conspicuous printing on said tags clearly and truly inform the purchasers and prospective purchasers of the actual varieties of said seed therein contained and that the origin and inspection have not been certified to under State supervision.

It is further ordered, That the said respondents within 60 days from and after the date of the service upon them of this order shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
PROVIDENCE MALT COMPANY

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

Docket 1976. Complaint, Oct. 13, 1931—Decision, Feb. 15, 1932

Where a corporation engaged in sale of domestic malt sirups,

- (a) Labeled the containers of one of its said products with legends "GERMAN DELIGHT HOPFEN GESCHMACK MALZ SIRUP," and "GERMAN HOP FLAVORED MALT SIRUP," on opposite sides thereof, together with corruption of the German eagle, reproduction of German iron cross, word "Saazer" in conspicuous red letters, and notice featuring use in product in question of genuine imported Saazer hops in quantities effective to produce unequaled taste, flavor, and quality, as contrasted with exclusive use of domestic hops in most hop-flavored malts, and displayed aforesaid "German Delight Label" in advertising its said product, notwithstanding fact said product was not until recently flavored with more than 45 per cent Saazer hops;
- (b) Labeled containers of another domestic product, compounded of domestic ingredients exclusively, with brand and designation "Canadian Arms," and depicted on said labels a shield prominently displaying St. George's Cross, together with designs representing the lion, unicorn, beaver, sheaf of wheat, and other symbols or characters generally associated in the public mind with Canada or the British Empire, and in advertising aforesaid product displayed such Canadian Arms label;

With capacity and tendency to mislead and deceive wholesale and retail dealers, and with result of supplying them with means of misleading and deceiving purchasing public into believing former product to have been imported and flavored with famous and more expensive Saazer Bohemian hops exclusively, and latter to be either imported, or domestic product of Canadian ingredients, and induce purchase of said products in reliance on such erroneous beliefs, and with capacity and tendency to divert trade to said corporation from competitors dealing in domestic malt sirups of domestic ingredients, entirely, without use of any such foreign trade names, descriptions, etc., or in imported malt or domestic Saazer hop flavored sirups:

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

Mr. James M. Brinson for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Rhode Island corporation engaged in the sale of malt sirup to purchasers in the various States, and with principal place of business in Providence, with misbranding or mislabeling as to

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source or origin and composition of product, and advertising falsely or misleadingly in said respects; in that it offers and sells certain products, in which the famous, more desired and more expensive Saazer hops have either not been used, or not used in sufficient quantity "to produce a distinctive taste, flavor or quality, or to be perceptible or appreciable," in containers bearing labels with German words and insignia, and a notice featuring the use of imported hops therein, depicts aforesaid labels in wide advertisements of said products in periodicals circulating in the various States, together with representation "We use genuine imported Saazer hops in this blend,"² and similarly offers another domestic product composed entirely of domestic ingredients in containers with labels bearing the Canadian arms and various other British insignia.³

Respondent's practices, as aforesaid, "have had and have the capacity and tendency to mislead and deceive, and have furnished and furnish dealers, wholesale and retail, with the means to mislead and deceive the purchasing public" into the belief that said products have been and are imported into the United States from Germany and have been and are flavored with Saazer hops, or have been imported from Canada or made out of Canadian ingredients, respectively, and have effect of diverting trade to respondent from competitors offering and selling imported malt Saazer hop flavored sirup, domestic malt sirup so flavored, and domestic sirups flavored with domestic hops, and capacity and tendency, so to do; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon respondent Providence Malt Co., a corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed answer, a hearing was duly held before an examiner of the Federal Trade Commission theretofore duly appointed for such purpose, in the course of which counsel for the Commission and Saul Abrams, representing Providence Malt Co., entered into a stipulation as to the facts in lieu of testimony and evidence, and the respondent consented

² As alleged in the complaint, "malt sirup is not a blend in the generally accepted sense of the word and is not so considered either by the trade or the consuming public."

³ Aforesaid labels and notices are described below in the findings at page 32.

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in such stipulation that the Federal Trade Commission may forthwith proceed to file its report stating its findings as to the facts and conclusion drawn therefrom, and to issue and serve an order to cease and desist from the practices charged in the complaint. Such stipulation is approved, and this proceeding having come on regularly for decision upon the complaint, answer and stipulation, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises makes this its report in writing stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Providence Malt Co. has been, for more than a year last past, and now is, a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal place of business in the city of Providence in said State. It has been and is engaged in offering for sale and selling in commerce among and between the several States of the United States a product, consisting of malt sirup, which it has caused and causes to be transported, when sold, from its place of business in Providence, R. I., to purchasers located in the several States of the United States other than the State of Rhode Island.

PAR. 2. In the course and conduct of such business, respondent has been and now is in competition with individuals, partnerships, and corporations engaged in the sale and distribution of malt sirup and similar products, in like commerce.

PAR. 3. Saaz is the name of a town in that portion of Czechoslovakia formerly called Bohemia and is in the center of the hop-growing industry of that country. The district in the midst of which it is situated is now, and for a considerable period of time has been, known throughout the world for the excellence of the hops it produces, and of malt products flavored with them. Hops grown in such districts have long been known and now are known, described and designated as Saazer hops, in the United States. Saazer hops and the distinctive flavor resulting from their use in malt products have been and are widely and popularly known among the purchasing public in the United States, and Saazer hops command a higher price than domestic hops; and malt sirup flavored with such Saazer hops commands a higher price than malt sirup flavored with domestic hops.

PAR. 4. It has been and is the practice of respondent Providence Malt Co. to offer for sale and sell, in the course and conduct of its business, certain products in containers, with labels affixed thereto,

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which are so arranged that on one side of the can or container appear the words:

GERMAN
DELIGHT
HOPFEN GESCHMACK
MALZ SIRUP

and on the other side, opposite, appear the following words:

GERMAN
DELIGHT
HOP FLAVORED
MALT SIRUP

The word "German" appears in large and conspicuous letters and the word "Delight" in relatively small and inconspicuous letters. The label is so arranged that between the words "German Delight" and the words "Hopfen Geschmack Malz Sirup" on one side of the container and the words "German Delight" and the words "Hop Flavored Malt Sirup" on the opposite side, appear circles which inclose a corruption of the so-called German eagle; and on each side of it are reproductions of the so-called German iron cross. Above the corruption of the German eagle appears in both circles the word "Saazer" in conspicuous red letters; and, below such design appear in one circle, the German words "Hopfen Geschmack," and in the other the words "Hop Flavored." On a side of the can there appears on the label at a point equally distant from each circle, the following in conspicuous letters:

Important. Most hop flavored malts are made with domestic hops entirely. In German Delight, however, genuine imported Saazer hops are used in the blend in sufficient quantity to produce a taste, flavor, and quality which can not be duplicated. Distributors, Providence Malt Co., Providence, R. I.

In truth and in fact the product of the respondent branded and labeled German Delight is not and has not been made in Germany or in the Saazer district of Czechoslovakia, formerly Bohemia, or imported therefrom, and until September, 1930, was flavored with only 45 per cent of Saazer hops. Since September, 1930, the said product of the respondent has been flavored with Saazer hops exclusively—that is to say, 100 per cent Saazer hops has been used for such purposes.

PAR 5. Respondent Providence Malt Co. has caused other products to be offered for sale and sold in containers bearing labels on which said products are branded or designated as Canadian Arms. On

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such labels there appear, in addition to the brand or name Canadian Arms, a shield on which is displayed prominently in red, St. George's Cross. The label contains designs representing the lion, the unicorn, the beaver, a sheaf of wheat, and other symbols or characters generally associated in the public mind with Canada or the British Empire.

In truth and in fact the product offered for sale and sold by respondent, branded and labeled Canadian Arms has not been, was not and is not manufactured in Canada or in any foreign country, or imported into the United States therefrom, but has been, was, and is manufactured in the United States from domestic ingredients or materials entirely.

PAR. 6. The respondent has also caused its product to be advertised in two issues of the Malt Age, a trade journal circulating throughout the United States among those engaged in the manufacture and sale of malt sirups and malt sirup products. One advertisement appeared in such journal in May, 1930, and the other in June, 1930. In the advertisement of May, 1930, appear representations of the containers of the respondent; one bearing the German Delight label and the other the Canadian Arms label. The June advertisement which appears in the June, 1930, issue, known as Commission's Exhibit No. 2, relates solely to the product described and designated as German Delight and it contains a representation or reproduction of the container, with the label hereinbefore described.

PAR. 7. There are competitors of respondents who offer for sale and sell in interstate commerce malt sirup manufactured in the United States, entirely of domestic ingredients, and do not use as a trade name or trade-mark any foreign name, description, emblem, symbol or design and on whose labels appear no foreign words at all.

PAR. 8. The practices of respondent described in paragraphs 2, 3, 4, 5, and 6 hereof have had and have the capacity and tendency to mislead and deceive and have furnished and furnish dealers, wholesale and retail, with means whereby they have been and are enabled to mislead and deceive the purchasing public into the belief that the product offered for sale and sold by respondent, under and by the name German Delight has been and is an imported product flavored exclusively with Saazer hops, and to induce its purchase in reliance on such erroneous belief, and that its product offered for sale and sold under and by the name Canadian Arms, has been and is imported into the United States from Canada, or has been and is manufactured in the United States of materials or ingredients imported from Canada, and to induce purchase of such product in reliance on such erroneous belief.

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PAR. 9. The aforesaid practices of respondent have had the capacity and tendency to divert trade to respondent from competitors offering for sale and selling, in interstate commerce, malt sirup manufactured in the United States entirely of domestic materials who do not use as a trade name or trade-mark any foreign name, description, emblem, symbol, or design, and on whose label appear no foreign words, and to divert to respondent, trade from individuals, partnerships, and corporations selling or offering for sale in interstate commerce their malt sirup imported into the United States or malt sirup manufactured in the United States and flavored with Saazer hops.

CONCLUSION

The practices of respondent, under the conditions and circumstances described in the above and foregoing findings as to the facts, are all to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts in lieu of testimony and evidence entered into by and between counsel for the Commission and respondent Providence Malt Co. in course of a hearing duly held before an examiner of the Federal Trade Commission theretofore appointed for such purpose, and respondent having consented in such stipulation that the Federal Trade Commission may proceed forthwith to file its report stating its findings as to the facts, together with its conclusion drawn therefrom, and may proceed forthwith to issue an order to cease and desist from the practices charged in the complaint, and the Commission having filed its report stating its findings as to the facts and its conclusion drawn therefrom that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That respondent, Providence Malt Co., its officers, agents, and employees, do cease and desist, directly and indirectly—

(1) From using the words "German Delight" or any pictures, illustrations, symbols, or emblems associated with, or suggestive of, Germany, in connection with offering for sale and selling, in inter-

state commerce, either in advertisements or on containers of, or as a trade name or trade-mark for, or to describe or designate, any malt or malt sirup product manufactured in the United States of domestic ingredients, unless there appear conspicuously in immediate conjunction with such words "German Delight," or with such pictures, illustrations, symbols, or emblems, apt and adequate words clearly showing that such product is manufactured in the United States entirely of domestic ingredients.

(2) From using the word "Saazer," or any pictures, illustrations, symbols, or emblems associated with, or suggestive of Saaz or the Saazer district of Czechoslovakia, in connection with offering for sale, in interstate commerce, any hop flavored malt sirup or malt sirup product, unless such product is flavored 100 per cent with Saazer hops.

(3) From using the words "German Delight" accompanied by the words "Imported Saazer Hop Flavor," or the word "Saazer" in combination or association with other words, together with foreign illustrations, pictures, symbols, or emblems, on labels of containers or in advertisements of, or as a trade-mark or trade name for, or to describe or designate any malt or malt sirup product offered for sale or sold in interstate commerce which has been, or is, manufactured in the United States from and out of domestic ingredients flavored with imported Saazer hops, unless such product is flavored 100 per cent with Saazer hops, and there appear, in immediate conjunction with the words "German Delight" or any foreign illustrations, pictures, symbols, or emblems, apt and adequate words showing that such product is manufactured in the United States of domestic ingredients flavored with imported Saazer hops.

(4) From using the words "Canadian Arms," or any pictures, illustrations, symbols, or designs associated with, or suggestive of, Canada, in advertisements or on containers of, as a trade-mark or trade name, or to describe or designate, any product offered for sale or sold in interstate commerce manufactured in the United States entirely of domestic material, unless there conspicuously appear in immediate conjunction with such words "Canadian Arms" and such pictures, illustrations, symbols, or emblems, apt and adequate words clearly showing that such product is manufactured in the United States entirely of domestic ingredients.

It is further ordered, That respondent shall, within 60 days after the service of this order, file reports in writing with the Commission setting forth in detail the manner and form of its compliance therewith.

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IN THE MATTER OF
**SANFORD MILLS AND O. F. KENDALL, ET AL., COPART-
 NERS, DOING BUSINESS AS L. C. CHASE & COMPANY**

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

Docket 1587. Complaint, Mar. 22, 1929—Decision, Feb. 25, 1932

Where a corporation engaged in manufacture of an imitation leather so made up as to closely resemble in its numerous grains, finishes, and colors all the leading varieties of leather, and in sale thereof under name "Leatherwove," through sole sales agent to wholesalers, jobbers, and manufacturers for automobile trim, furniture upholstery, and manufacture of novelties, shoes, etc., in competition both with others similarly engaged, and with those engaged in sale of real leather; and aforesaid sales agent; used term "buckskin" in sample books and circulars, and on shipping tags in connection with sale of a particular variety of aforesaid "Leatherwove"; with effect of putting such artificial product into the channels of trade under said false and misleading name, and of thereby suggesting to customers and latter's vendees misrepresentation of said goods as made of leather, and furnishing them with means of so doing, and with tendency and capacity to deceive ultimate purchasers of products made thereof into believing same to be composed in whole or in part of leather, and divert trade from competitors dealing in leather, and in imitation leather without misrepresenting composition thereof, and otherwise injure the same:

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

Mr. E. J. Hornibrook for the Commission.

Heard, Smith & Tennant, of Boston, Mass., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Sanford Mills, a Maine corporation engaged in the manufacture of imitation leather, with head office and principal place of business in Sanford, Me., and respondent individuals, partners, with principal office and place of business in Boston, engaged in sale of said product to manufacturers of automobiles, furniture, etc., who make their products in whole or in part thereof, with naming product misleadingly, misbranding or mislabeling, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, named, designated, branded, and labeled aforesaid imitation leather, consisting of a cotton cloth coated on one

side with a special preparation to give it the appearance of genuine leather, but containing no leather, "Leatherwove," and so advertised same in magazines of general circulation and in circulars, catalogues, price lists, letters, letterheads, and other printed matter circulated generally, and also frequently used the term "buckskin" in price lists and other printed matter in designating various kinds or styles of aforesaid "Leatherwove."

The use, by respondents, as alleged, of aforesaid names and designations, places in (1) hands of their vendees means of committing a fraud upon retail dealers to whom said vendees sell the automobiles, furniture and other products made by them in whole or in part of said imitation leather, and eventually upon (2) "the consuming public by enabling said vendees and said retail dealers to represent and sell the products made by them in whole or in part of said imitation leather to retail dealers and the ultimate consumers of said imitation leather as and for articles made in whole or in part of real leather," and has tendency to and effect of diverting business from and otherwise injuring competitors of respondent, many of whom sell and supply real leather to manufacturers of trunks, etc., correctly represented by said manufacturers to the retail trade as composed in whole or in part of genuine leather, and others of whom sell and supply to such manufacturers artificial leathers without in anywise representing the same as composed either partly or wholly of genuine leather; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the above-named respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of the said act.

Respondents having entered their appearance and filed answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges of said complaint and in opposition thereto. Thereafter this proceeding came on regularly to be heard, and the Commission having duly considered the record and being now fully advised in the premises makes this its report stating its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Sanford Mills is a corporation organized and existing under and by virtue of the laws of the State of Maine, with its principal office and place of business in the town of Sanford, in said State. It is engaged, among other things, in the manufacture of artificial or imitation leather at the city of Reading, in the State of Massachusetts, and in the sale thereof, as hereinbelow set forth.

Respondents O. F. Kendall, W. H. Mertz, J. E. Nelson, James Clemons, Henry C. Hopewell, W. P. Underhill, F. B. Hopewell, and F. C. Hopewell are copartners trading under the name and style L. C. Chase & Co., with their principal office and place of business in the city of Boston, State of Massachusetts. They will hereinafter be referred to as respondents L. C. Chase & Co. Under and by virtue of an agreement with respondent Sanford Mills they have been for many years and are now the sole selling and distributing agents of the artificial or imitation leather referred to above. Since the execution of said agreement, under their said copartnership name they have had and now exercise complete control of the marketing, selling, advertising, and distributing of the product in question, and receive and have received a certain stated commission for such services.

For many years this product has been and it is now sold and advertised under the trade name of Chase Leatherwove. Chase Leatherwove is sold to wholesalers, jobbers, and manufacturers, and is used for the purposes of trimming automobiles, upholstering furniture, and in the making of luggage, novelties, shoes, and other products.

When Chase Leatherwove is sold by respondent, L. C. Chase & Co. to such wholesalers, jobbers, and manufacturers it is packed in rolls by respondent Sanford Mills at its factory at said Reading, in the State of Massachusetts, and shipped from there into and through other States of the United States to the respective places of business of said wholesalers, jobbers, and manufacturers. The said manufacturers make said products in whole or in part of Chase Leatherwove and sell such products to retailers, who in turn sell the same to the consuming public.

PAR. 2. Each and all of the respondents, in the course and conduct of their said businesses, are in competition with other individuals, partnerships, and corporations likewise engaged in the sale of artificial or imitation leather among the several States, and also sell

their said artificial or imitation leather in such competition with real leather, especially with the lower grades of real leather and with leather split and artificially coated and grained to imitate natural grains of leather. Many of these said competitors sell and supply such real leather and artificial or imitation leather to manufacturers for use in the making of automobiles, furniture, luggage, novelties, shoes, and other products. Some of said competitors who manufacture such artificial or imitation leather sell the same under such names as Fabrikoid and Keratol, and these latter in nowise represent that their products are composed in whole or in part of real leather.

PAR. 3. Respondent corporation makes said Chase Leatherwove out of cotton cloth, coated on one side with pyroxylin compound and colored matter so as to give one side the appearance of genuine leather. The various thicknesses of cloth and the various colors and finishes used combine to make the product adaptable for many purposes as a substitute for leather. Its numerous grains, finishes, and colors closely resemble all the leading varieties of leather. The product Leatherwove contains no leather.

PAR. 4. For several years, and until after the filing of complaint herein, respondents in designating a particular style of Chase Leatherwove frequently used the term "buckskin" on samples, in sample books, in circulars, and on shipping tags used in the sale and the promotion of the sale of the product Chase Leatherwove. These samples, sample books, circulars, and shipping tags containing the word "buckskin" as aforesaid were printed and distributed by respondents L. C. Chase & Co. at the expense of the respondent Sanford Mills. These sample books and circulars were distributed in large quantities by respondents L. C. Chase & Co. to said customers—about 2,000 books a year.

The term "buckskin" is understood by the trade and consuming public to mean a leather made from the skin or hide of an animal, usually a deer. Funk & Wagnalls Standard Dictionary defines the term "buckskin" as a soft, strong, pliable, grayish or yellowish oil-dressed or brains-dressed leather, properly made from deerskin but now chiefly from sheepskin.

PAR. 5. The sales of said Chase Leatherwove for the year 1930 were between \$700,000 and \$800,000, and in some years such sales have exceeded \$2,000,000. Over \$250,000 have been expended in advertising Chase Leatherwove. Respondents have between 1,200 and 1,500 customers scattered throughout the several States of the United States.

PAR. 6. The name "buckskin" as so applied to Chase Leatherwove is false and misleading, and by its said use respondents have put their

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said artificial and imitation product bearing such false and misleading name into the channels of trade, and have thereby furnished their customers and those dealing with them the means to misrepresent that the goods made from such Leatherwove were made of leather, and the term "buckskin" as so used suggests the use of said term by their said customers and the customers of their said customers, and its said use has the tendency and capacity to deceive ultimate purchasers of products made in whole or in part of Leatherwove into the belief that they are made in whole or in part of leather, and to divert trade to respondents from their said competitors and to otherwise injure them.

CONCLUSION

The above alleged acts and practices are all to the prejudice of the public and to respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondents, the testimony taken and the record herein, and the Commission having made its findings as to the facts and conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondents, Sanford Mills and O. F. Kendall, W. H. Mertz, J. E. Nelson, James Clemons, Henry C. Hopewell, W. P. Underhill, F. B. Hopewell, and F. C. Hopewell, copartners doing business under the name and style of L. C. Chase & Co., cease and desist from using the name or term "buckskin," or any other word, term or phrase of like import on samples, in sample books, in circulars, on shipping tags or in any other manner in connection with the advertising, sale, or offering for sale in commerce among the several States of the United States or within the District of Columbia of a product not made of leather.

It is further ordered, That the respondents, Sanford Mills and O. F. Kendall, W. H. Mertz, J. E. Nelson, James Clemons, Henry C. Hopewell, W. P. Underhill, F. B. Hopewell, and F. C. Hopewell,

copartners doing business under the name and style of L. C. Chase & Co., shall, within 60 days after the service upon them of a copy of this order to cease and desist, 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 hereinbefore set forth.

ORDER OF DISMISSAL AS TO WORD "LEATHERWOVE"

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondents, the testimony taken and the record herein, and the Commission being now duly advised in the premises,

It is ordered, That the complaint herein be, and the same is hereby dismissed as to the use of the word "Leatherwove."

Complaint

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IN THE MATTER OF

JOHN C. HERMAN AND EDWIN S. HERMAN, PARTNERS,
DOING BUSINESS AS JOHN C. HERMAN & COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914.*Docket 1443. Complaint, Mar. 8, 1927—Decision, Feb. 27, 1932*

Consent order requiring respondent partner cigar manufacturers to cease and desist use of word "Havana" in connection with sale of their so-called "Havana Darts" cigars, containing no Havana or Cuban tobacco, or from applying word "Havana" to cigars not composed entirely of such tobacco, or using any other name, statement, etc., falsely implying or importing a Havana or Cuban tobacco content; as in said order set forth and qualified.

Mr. Henry Miller for the Commission.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that John C. Herman and Edwin S. Herman, partners doing business under the trade name and style John C. Herman & Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect, as follows:

PARAGRAPHS 1. Respondents are partners doing business under the trade name and style John C. Herman & Co., with their place of business in the city of Harrisburg, State of Pennsylvania. They are engaged in the manufacture of cigars and the sale thereof to wholesale and retail dealers located at points in various States of the United States. They cause said cigars when so sold to be transported from their said place of business in the city of Harrisburg, Pa., into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of cigars in commerce between and among various States of the United States.

PAR. 2. For many years prior to the date hereof, tobacco has been and is now a commercial export product from the island of Cuba and the term "Havana" tobacco has for many years meant, and still means to the cigar tobacco trade, the cigar trade and the consuming

public, tobacco grown on the island of Cuba. Many among the said trades and many of the consuming public have for many years considered and still consider that cigars made of said Havana tobacco are superior in quality to cigars made of tobacco grown elsewhere than on the island of Cuba.

PAR. 3. Among the cigars manufactured and sold by respondents in interstate commerce as in paragraph 1 hereof set out, are certain cigars named and designated by respondents Havana Darts. Respondents pack their said Havana Darts cigars in boxes and containers upon which respondents cause to be set forth in sundry places and positions, said name Havana Darts printed in large and conspicuous letters together with statements to the effect that said cigars are made of Havana tobacco as in paragraph 2 hereof defined, and upon each said cigars respondents cause to be placed a band and label upon which said name, Havana Darts, is conspicuously printed and set forth. Respondents ship and deliver said cigars so packed, labeled and banded, to aforesaid dealer vendees. Said wholesale dealer vendees resell said cigars to retail dealers and ship and deliver said cigars, still so packed, labeled, and banded, to their said retail dealer vendees. Said retail dealer vendees, both those who purchase said cigars directly from respondent and those who purchase same from said wholesale dealers, offer for sale and sell said cigars, still so packed, labeled, and banded, to the consuming public.

PAR. 4. The use by respondents of said name and designation Havana Darts in the packing, labeling, and banding of their said cigars, all as in paragraph 3 hereof set out, has the capacity and tendency to and does mislead and deceive many among the aforesaid trades and many of the consuming public into the belief that the respondents' said Havana Darts cigars are composed of Havana tobacco, as in paragraph 2 hereof defined, and causes many of said trades and many of the consuming public to purchase respondents' said Havana Darts cigars in that belief. In truth and in fact, respondents' said Havana Darts cigars contain no Havana tobacco, as in paragraph 2 hereof defined, and are composed entirely of tobacco grown elsewhere than on the island of Cuba.

PAR. 5. There are among the competitors of respondents referred to in paragraph 1 hereof, many who sell cigars composed of Havana tobacco, as defined in paragraph 2 hereof, and who rightfully and lawfully represent their said cigars to be so composed. There are others of such competitors who sell cigars manufactured of tobacco other than said Havana tobacco and who in no wise represent that their said cigars are composed of said Havana tobacco. Respondents' acts and practices, all in this complaint above set out, tend to

divert business from and otherwise injure and prejudice said competitors.

PAR. 6. For about five years last past, respondents have engaged in the acts and practices under the circumstances and conditions and with the results hereinbefore set out.

PAR. 7. The above alleged acts and practices of respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint in this proceeding upon John C. Herman and Edwin S. Herman, partners doing business under the trade name and style John C. Herman & Co., respondents above named, in which complaint it is charged that respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents not having filed answer to said complaint within the time therein specified, a hearing for the taking of testimony with respect to the charges in said complaint was held pursuant to order and notice before an examiner of the Commission thereto duly appointed. At said hearing respondents entered their appearances in this proceeding and submitted their answer to said complaint with request that the same be filed and accepted by the Commission, whereupon said hearing for the taking of testimony was closed. In said answer to the complaint respondents formally state in writing that they desire to waive hearing on the charges set forth in the complaint and not to contest the proceeding, that they refrain from contesting the proceeding and consent that the Commission may make, enter, and serve upon them an order to cease and desist from the violations of the law alleged in the complaint. Respondents also request in said answer that the Commission proceed to final disposition of this proceeding upon said answer pursuant to the provisions of paragraph 2 of Rule III of the Commission's Rules of Practice and without further hearings.

The said answer of the respondents was duly accepted and filed by the Commission, and thereupon this proceeding came on before the

Federal Trade Commission on the entire record, and the Commission having duly considered the same and being fully advised in the premises.

It is now ordered, Pursuant to paragraph 2 of Rule III of the Rules of Practice heretofore adopted by the Commission and still in force, that respondents John C. Herman and Edwin S. Herman, their agents, representatives, servants, employees, and successors in business, in connection with or in the course of the sale or distribution of cigars in interstate commerce, do cease and desist:

(1) From using or causing to be used the word "Havana" in the brand name or designation "Havana Darts" for any such cigars which are not composed wholly of Havana or Cuban tobacco, unless in each instance when and where so used said brand name or designation be immediately accompanied by a statement, assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact, respectively, that said cigars do not contain any Havana or Cuban tobacco, or that the cigars contain such tobacco in part only, as the case may be.

(2) From directly or indirectly applying the word "Havana" singly to any such cigars which are not composed entirely of Havana or Cuban tobacco.

(3) From directly or indirectly applying to any of such cigars any other name, designation, statement, assertion, phrase or representation which implies, or imports that such cigars contain Havana or Cuban tobacco in whole or in part when such is not the fact.

It is further ordered, That said respondents John C. Herman and Edwin S. Herman shall, within 60 days after the service upon them of a copy 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 hereinbefore set forth.

Complaint

16 F. T. C.

IN THE MATTER OF
JOSEPH B. BRANDLER

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

Docket 1921. Complaint, Feb. 27, 1931—Decision, Feb. 29, 1932

Where an individual dealing as manufacturer's agent in a knitted Astrakhan cloth fabric, imitating Persian lamb fur on the outer or wool Angora pile side thereof, and in the sale of a large part thereof to a cloak manufacturer for latter's use in manufacture of garments (1) sold by him in competition with genuine Persian lamb fur coats, and Astrakhan coats resembling the appearance thereof, and (2) so lined and made up as not to permit purchasers and prospective purchasers of said manufacturer's retail dealer vendees to see the reverse side of the fabric in question without tearing or ripping the lining of the garment,

Adopted the phrase "Persian pelt" as a name for said fabric and furnished aforesaid manufacturer labels displaying words "Persian pelt—registered U. S. A.," in gold colored letters on black, for latter's use in labeling garments made by him thereof as aforesaid, and made such statements in advertising garments above referred to in a women's wear trade periodical, and in rotogravure circulars as "excellent copy of the Persian lamb fur. The difference can hardly be detected at sight. Feature in the ensemble—coat and beret of Persian pelt consigned to us exclusively," and "cold days would prove welcome to a smart coat and beret of Persian pelt, a fabric that is a remarkable reproduction of Persian lamb," and featured words "Persian lamb" in circulars distributed among retail dealers by said manufacturer under said individual's instructions;

With tendency and capacity to deceive and mislead purchasing public into believing said coats to be of Persian lambskin, induce the purchase thereof in reliance on such belief, and with effect of placing in the hands of retailers, through manufacturers and other thus supplied with aforesaid labels, means of consummating a fraud upon the purchasing public, and with capacity and tendency to divert trade from and otherwise prejudice and injure competitors, and operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the fabric coat, and fur coat, businesses:

Held, That such practices, under the circumstances and conditions set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

Mr. Maxwell E. Sparrow, Mr. Herman Levy, and Mr. William Michaels, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission act, the Commission charged

respondent individual, engaged in sale and distribution of a knitted fabric with a wool pile, and with principal place of business in New York City, with naming product misleadingly, misbranding or mislabeling, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent designates aforesaid product "Persian pelt" and supplies garment manufacturer vendees with labels bearing said words, notwithstanding fact product in question was not made from pelt of the Persian lamb or of any other animal; with capacity and tendency to mislead and deceive purchasing public into believing garments fabricated or made thereof and labeled as aforesaid, were made from the pelt of some animal, and with effect of inducing purchase thereof in reliance on such erroneous belief, and with capacity and tendency so to do, and to divert trade from and otherwise injure competitors; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon Joseph B. Brandler, an individual, hereinafter referred to as respondent, charging him with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondent having entered his appearance and having filed his answer herein, hearings were had, and evidence was thereupon introduced on behalf of the Commission and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the brief and oral argument of counsel for the Commission (counsel for the respondent having failed to file a brief or to appear at the oral argument although duly notified thereof), and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Joseph B. Brandler is an individual doing business under that name, with his principal place of business located in the city of New York in the State of New York.

For more than one year last past he has been engaged as a manufacturer's agent in the sale and distribution of a knitted fabric with a wool and Angora pile in commerce between and among various States of the United States. Respondent caused this product when sold to be shipped from the factory or plant of the Tingue Manufacturing Co., Seymour, Conn., manufacturer thereof, to the purchaser or purchasers thereof located in a State or States of the United States other than the State of origin of such shipment.

In the course and conduct of his business the respondent was at all times herein referred to in competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution in interstate commerce of similar and competitive products.

PAR. 2. The fabric above referred to is an astrakhan cloth, an imitation of Persian lamb fur. During the year 1930 the respondent sold this product to manufacturers of coats to be made by such manufacturers into coats and sold to the purchasing public in that form. Respondent also sold the said fabric to department stores to be sold by the yard over the counter. About 75 per cent of this product sold by respondent was sold to coat manufacturers and about 25 per cent to department stores.

PAR. 3. Respondent has adopted the phrase "Persian Pelt" as a name for the said fabric product. Under that name respondent has offered for sale and sold the said fabric as aforesaid. Practically all of said fabric, sold as aforesaid, has been sold by the respondent to the firm of Sisselman & Cohan, a cloak and suit manufacturer at 501 Seventh Avenue, New York City. When this fabric was sold by respondent to Sisselman & Cohan it was usually shipped from the manufacturing plant of the Tingue Manufacturing Co. at Seymour, Conn., direct to Sisselman & Cohan upon orders secured by respondent. In some instances the fabric was shipped first to the respondent and then from the respondent's place of business in New York City to Sisselman & Cohan.

PAR. 4. In connection with the sale of this fabric to Sisselman & Cohan the respondent had made and furnished the said firm of Sisselman & Cohan with more than one thousand coat labels. These labels were marked with the words "Persian Pelt." The wording on the labels was in gold colored letters upon a black background surrounded by a gold colored border, and was as follows: "Persian Pelt—Registered U. S. A." These labels were sewed into coats manufactured of the said fabric by Sisselman & Cohan and were sold by Sisselman & Cohan to retail dealers in various States of the United States other than the State of New York.

PAR. 5. As an inducement to purchasers and prospective purchasers of coats manufactured by Sisselman & Cohan and labeled "Persian Pelt" as above, the respondent inserted advertisements in the Women's Wear Daily, a trade paper circulated generally throughout the United States and sold to the women's wear trade. One such advertisement appeared in the Women's Wear Daily for Thursday, September 4, 1930, on page 23 of section 1. This advertisement included a picture of a young woman wearing a "Persian Pelt" coat and is worded as follows:

Black, most excellent copy of the Persian lamb fur. The difference can hardly be detected at sight. Feature in the ensemble—coat and beret of Persian Pelt consigned to us exclusively.

The firm of Sisselman & Cohan acting under instructions from respondent Brandler distributed to retail dealers a circular prepared by respondent Brandler, which circular features Persian Pelt as the nearest imitation to Persian lamb, and as being sold exclusively in the United States by the firm of Sisselman & Cohan, Inc. Respondent also advertised the product which he called Persian Pelt in roto-gravure advertising circulars. One such advertisement read in part as follows:

Cold days will prove welcome to a smart coat and beret of Persian Pelt, a fabric that is a remarkable reproduction of Persian lamb.

PAR. 6. The coats manufactured by the firm of Sisselman & Cohan of the product called Persian Pelt by the respondent were sold by the said firm of Sisselman & Cohan to retail dealers in various States of the United States, particularly in the Northern States. These retailers in turn resold the said coats with the label above referred to sewed therein to individual consumers. These coats were sold to the individual consumers under the name Persian Pelt. The coats were fully lined and the lining was sewed so that purchasers and prospective purchasers were unable to see the reverse side of the product called Persian Pelt without tearing or ripping the lining.

PAR. 7. The fabric termed by respondent Persian Pelt is an imitation and reproduction of the fur of the Persian lamb on the outer or pile side of the fabric.

PAR. 8. The word "Persian" is used in the fur trade to designate, mean, and refer to the skins of the Persian lamb or coats made of such skins. The word "pelt" means and is generally understood to mean the fur covered skin of an animal. Coats made of the product sold by the respondent under the name Persian Pelt are sold in competition with Persian lamb coats and with coats manufactured of other astrakhan fabrics which closely resemble in appearance Persian

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lamb fur. The use by the respondent of the name Persian Pelt or of the word "Persian" or of the word "Pelt," to label, describe or refer to the said astrakhan fabric has the tendency and capacity to deceive and mislead the purchasing public into the belief that coats manufactured thereof and so advertised, labeled and referred to as Persian Pelt are in fact manufactured of the skin of the Persian lamb, and to induce the purchase of such coats in reliance upon such belief and thereby to divert trade from and otherwise injure competitors of respondent.

PAR. 9. The respondent in furnishing coat manufacturers or others with labels bearing the words "Persian Pelt" to be used or which may be used in coats manufactured of the said astrakhan fabrics as sold by the respondent places in the hands of the coat manufacturers or others and through the coat manufacturers places in the hands of retail dealers a means of consummating a fraud upon the purchasing public.

PAR. 10. The use by respondent of the name Persian Pelt to label, describe, or refer to the said astrakhan fabric, or to coats manufactured of the said astrakhan fabric, and placing in the hands of others a means whereby they may so label coats made of the said fabric has the capacity and tendency to divert trade from and otherwise prejudice and injure the competitors of respondent and to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the fabric-coat business and in the fur-coat business.

CONCLUSION

The practices of respondent, Joseph B. Brandler, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony taken and brief filed therein, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Joseph B. Brandler, his agents, representatives, and employees, in selling and/or offering for sale in commerce among the several States of the United States, or in the District of Columbia, the knitted fabric or textile described in the findings as to the fact herein, and any similar knitted fabric or textile and/or in selling and offering for sale any such knitted fabric or textile for manufacture into wearing apparel to be sold or offered for sale in the commerce aforesaid, cease and desist from:

1. Labeling, representing, advertising such fabrics or textiles as Persian Pelt.

2. Labeling, advertising, representing such fabrics or textiles as Persian.

3. Labeling, advertising, representing such fabrics or textile as Pelt.

4. Furnishing or causing to be furnished to purchasers of such fabrics or textiles labels, tags, or other markers bearing the word "Persian" or bearing the word "Pelt," or bearing the phrase "Persian Pelt," in order that the said purchasers may place said labels, tags, or other markers in garments manufactured for resale by said purchasers of the said fabrics or textiles.

It is further ordered, That respondent shall within 30 days from the date of the service upon it of the order herein file with the Commission a report in writing setting forth in detail the manner and form in which the order has been complied with and conformed to.

IN THE MATTER OF
H. H. BROOTEN & SONS, INC.

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

Docket 1927. Complaint, Mar. 16, 1931—Decision, Feb. 29, 1932

Where a corporation engaged in the distribution and sale in both liquid and solid form of a shalelike mineral of alleged therapeutic or curative properties, for external and internal use, and in the operation of a sanitarium for treatment based on application and use of aforesaid product,

- (a) Represented aforesaid so-called Brooten's Kelp Ore in circulars, leaflets, labels, and other advertising media as a remedy and cure for sugar diabetes, pernicious anaemia, tubercular formation of the bone, cancer, asthma, and arthritis, and as of substantial benefit to sufferers therefrom, facts being said product was of no particular therapeutic value nor of any substantial benefit for diseases and afflictions specified;
- (b) Falsely represented said product as effective for treatment of pain, inflammation, and catarrhal conditions in the body and "in treatment and elimination of glandular, follicular, and fibroid tumors," and as a "healing power," facts being said product had little effect, if any, on conditions specified, or in the treatment thereof;
- (c) Falsely represented said product as a "time-tried remedy" and a "remarkable combination of chemical essentials, compounded in the laboratories of Mother Nature," "used and recommended by thousands of sufferers from digestive, skin and constitutional diseases," and as "proving of inestimable value in hundreds of cases where the digestive and eliminative organs are at fault," and unexcelled as a local antiseptic, facts being it had little if any beneficial effect for aforesaid conditions and ailments or uses, and was not a time-tried remedy; and
- (d) Falsely represented said product as having magnetic healing powers, and vibration as the fundamental, creative vital force, and main agent in said Kelp Ore, and latter as so charged with vibration that it overpowered and corrected in users thereof alleged results of harmful vibrations, fact being product had no magnetic, vibratory healing properties;

With effect of operating to mislead and deceive public and particularly sufferers from various ailments into believing that through purchase and use of aforesaid product as directed, or through becoming patients at said corporation's sanitarium, they would be benefited, remedied or cured of the various diseases and ailments specified, and with tendency and capacity so to do, and thereby divert trade to said corporation from its competitors dealing in mineral salts, drugs, remedies, and other medicaments of therapeutic value:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Ellis Debruler for the Commission.

Mr. George P. Winslow, of Tillamook, Oreg., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Oregon corporation engaged in distribution and sale in liquid and solid form of a shalelike mineral of alleged therapeutic or curative properties, under designation "Brooten's Kelp Ore," and in transmitting through the mails circulars and other advertising literature soliciting customers and paying patients for its health resort at or near Cloverdale, where principal treatment or cure consisted in application and use, externally and internally of said kelp ore, with advertising falsely or misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid in sale of said product from material mined on its premises, a mineral consisting of a shalelike clay with iron and aluminum sulphates with a trace of sulphur, represents in its aforesaid circulars, labels, etc., that said kelp ore, in both liquid and solid form and whether used externally or internally, according to directions, will be of substantial therapeutic benefit, remedy and cure for sugar diabetes, pernicious anaemia, tubercular formation of the bone, cancer, and various other diseases and ailments¹ and further that said ore has certain extraordinary vibratory magnetic healing properties,² facts being that while mineral material in question acts and operates as an antiseptic astringent mineral water, it will not act or operate as a benefit, remedy, or cure for the diseases and ailments specified or be effective therein, is not a healing power or time tried remedy, nor possessed of "magnetic vibratory healing properties."

The foregoing representations of fact, as alleged, distributed by "respondent in interstate commerce are calculated, have a tendency, and operate to mislead and deceive the public, and particularly that portion thereof which is suffering from various forms of human ailments, into the erroneous belief that by purchasing and using

¹ Set forth in the findings.

² As alleged in the complaint, "respondent represents to the public that vibration makes the world, is the founder of life and the main agent in Kelp Ore; that millions of years ago vibration was so immense that it worked on this kelp deposit and charged it so strong that to-day, when properly treated, it controls other vibrations which are a detriment to humans and cause much sickness; that intelligent human thoughts materialize in the body and form a silicate causing sickness, and that Kelp Ore has so many more vibrations than harmful or angry thoughts forming such silicate that when a human being drinks or takes a Kelp Ore bath or puts on a Kelp Ore poultice, vibrations are overpowered and brought back to normal; and that the said Kelp Ore has magnetic healing powers."

respondent's Kelp Ore according to directions, or by becoming paying guests at its health resort and sanitarium aforesaid, they will be benefited, remedied or cured of their divers and sundry diseases and ailments"; to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent entered its appearance, through its attorney, and filed its answer herein, and thereafter a hearing was had and evidence was introduced before Commissioner William E. Humphrey, acting as an examiner of the Federal Trade Commission in such matter, he having been theretofore duly appointed by the Commission to sit in the taking of the testimony.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and also counsel for respondent having submitted briefs, neither counsel appearing to argue the matter orally before the Commission, and the Commission having duly considered the entire record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Oregon, and has its office and principal place of business at Cloverdale, Oreg., and is now and for more than two years last past has been engaged in the distribution and sale in both liquid and solid form of a shalelike mineral of alleged therapeutic or curative properties, which respondent designates as Brooten's Kelp Ore. In solid form this mineral is a shalelike clay, containing iron and aluminum sulphates with a trace of sulphur, and in liquid form it is an aqueous solution of iron and aluminum sulphates with traces of calcium, magnesium, and potassium salts.

One analysis furnished by respondent reads as follows:

(1) The acidity is rather high; the solution is acid to methyl orange indicator (Ph color change 4.4-4.6) Ph of solution is approximately 2.4.

(2) The solution contains considerable iron and aluminum sulphate in solution.

(3) The insoluble material contained in the bottle was found to consist of the oxides or hydrated oxides of ferric iron, aluminum, and silicon. By far the greater part of this precipitate is due to iron.

(4) No nitrates, carbonates, bromides, or iodides were found in the solution.

(5) The acidity of the solution is probably due to hydrolysis (the interaction of the ions of iron and aluminum sulphate with the ions of water).

Respondent mines said mineral on its premises at or near Cloverdale, Oreg., and when packed or bottled causes the same when sold to be transported from the city of Cloverdale, Oreg., into and through the various States of the United States for delivery to the purchasers thereof, and in transmitting the same through the mails from its principal place of business in Oregon as aforesaid to various and diverse places in the several other States of the United States uses circulars, leaflets, and other advertising literature, soliciting prospective customers and paying patients for its health resort or sanitarium located at or near Cloverdale, Oreg., known as Brooten's Baths and Sanitarium, where the principal treatment or "cure" given is the application and use, externally and internally, of the said shalelike mineral designated as Kelp Ore.

In the course and conduct of its business as heretofore set out, respondent is and has been at all times hereinafter referred to in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of mineral salts, drugs, remedies, and other medicaments of some therapeutic value.

PAR. 2. In the course and conduct of its business by means of circulars, leaflets, labels, and other advertising media, mailed and distributed in interstate commerce, respondent has represented and does represent that Brooten's Kelp Ore in both liquid and solid form, and when used either externally or internally or both according to directions, will be of substantial benefit, remedy and cure for:

Sugar diabetes
Pernicious anaemia
Tubercular formation of the bone
Cancer
Asthma
Arthritis

and that it is "effective where pain, inflammation, and catarrhal conditions are present in the vaginal cavities and in the treatment and elimination of glandular, follicular, and fibroid tumors"; that it is a "healing power"; that it is a "time-tried remedy"; that "this remarkable combination of chemical essentials, compounded in the laboratories of Mother Nature, is being used and recommended by

thousands of sufferers from digestive, skin and constitutional diseases"; that "Brooten's Kelp Ore is proving of inestimable value in hundreds of cases where the digestive and eliminative organs are at fault, and applied locally as an antiseptic it is unexcelled.

In certain of its circulars and advertisements also distributed in interstate commerce, respondent represents to the public that vibration makes the world. It is the founder of life and the main agent in Kelp Ore; that millions of years ago vibration was so immense it worked on this kelp deposit and charged it so strong that to-day when properly treated it controls other vibrations which are a detriment to humans and cause much sickness; that intelligent human thoughts materialize in the body and form a silicate causing sickness and that Kelp Ore has so many more vibrations than harmful and angry thoughts forming such silicates that when a human being drinks or takes a Kelp Ore bath or puts on a Kelp Ore poultice vibrations are overpowered and brought back to normal; and that the Kelp Ore has magnetic healing powers.

PAR. 3. The Commission finds that in truth and in fact the said mineral material known as Brooten's Kelp Ore or Kelp Ore, in both solid and liquid form, when used externally or internally or both according to respondent's directions, acts and operates, possibly, as an antiseptic astringent mineral water and is not of any particular therapeutic value, and is not of any substantial, if any, benefit or remedy, and is not a cure to or of persons afflicted with sugar diabetes, pernicious anæmia, tubercular formation of the bone, cancer, asthma, or arthritis, and that it has little, if any, effect where pain, inflammation and catarrhal conditions are present in the vaginal cavities, nor in the treatment and elimination of glandular, follicular or fibroid tumors, and is not a healing power nor a time-tried remedy, and has little, if any, beneficial effect for digestive, skin or constitutional diseases, and does not aid the digestive or eliminative organs, nor is it an unexcelled antiseptic, and that it has no magnetic vibratory healing properties.

PAR 4. The Commission further finds that the above and foregoing misrepresentations of fact concerning the curative properties of Brooten's Kelp Ore, or Kelp Ore, distributed by respondent in interstate commerce, are calculated, have a tendency to and operate to mislead and deceive the public, and particularly that portion which is suffering from various forms of human ailments, into the erroneous belief that by purchasing and using respondent's Kelp Ore according to directions, or by becoming paying guests at its health resort and sanitarium hereinabove referred to, that they will be benefited, remedied or cured of their diverse and sundry diseases and ailments.

and thereby to divert trade to respondent H. H. Brooten & Sons, Inc., from its competitors.

CONCLUSION

By reason of the foregoing, it is concluded by the Commission that the acts and things above alleged to have been done by respondent are to the prejudice of the public and to competitors of the respondent and constitute unfair methods of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony taken and briefs filed herein by counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, H. H. Brooten & Sons, Inc., its officers, agents, representatives, and employees and all persons associated or connected with said corporation in any manner whatsoever cease and desist from making statements and representations in advertisements, circulars, leaflets, labels and/or other advertising media, mailed and distributed in interstate commerce—

(1) That Brooten's Kelp Ore, or Kelp Ore, or the same material or substance under any other name, in either liquid or solid form, when used either externally or internally or both, will be of substantial therapeutic benefit, remedy and cure for sugar diabetes, pernicious anaemia, tubercular formation of the bone, cancer, asthma or arthritis.

(2) That the use of Brooten's Kelp Ore, or the same material or substance under any name, is effective where pain, inflammation, and catarrhal conditions are present in the vaginal cavities, and in the treatment or elimination of glandular, follicular and fibroid tumors.

(3) That Brooten's Kelp Ore, or the same material or substance under any name, is a healing power and a time-tried remedy.

(4) That Brooten's Kelp Ore, or the same material or substance under any name, is a remarkable combination of chemical essentials

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compounded in the laboratories of Mother Nature, and that it is being used and recommended by thousands of sufferers from digestive, skin, and constitutional diseases.

(5) That Brooten's Kelp Ore, or the same material or substance under any name, is proving of inestimable value in hundreds of cases where the digestive or eliminative organs are at fault, and that when applied locally as an antiseptic it is unexcelled.

(6) That vibration makes the world and is the founder of life and the main agent in Kelp Ore, and that millions of years ago vibration was so immense that it worked on this kelp ore deposit and charged it so strong that to-day, when properly treated, it controls other vibrations which are a detriment to humans and cause much sickness.

(7) That intelligent human thoughts materialize in the body and form a silicate causing sickness, and that Kelp Ore has so many more vibrations than harmful or angry thoughts forming such silicate that when a human being drinks or takes a Kelp Ore bath, or puts on a Kelp Ore poultice, vibrations are overpowered and brought back to normal.

(8) That Kelp Ore has magnetic healing powers.

And it is further ordered, That respondent shall, within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with and conformed to.

Syllabus

IN THE MATTER OF

W. H. SNYDER, R. P. SNYDER, AND ROGER N. SNYDER,
PARTNERS, DOING BUSINESS AS W. H. SNYDER &
SONSCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1441. Complaint, Mar. 4, 1927—Decision, Mar. 3, 1932*

Where the words "Havana" or "Habana" had long since been used and understood by the cigar purchasing and consuming public of the United States and by cigar manufacturers and dealers as meaning and designating tobacco grown in Cuba, of high grade, such tobacco had long been imported into the United States and extensively used and consumed therein in cigars made in whole or in part thereof, cigars made of such tobacco were considered by many as having an improved quality and desirability by reason of such fact, and enjoyed a large demand in the United States, and purchase thereof was preferred by many of the dealers and consuming public; and thereafter a domestic firm engaged in manufacture and sale of domestic cigars, containing no Havana or Cuban tobacco,

- (a) Named, banded, and advertised one of their aforesaid cigars as "Havana Fruit," and displayed said name and the words "Guaranteed Mild Havana" conspicuously in numerous places on the containers in which offered the public, together with glass display cigar box lids, supplied by it and bearing aforesaid name, and so framed and planned that retailer's use thereof resulted in display of aforesaid legends, and concealment of inconspicuous notice on inside hinge strap that cigars were made "from ripe domestic tobacco"; and
- (b) Named, banded, and advertised a cigar made and sold as aforesaid, "Havana Velvet," and so labeled the containers thereof, together with a depiction of Cuban tobacco plantation showing Havana tobacco under cultivation;

With effect of misleading and deceiving a large and substantial number of the purchasing and consuming public into buying aforesaid cigars as and for those composed in whole or in part of Havana, i. e., tobacco grown in Cuba, and of unfairly diverting trade from competitors dealing in cigars so composed in fact and rightfully and truthfully so advertising, representing, banding, and labeling the same, and from competitors dealing in cigars composed wholly of domestic tobacco and of non-Cuban tobacco, and neither banding, labeling, advertising, nor otherwise representing their said cigars as containing any Havana or Cuban tobacco, and with capacity and tendency so to mislead and deceive and unfairly divert trade from competitors, and to operate as a competitive burden upon sale of aforesaid competitive cigars:

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

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Mr. Henry Miller for the Commission.

Mr. John Walsh and *Mr. L. A. Spiess*, of Washington, D. C., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, W. H., R. P., and Roger N. Snyder, partners engaged as W. H. Snyder & Sons in the manufacture of cigars and sale thereof to wholesale dealers in various States, and with principal place of business in Windsor, Pa., with naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, for about four years last past, have designated as "Havana Fruit" and "Havana Velvet" two brands of cigars made by them, and composed for the most part of tobacco other than Havana tobacco, i. e., tobacco grown on the Island of Cuba,¹ and so band said cigars and conspicuously label the containers thereof in which sold to its wholesale dealer vendees, and in which finally offered to the consuming public by said wholesalers' retail dealer customers.

Use by respondents, as alleged, "of said names and descriptions 'Havana Fruit' and 'Havana Velvet' in naming, designating, packing, labeling and banding their said cigars," as above set forth, "has the capacity and tendency to, and does, mislead and deceive many among aforesaid trades and many of the consuming public into the belief that respondents' said 'Havana Fruit' and 'Havana Velvet' cigars are composed of Havana tobacco," as aforesaid, and "causes many among said trades and many of the consuming public to purchase respondents' said cigars in that belief," and said acts and practices, as charged, tend to divert business from and otherwise injure and prejudice competitors dealing in cigars composed of Havana tobacco, and rightfully and lawfully so representing the same, and competitors manufacturing cigars composed for the most part of other than Havana tobacco, without in anywise representing

¹ As alleged in paragraph 2 of the complaint, "for many years prior to the date hereof, tobacco has been and is now a commercial export product from the Island of Cuba and the term 'Havana' tobacco has for many years meant, and still means to the cigar tobacco trade, the cigar trade and the consuming public, tobacco grown on the Island of Cuba. Many of said trades and many of the consuming public have, for many years, considered, and still consider, said Havana tobacco superior in quality for the manufacture of cigars to tobacco grown elsewhere than on the Island of Cuba. Many among the said trades and many of the consuming public have for many years considered, and still consider, that cigars made of said Havana tobacco are superior in quality to cigars made of tobacco grown elsewhere than on the Island of Cuba."

their said cigars as so composed; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents W. H. Snyder, R. P. Snyder, and Roger N. Snyder, partners, doing business under the trade name and style W. H. Snyder & Sons, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondents entered their appearance in the proceeding and filed answer to said complaint. Thereafter, the matter being ready for the taking of evidence with respect to the charges in the complaint, a stipulation as to the facts was agreed upon and entered by respondents and counsel for the Commission wherein it is stipulated and agreed that the statement of facts therein recited may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Federal Trade Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and may enter its order disposing of the proceeding. Said stipulation as to the facts was approved by the Commission and thereafter, the privilege of filing briefs having been waived, the matter was orally argued before the Commission by counsel for the respondents and counsel for the Commission.

Thereupon this proceeding came on for final hearing, and the Federal Trade Commission, having duly considered the entire record and being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents W. H. Snyder, R. P. Snyder and Roger N. Snyder are partners who as such are and, for many years last past and prior to the issuance of the complaint herein, have been doing business as hereinafter described under the trade name and style W. H. Snyder & Sons, with their office and place of business in

the city of Windsor in the State of Pennsylvania. The said business conducted by respondents is the manufacture of cigars and the sale and distribution thereof, from the State of Pennsylvania, to the cigar trade, wholesale and retail dealers and to the consuming public throughout the several States of the United States. Respondents maintain and operate cigar factories in York County, Pa., where they manufacture said cigars, and pack, brand, and label the same for sale and distribution to their customers and by their dealer-customers to the consuming public. Said cigars are advertised, offered for sale and sold by respondents to their customers in the several States through and by means of personal solicitation, newspaper, magazine, and other advertisements, and by means of correspondence and other communications with customers and prospective customers. In consummating the sale of the cigars and in making delivery thereof to their customers, respondents cause the cigars sold to be transported from their factories and place of business in the State of Pennsylvania through and into States other than the State of Pennsylvania to the respective purchasers thereof in such other States. Throughout the course and conduct of said business respondents are and continuously have been engaged in interstate commerce in the sale and distribution of their cigars; and they are and continuously have been selling and distributing said cigars and conducting their said business in direct active competition with many other individuals, partnerships, and corporations also engaged in the sale and transportation of cigars in commerce in, between and among the several States of the United States to wholesale and retail dealers and to the consuming public.

PAR. 2. Large and substantial quantities of the cigars manufactured, advertised, sold, and distributed competitively by respondents in interstate commerce, as set forth in paragraph 1 hereof, are and, for several years last past and prior to the issuance of the complaint herein, have been so sold and distributed by respondents under the name, designation, and description of "Havana Fruit" cigars and "Havana Velvet" cigars and under the following described labels and brands affixed to the cigars and the containers thereof. Said containers are the usual and customary cigar boxes or cigar containers of the respective capacities of twenty-five and fifty cigars each which are packed therein by respondents.

(a) AS TO SAID "HAVANA FRUIT" BRAND OF CIGARS: Around each of said cigars respondents affix a paper band bearing conspicuously the words "Havana Fruit." Upon each container respondents cause to be affixed and prominently and conspicuously displayed in numerous places, on both the inside and outside of the containers, the

printed words "Havana Fruit," "Guaranteed Mild Havana" as the designation and description of such cigars. In the comparatively inconspicuous position on the inside hinge strip, respondents cause to be set forth in said containers the statement "These cigars are manufactured from ripe domestic tobacco," said statement appearing but once in connection with such cigars. For the purpose of more effectively promoting the sale of said cigars to the consuming public respondents have had manufactured for them certain glass cigar box lids to be attached by retail dealers to said containers. Said glass lids are supplied by respondents free of charge to cigar stores and other dealers for use by such dealers in displaying and reselling respondents' said cigars to the consuming public. On said glass lids respondents have caused to be prominently printed and displayed the words "Havana Fruit" as the name and designation of the cigar. The metal frame of the glass lid has been designed in such a way that as and when the same is used it (1) holds the lid of the cigar box open so as to prominently display to the purchasers and prospective purchasers said words "Havana Fruit" and "Guaranteed Mild Havana"; and (2) obstructs and renders invisible to the purchasers and prospective purchasers the above-mentioned statement, "These cigars are manufactured from ripe domestic tobacco."

(b) AS TO SAID "HAVANA VELVET" BRAND OF CIGARS: Upon a paper band around each cigar and upon the containers of said "Havana Velvet" cigars which are and have been sold and distributed by respondents, as aforesaid, respondents cause and have caused to be conspicuously set forth as the name and designation of such cigars the words "Havana Velvet," which words in the case of the containers are displayed in conjunction with a picture depicting a Cuban tobacco producing plantation with growing Havana tobacco under cultivation.

To promote the sale of said Havana Fruit and Havana Velvet cigars, respondents caused and still cause the same to be designated, described and represented, in the advertising matter referred to in paragraph 1 hereof, as Havana Fruit cigars and Havana Velvet cigars respectively. In the regular course of business and as intended by respondents, cigar stores and other wholesale and retail dealers display, offer for sale and resell to the consuming public said cigars in the original containers and under the said labels, brands, designations, and representations applied thereto by respondents.

PAR. 3. The word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar purchasing and consuming public of

the United States, and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in whole or in part from such tobacco. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of high quality and excellence, and cigars made in whole or in part from said tobacco are in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco, and have believed and still believe that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

PAR. 4. In truth and in fact none of respondents Havana Fruit and Havana Velvet cigars manufactured, branded, labeled, advertised and sold by respondents as hereinabove described contain any Havana tobacco or tobacco grown on the Island of Cuba, nor have they at any time contained any such tobacco, but are and have been manufactured entirely from and wholly composed of tobacco grown in the United States, namely Pennsylvania tobacco. The effect of the use of the word "Havana" in said designations Havana Fruit and Havana Velvet and otherwise in advertising, branding, labeling, and describing the said cigars containing no Havana tobacco, all as hereinbefore set forth, is misleading and it has and had the capacity and tendency to and did mislead and deceive a large and substantial number of the purchasing and consuming public into purchasing said cigars in the erroneous belief that they are and were composed in whole or in part of Havana tobacco, that is, tobacco grown on the Island of Cuba.

PAR. 5. There are among the competitors of respondents mentioned in paragraph 1 hereof many who sell and distribute in competition with respondents' cigars composed in whole and also cigars composed in part only of Havana tobacco and who rightfully and truthfully advertise, represent, brand, and label such cigars as containing said Havana tobacco. There are also many of said competitors who sell and distribute in competition with respondents cigars composed wholly of tobacco grown in the United States and of tobacco grown elsewhere than on the Island of Cuba and who do not brand, label, advertise, or otherwise represent that said cigars contain any Havana or Cuban tobacco. Respondents' Havana Fruit and Havana Velvet cigars are displayed, offered for sale and sold to the consuming public by respondents, and in and by cigar stores and

other dealer establishments, in competition with the said cigars of competitors. The respondents' use of the word "Havana" in relation to cigars containing no Havana tobacco under the circumstances and conditions hereinabove set forth has the capacity, tendency and effect of injuring the public and of unfairly diverting trade from respondents' competitors; and, further, tends to operate as a competitive burden upon the sale of said competing cigars.

CONCLUSION

The acts and practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are and have been to the injury and prejudice of the public and of respondents' competitors, and are unfair methods of competition in interstate commerce and constitute a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the entire record, including the complaint of the commission, the answer of respondents thereto, the stipulation as to the facts agreed upon and approved; and the Commission having made its findings as to the facts with its conclusion that said respondents have been and are violating the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondents W. H. Snyder, R. P. Snyder, and Roger N. Snyder, and each of them, their agents, representatives, servants, employees, and successors in business, cease and desist, in connection with, or in the course of, the sale or distribution of cigars in interstate commerce:

(1) From using, or causing to be used, the word "Havana" in the brand names or designations Havana Fruit and Havana Velvet for any such cigars which do not contain any Havana or Cuban tobacco, unless in each instance when and where so used said brand names or designations be immediately accompanied by a statement, assertion, or phrase, which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such

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cigars do not contain any Havana or Cuban tobacco, or that said cigars are composed entirely of certain tobacco none of which is Havana tobacco or tobacco grown in Cuba.

(2) From using, or causing to be used, the word "Havana" in the brand names or designations Havana Fruit and Havana Velvet for any such cigars which are not composed entirely of Havana or Cuban tobacco but contain such tobacco in part, unless in each instance when and where so used said brand names or designations containing the word "Havana" be immediately accompanied by a statement, assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars are not composed wholly of Havana or Cuban tobacco or that the cigars contain certain tobacco which is not Havana tobacco or tobacco grown in Cuba.

(3) From directly or indirectly applying the word "Havana" singly to any such cigars which are not composed entirely of Havana or Cuban tobacco.

(4) From directly or indirectly applying to any of said cigars any other name, designation, statement, assertion, phrase, or representation which implies or imports that such cigars contain Havana or Cuban tobacco in whole or in part when such is not the fact.

It is further ordered, That said respondents, W. H. Snyder, R. P. Snyder, and Roger N. Snyder shall within 60 days after the service upon them of a copy 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 hereinbefore set forth.

Syllabus

IN THE MATTER OF
MECHANICAL MANUFACTURING CO., R. O'HARA,
AND W. A. MAYFIELD

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

Docket 1727. Complaint, Dec. 6, 1929—Decision, Mar. 4, 1932

Where a corporation (1) engaged in the manufacture and/or assembling of bumping posts, draft gears, and coupler centering devices, and in the sale thereof to the principal railway lines in the United States, (2) controlled by the principal stockholders of one of the large, well-known meat packers, officers, directors, and family owners of which made up its board, and, (3) including among its stockholders two transportation officials of said meat packing company, in direct charge of latter's traffic negotiations with the railroads, and in control of the freight car routings of its products and those of its subsidiaries, involving a business in meat products and by-products carried on through more than 500 branch distributing warehouses in the principal cities and towns of the United States, and utilization and control of approximately 7,500 refrigerator cars,

(a) Used the volume of freight traffic thus controlled by aforesaid transportation officials, to induce purchase of its bumping posts, draft gears, and centering devices in preference to those of competitors through promises and assurances of shipments or increased shipments for the lines concerned, and, in some instances, threats of withdrawal of traffic from lines of companies declining such purchases; and

Where aforesaid transportation officials,

(b) Cooperated with and assisted said corporation in making such sales to the railways, through utilizing their official position to induce and compel railway officials to give undue preference to its said draft gears and bumping posts, by personal interviews and official letters informing traffic and other railway officials that the packing company or "family" or "interests" controlling it and owning the corporation would be favorably disposed to railroads using corporation's gears or bumping posts, "expected their railroad friends" and those carriers whom they "patronized liberally" to buy products on a "reciprocity" basis or "reciprocate" through buying a portion or specified portion of their requirements, and were disappointed or dissatisfied with traffic officials of roads which failed to purchase said articles in substantial or specified numbers, along with the advice that other roads or specified roads were using said articles in substantial quantities; and

(c) Threatened to and did divert traffic of said packer or its subsidiaries from railways failing or refusing to buy said articles in substantial quantities, and increased shipments to purchasers thereof and informed said corporation's customers, following assignment of license under which it theretofore made certain draft gears concerned, that purchase of such gears by said customers from such licensee would be satisfactory to the corporation;

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With result that creation and employment by said corporation and general officers of such an oppressive and coercive competitive weapon, which prevented prospective customers of said corporation and of its competitors from exercising their free will and judgment in determining most efficient device and one to best serve their needs at lowest net cost over a period of time, injected an unfair and abnormal element in the competitive field involved, all to the injury of the public and competitors, and with a tendency unduly to suppress competition between said corporation and competing draft-gear manufacturers, and reduce latter's efficiency and economy in production and selling, and give concern controlling largest volume of freight traffic an unfair advantage, and thereby hinder and restrain freedom of competition in the natural and customary channels of trade in the industry concerned:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Everett F. Haycraft for the Commission.

Mr. Frank L. Horton, of Chicago, Ill., for Mechanical Manufacturing Co., and *Albert H. and Henry Veeder*, of Chicago, Ill., for R. O'Hara and W. A. Mayfield.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Mechanical Manufacturing Co., an Illinois Corporation engaged in manufacture of meat-packing house machinery and equipment and in sale thereof to meat-packing houses in the several States, and in foreign countries, and in manufacture and/or sale of bumping posts, draft gears, and other railway equipment under trade name "Durable" to railway companies for use on railway cars, and respondents R. O'Hara and W. A. Mayfield, with combining or cooperating to secure competitive business through coercion and intimidation of customers, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent company, engaged as above set forth, with majority of its common stock owned and/or controlled by members of the Swift family, principal stockholders of Swift & Co., and by employees of said Swift & Co., including respondents O'Hara and Mayfield, respectively manager and assistant manager of traffic department of said Swift & Co.,¹ and in direct charge of traffic nego-

¹According to the allegations of the complaint said Swift & Co. "is an Illinois corporation engaged in the meat-packing business with its principal office and slaughtering plants located in the city of Chicago in the State of Illinois and with twenty or more branch slaughtering plants located in other sections of the United States where livestock is produced and is the largest meat packer in the United States. In the course and conduct of

tiations with the railway companies with respect to the transportation of its products and those of its subsidiary corporations, as charged in the course and conduct of its said business, during the past three years, and acting "in cooperation with the said respondents, R. O'Hara and W. A. Mayfield, as traffic department officials of the said Swift & Co.—

"Has sought to induce and compel, and has induced and compelled railway companies to purchase said 'Durable' draft gears and other equipment manufactured and/or sold by said respondent, Mechanical Manufacturing Co., in preference to draft gears and other equipment manufactured and sold by competitors, by the following methods:

"(a) by promises and assurances of certain volume of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and its subsidiary corporations.

"(b) by promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and its subsidiary corporations; and,

"(c) by threats of withdrawal of freight traffic from the lines of said railway companies, by said Swift & Co. and its subsidiary corporations, if said railway companies would not purchase the said 'Durable' draft gears and/or other equipment manufactured and/or sold by said respondent, Mechanical Manufacturing Co."

Respondents O'Hara and Mayfield, as alleged, have cooperated with and assisted said respondent in the sale of its said product to railway companies, "particularly by utilizing their official positions in the said Swift & Co., to induce and compel the officials of railway companies to give undue preference to draft gears and/or other equipment manufactured and sold by the said respondent, Mechanical Manufacturing Co., by means of promises of freight traffic from Swift & Co. and its subsidiary corporations and threats of withdrawal of said traffic if the railway companies would not purchase draft gears and other equipment manufactured and/or sold by said respondent, Mechanical Manufacturing Co."

During times above referred to, as alleged, "other individuals, firms, and corporations located in the various States of the United States have been and still are engaged in the manufacture of draft gears and other railway equipment and in the sale thereof to the

its said business, Swift & Co. and its subsidiary corporations ship large quantities of meat products and by-products from their various slaughtering plants to their distributing depots known as branch houses, located in the principal towns and cities of the United States numbering more than five hundred, utilizing for this purpose refrigerator cars owned by a Swift & Co. subsidiary, the Swift Refrigerator Transportation Co., which owns more than 7,500 cars, causing said cars to be transported over the lines of the various railway companies of the United States."

railway companies of the United States, and the respondent, Mechanical Manufacturing Co., has been and still is engaged in competition in commerce in the sale of its said 'Durable' draft gears and other equipment with said other individuals, firms, and corporations," and foregoing alleged acts and things done by the respondents, as charged, "are all to the prejudice and injury of the public and competitors of the respondent, Mechanical Manufacturing Co., and unduly tend to suppress competition between the said respondent and competing manufacturers of draft gears and other equipment, and to create a monopoly in said respondent in the manufacture and sale of draft gears and other equipment and constitute unfair methods of competition in violation of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717), the Federal Trade Commission on December 6, 1929, issued and thereupon served, as required by law, upon Mechanical Manufacturing Co., R. O'Hara, W. A. Mayfield, respondents above named, in which said complaint it is charged that respondents have been and are now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The said respondents, having filed their answers herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on brief and oral argument, a brief having been filed on the part of the Commission, and counsel for the Commission and the respondents having been heard in oral argument and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. Respondent, Mechanical Manufacturing Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and has so existed since July, 1889. Said corporation is capitalized at \$1,250,000 and has outstanding 75,000 shares of common stock having a par value of \$750,000, and 5,000 shares of preferred stock having a par value of \$500,000. Said

corporation was engaged at all times hereinafter mentioned in the manufacturing of meat-packing house machinery and equipment and for more than 20 years last past has been engaged in making, selling, and delivering to the principal railways in the United States, bumping posts, one type of which is known as the "Durable" bumping post, and during the year 1929, it assembled or caused to be assembled and sold and delivered to many railroad companies for use on their cars, draft gears and coupler centering devices under the trade name "Durable." Said draft gears, bumping posts, and centering devices when manufactured and sold by said corporation were shipped from the point of manufacture in the city of Chicago, State of Illinois, to the purchasers thereof located in various States of the United States other than the State of Illinois. The said corporation is in competition with manufacturers and distributors of draft gears, bumping posts, and centering devices located in the various States of the United States who sell and distribute their said products in and among the various States of the United States.

Respondents, R. O'Hara and W. A. Mayfield, for several years last past have been and now are manager and assistant manager, respectively, of the transportation department of Swift & Co., Chicago, Ill., more particularly hereinafter described, and as such are in direct charge of the traffic negotiations with railroad companies and control the routing of freight cars carrying products of said Swift & Co. and its subsidiary corporations.

PAR. 2. Swift & Co. with its subsidiaries are well-known large meat packers with headquarters and plants located in the city of Chicago, State of Illinois, and with slaughtering plants located in various States of the United States, shipping its meat products and by-products in refrigerator and freight cars from its several plants to branch distributing houses located in the principal cities and towns of the United States numbering more than 500, utilizing for this purpose approximately 7,500 refrigerator cars which it controls and which are transported over the lines of the various railway companies of the United States. The principal stockholders of said Swift & Co. are members of the Swift family and the Swift estate, which said stockholders own over 65 per cent of common stock and approximately 87 per cent of preferred stock of the said respondent corporation, Mechanical Manufacturing Co. In addition, said respondents O'Hara and Mayfield and other employees of said Swift & Co. own approximately 4½ per cent of the common stock and 0.6 per cent of preferred stock of the said Mechanical Manufacturing Co. Members of the Swift family who are officers and directors of the said Swift company and three employees of said Swift & Co.

make up the board of directors of the said respondent, Mechanical Manufacturing Co.

PAR. 3. Respondent, Mechanical Manufacturing Co., in the course and conduct of its said business during the years 1928 and 1929 in cooperation with respondents O'Hara and Mayfield, as transportation officials of Swift & Co. sought to induce and has induced numerous railway companies of the United States to purchase Durable bumping posts, draft gears and centering devices sold by said Mechanical Manufacturing Co. in preference to draft gears, bumping posts, and centering devices manufactured and sold by competitors, by promises and assurances of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and its subsidiary corporations, and also by promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and its subsidiary corporations, and, in some instances, by threats of withdrawal of freight traffic from the lines of said railway companies by Swift & Co. and its subsidiary corporations, if said railway companies would not purchase the said Durable draft gears or bumping posts manufactured or sold by said respondent Mechanical Manufacturing Co. Said respondent company has not sought to induce railway companies to buy said draft gears, bumping posts, or centering devices since the latter part of November or early part of December, 1929, and since that time has not accepted any orders from railway companies for said draft gears and centering devices, but has continued to take orders and ship some bumping posts.

PAR. 4. Said respondents O'Hara and Mayfield have cooperated with and assisted the said respondent, Mechanical Manufacturing Co., in the sale of its said Durable draft gears, bumping posts and centering devices to railway companies by utilizing their official positions in the said Swift & Co. to induce and compel the officials of railway companies to give undue preference to draft gears and bumping posts manufactured and sold by the respondent, Mechanical Manufacturing Co.

PAR. 5. Said respondents, O'Hara and Mayfield, in seeking to induce railway companies to buy Durable bumping posts and draft gears, as aforesaid, solicited traffic and other officials of railway companies by means of personal interviews and letters written on the stationery of said Swift & Co., signing their names as transportation officials of said Swift & Co., in which said letters and interviews they represented to said traffic and other officials of said railway companies that the Swift "family" or the Swift "interests" owned the Mechanical Manufacturing Co., and that Swift & Co. would be

favorably disposed to railroads using Durable draft gears or Durable bumping posts; that Swift & Co. and the Swift interests "expected their railroad friends" or "carriers that they patronized liberally" to buy said products on a "reciprocity" basis or to "reciprocate" by buying a portion of their requirements of draft gears or bumping posts, sometimes to the extent of 25 to 33 $\frac{1}{3}$ per cent of such requirements, and, also that their principal, Swift & Co., or the Swift interests were disappointed or dissatisfied with traffic officials who failed to get their railroads to order said Durable bumping posts or draft gears in substantial numbers, sometimes indicating the number which would be considered satisfactory to their principals; and also that other railroads, often naming them, were using the Durable bumping posts or draft gears in substantial quantities.

PAR. 6. Said respondents, O'Hara and Mayfield, in seeking to induce railway companies to buy Durable bumping posts and draft gears as aforesaid, threatened to and actually did divert traffic of Swift & Co. or its subsidiaries from railway companies who failed to or refused to buy Durable bumping posts or draft gears in substantial quantities, and also increased shipments of freight traffic from Swift & Co. and its subsidiaries to railway companies who did buy Durable draft gears or bumping posts.

PAR. 7. Respondent, Mechanical Manufacturing Co., by the use of methods of competition described in paragraphs 3, 4, 5, and 6 herein, sold Durable bumping posts to the Sante Fe Railroad during 1928, and sold draft gears to other railway companies during the year 1929 as follows:

	Sets
Wheeling & Lake Erie.....	100
Pere Marquette.....	100
Union Pacific.....	100
New Orleans & Northeastern.....	100
Lehigh Valley.....	200
Chicago, Burlington & Quincy.....	250
Chesapeake & Ohio.....	250 $\frac{1}{2}$
Nickle Plate.....	351
Missouri Pacific.....	500
Rock Island.....	525
Boston & Maine.....	710
Erie.....	1007

The price received for the draft gears was usually \$65 per set of two gears.

PAR. 8. The principal competitors of the respondent corporation during 1929 were the following:

W. H. Miner & Co., Inc., Wilmette, Ill., selling draft gears under the trade name of Miner.

National Malleable & Steel Castings Co., Cleveland, Ohio, selling draft gears under the trade name National.

Cardwell-Westinghouse Co., Chicago, Ill., a merger of the Union Draft Gear Co. and the Westinghouse Co., selling draft gears under the trade names Cardwell and Westinghouse.

Bradford Corporation, New York City, selling draft gears under the trade name Bradford.

Standard Coupler Co., New York City, selling draft gears under the trade name Sessions.

Keyoke Railway Equipment Co., Chicago, Ill., selling draft gears under the trade name Murray.

Waugh Equipment Co., New York City, and Chicago, Ill., selling draft gears under the trade name Waugh.

The foregoing competitors of the respondent corporation during 1929 sold or attempted to sell draft gears to the various railway companies purchasing draft gears during that year, including particularly those companies to whom the respondent corporation sold draft gears as aforesaid.

PAR. 9. In December, 1929, respondent corporation assigned to the Waugh Equipment Co., a New York corporation engaged in the manufacture, sale and distribution of draft gears, its license from one Laughlin to manufacture and sell centering devices. Thereafter, on two occasions, respondent O'Hara notified customers of the respondent corporation that it would be satisfactory for said customer to purchase Waugh draft gears in place of Durable draft gears.

PAR. 10. The aforesaid acts and things done by said respondents are all to the injury of the public and competitors of respondent corporation, and unduly tend to suppress competition between respondent corporation and competing manufacturers of draft gears, in that the respondent corporation cooperating with respondents O'Hara and Mayfield have created and taken advantage of a competitive weapon, oppressive and coercive in nature, which prevents the customers to whom the respondent corporation and its competitors are trying to sell their products, from exercising their free will and judgment in determining which device is the most efficient and will best serve their needs at the lowest net cost over a period of time, and has thus injected an element in the competitive field in which respondent is engaged, which is unfair and abnormal, and tends to reduce the efficiency and economy in the production and sales methods of competing manufacturers and gives to the concern that controls the largest volume of freight traffic an unfair advantage,

and thus hinders and restrains the freedom of competition in the natural customary channels of trade in the draft gear industry.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondents' competitors, are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and the Commission having made its findings as to the facts and the conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the following respondent, Mechanical Manufacturing Co., its agents, representatives, and employees, shall cease and desist the use of the volume of the freight traffic of Swift & Co. and/or its subsidiary corporations in the solicitation of draft gear or other railway equipment business in interstate commerce from railway companies by the following methods:

(a) By promises and assurances of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and/or its subsidiary corporations.

(b) By promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and/or its subsidiary corporations; and/or

(c) By threats of withdrawal of freight traffic from the lines of said railway companies by Swift & Co. and/or its subsidiary corporations, if said railway companies would not purchase draft gears or other railway equipment manufactured and/or sold by said Mechanical Manufacturing Co.

It is further ordered, That said respondents, R. O'Hara and W. A. Mayfield, shall cease and desist cooperating with and assisting the said respondent Mechanical Manufacturing Co., its officers, agents, and employees, or any other affiliated corporation engaged in the manufacture, sale, and distribution of railway equipment, in the sale

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and distribution of said railway equipment, including draft gears, bumping posts, or centering devices in interstate commerce to railway companies, by utilizing their official positions in Swift & Co. to induce and compel officials of railway companies to give undue preference to railway equipment manufactured and/or sold by the said Mechanical Manufacturing Co. or any other affiliated corporation engaged in the manufacture, sale, and distribution of railway equipment, by means of promises of freight traffic from said Swift & Co. and/or its subsidiary corporations, and threats of withdrawal of said traffic if said railway companies did not purchase railway equipment manufactured and/or sold by said Mechanical Manufacturing Co. or any other affiliated corporation engaged in the manufacture, sale, and distribution of railway equipment.

It is further ordered, That the respondents, Mechanical Manufacturing Co., R. O'Hara, W. A. Mayfield, shall individually and separately within 60 days after the service upon them of copies 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 hereinbefore set forth.

Complaint

IN THE MATTER OF
JOHN F. REICHARD, DOING BUSINESS AS MANCHESTER
CIGAR COMPANY

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

Docket 1459. Complaint, Apr. 22, 1927—Order, Mar. 12, 1932

Consent order requiring respondent individual, cigar manufacturer, to cease and desist use of word "Havana" in connection with sale of his so-called "Havana Cadet" cigar containing no Havana or Cuban tobacco, or from applying word "Havana" to cigars not composed entirely of such tobacco, or using any other name, statement, etc., falsely implying or importing a Havana or Cuban tobacco content for said cigar; as in said order set forth and qualified.

Mr. Henry Miller for the Commission.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that John F. Reichard, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect, as follows:

PARAGRAPH 1. Respondent is an individual with his place of business in the city of York, State of Pennsylvania. He is engaged in the manufacture of cigars and the sale thereof to wholesale and retail dealers located at points in various States of the United States. He causes said cigars, when so sold, to be transported from his said place of business in the city of York, Pa., into and through other State of the United States to said vendees at their respective points of location. In the course and conduct of his said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of cigars in commerce between and among various States of the United States.

PAR. 2. For many years prior to the date hereof, tobacco has been and is now a commercial export product of the Island of Cuba and the term "Havana" tobacco has for many years meant, and still means, to the cigar trade and to the consuming public, tobacco grown upon the Island of Cuba. Many among said trade and many

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of the consuming public have for many years considered, and still consider, that cigars made of said Havana tobacco are superior in quality to cigars made of tobacco grown elsewhere than on the Island of Cuba, and cigars containing said Havana tobacco are in great demand among the consuming public in the United States.

PAR. 3. Among cigars manufactured and sold by respondent in interstate commerce as in paragraph 1 hereof set out, are certain cigars named and designated by respondent Havana Cadet cigars. Respondent packs its said Havana Cadet cigars in boxes and containers upon which respondent causes to be set forth in sundry places and positions, said name Havana Cadet, printed in large and conspicuous letters. Respondent ships and delivers his said cigars, so packed, to his aforesaid vendees. Said wholesale dealer vendees resell said cigars to retail dealers and ship and deliver said cigars, still so packed, to their said retail dealer vendees. Said retail dealer vendees, both those purchasing from said wholesale dealers and those purchasing directly from respondent, display, offer for sale, and sell said cigars, still so packed, to the consuming public.

PAR. 4. The use by respondent of said name and designation Havana Cadet upon the containers in which his aforesaid cigars are packed, all as in paragraph 3 hereof set out, has the capacity and tendency to and does mislead many among aforesaid trade, and many of the consuming public, into the belief that respondent's said Havana Cadet cigars are composed of said Havana tobacco referred to in paragraph 2 hereof, and causes many of said trade and many of the consuming public to purchase respondent's said Havana Cadet cigars in that belief. In truth and in fact, respondent's said Havana Cadet cigars contain no aforementioned Havana tobacco and are composed entirely of tobacco grown elsewhere than on the Island of Cuba.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof, many who sell cigars composed of aforementioned Havana tobacco and who rightfully and lawfully represent their said cigars to be so composed. There are others of said competitors who sell cigars manufactured of tobacco wholly other than said Havana tobacco and who in nowise represent that their said cigars are composed of the last named tobacco. Respondent's acts and practices, all in this complaint above set out, tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. For about three years last past, respondent has engaged in the acts and practices under the circumstances and conditions and with the results hereinbefore set out.

PAR. 7. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint in this proceeding upon John F. Reichard, an individual doing business under the trade name and style Manchester Cigar Co., respondent above named, charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent not having filed answer to said complaint within the time therein specified, a hearing for the taking of testimony and other evidence with respect to the charges in said complaint was set to begin pursuant to order and notice before an examiner of the Commission thereto duly appointed. Respondent thereupon entered his appearance in this proceeding and having indicated his desire to avoid the taking of proofs in the matter and to file answer to said complaint, said hearing before the examiner was canceled. Respondent then submitted his answer to said complaint with the request that the same be filed and accepted by the Commission. In said answer to the complaint respondent formally states in writing that he desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, that he refrains from contesting the proceeding and consents that the Commission may make, enter and serve upon him an order to cease and desist from the violations of the law alleged in the complaint. Respondent also requests in said answer that the Commission proceed to final disposition of this proceeding upon said answer pursuant to the provisions of paragraph 2 of Rule III of the Commission's Rules of Practice and without further hearings.

The said answer of the respondent was duly accepted and filed by the Commission, and thereupon this proceeding came on before the Federal Trade Commission on the entire record, and the Commission having duly considered the same and being fully advised in the premises,

It is now ordered, Pursuant to paragraph 2 of Rule III of the Rules of Practice heretofore adopted by the Commission and still in force, that respondent, his agents, representatives, servants, em-

ployees, and successors in business, in connection with or in the course of the sale or distribution of cigars in interstate commerce, cease and desist:

(1) From using or causing to be used the word "Havana" in the brand name or designation "Havana Cadet" for any such cigars which are not composed wholly of Havana or Cuban tobacco unless in each instance when and where so used said brand name or designation be immediately accompanied by a statement, assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact, respectively, that said cigars do not contain any Havana or Cuban tobacco, or that the cigars contain such tobacco in part only, as the case may be.

(2) From directly or indirectly applying the word "Havana" singly to any such cigars which are not composed entirely of Havana or Cuban tobacco.

(3) From directly or indirectly applying to any of such cigars any other name, designation, statement, assertion, phrase, or representation which implies or imports that such cigars contain Havana or Cuban tobacco in whole or in part when such is not the fact.

It is further ordered, That said respondent John F. Reichard shall, within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

T. E. BROOKS, DOING BUSINESS AS T. E. BROOKS & COMPANY

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

Docket 1442. Complaint, Mar. 4, 1927—Decision, Mar. 14, 1932

Where the words "Havana" or "Habana" had long since been used and understood by the cigar purchasing and consuming public of the United States and by cigar manufacturers and dealers as meaning and designating tobacco grown in Cuba and of high grade, such tobacco had long been imported into the United States and extensively used and consumed therein in cigars made in whole or in part thereof, and cigars made of such tobacco enjoyed a large demand in the United States and were considered as having an improved quality and desirability by reason of such fact, by many of the dealers and consuming public, who preferred the purchase thereof; and thereafter an individual engaged in the manufacture and sale of domestic cigars containing no Havana or Cuban tobacco,

Named, banded, and advertised its said cigars "Havana Sweets" and featured aforesaid name upon the tops and ends of the containers in which displayed and offered to the consuming public, as well as on the inside lid and inner side of the vertical part of the container to which was attached the hinged lid, with no notice of said cigar's domestic content other than a relatively inconspicuous statement to that effect printed at the bottom of aforesaid inside lid label;

With effect of misleading and deceiving a large and substantial number of the purchasing and consuming public into buying aforesaid cigars as and for those composed in whole or in part of Havana, i. e., tobacco grown in Cuba, and of unfairly diverting trade from competitors dealing in cigars so composed in fact and rightfully and truthfully so advertising, representing, banding, and labeling the same, and from competitors dealing in cigars composed wholly of domestic tobacco and neither banding, labeling, advertising, nor otherwise representing their said cigars as containing any Havana or Cuban tobacco, and with capacity and tendency so to mislead and deceive and unfairly divert trade from competitors and to operate as a competitive burden upon sale of aforesaid competitive cigars:

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

Mr. Henry Miller for the Commission.

Mr. John Walsh and *Mr. L. A. Spiess*, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the manufacture of

cigars and sale thereof to wholesale dealers at points in various States, and with place of business in New York City, with naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent individual, as charged, engaged as above set forth, for about four years last past, has designated as Havana Sweets, a cigar made by him and composed entirely of other than Havana tobacco, i. e., tobacco grown on the Island of Cuba,¹ and has so banded said cigars and conspicuously labeled the containers thereof in which sold to its wholesale dealer vendees, and in which finally offered to the consuming public by said wholesalers' retail dealer customers.

Use by respondents, as alleged, "of the name and description Havana Sweets in naming, designating, packing, labeling, and banding his said cigars," as aforesaid, "has the capacity and tendency to, and does, mislead and deceive many among aforesaid trades and many of the consuming public into the belief that respondent's said Havana Sweets are composed of Havana tobacco," and said acts and practices, as charged, tend to divert business from and otherwise injure and prejudice competitors dealing in cigars composed of Havana tobacco as aforesaid, and rightfully and lawfully so representing the same, and competitors manufacturing cigars composed for the most part of other than Havana tobacco, without in anywise misrepresenting composition of their said cigars; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint in this proceeding upon T. E. Brooks, an individual doing business under

¹ As alleged in paragraph 2 of the complaint, "For many years prior to the date hereof, tobacco has been and is now a commercial export product from the Island of Cuba and the term 'Havana' tobacco has for many years meant, and still means to the cigar tobacco trade, the cigar trade and the consuming public, tobacco grown in the Island of Cuba. Many of said trades and many of the consuming public have, for many years, considered, and still consider, said Havana tobacco superior in quality for the manufacture of cigars to tobacco grown elsewhere than on the Island of Cuba. Many among the said trades and many of the consuming public have for many years considered, and still consider, that cigars made of said Havana tobacco are superior in quality to cigars made of tobacco grown elsewhere than on the Island of Cuba."

the trade name and style T. E. Brooks & Co., respondent above named, charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent entered his appearance in the proceeding and filed answer to said complaint. Thereafter, the matter being ready for the taking of testimony and other evidence with respect to the charges in the complaint, a stipulation as to the facts was agreed upon and entered by respondent and by counsel for the Commission, subject to the approval of the Commission, wherein it is stipulated and agreed that the statement of facts therein recited may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Federal Trade Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and may enter its order disposing of the proceeding. Said stipulation as to the facts was approved by the Commission and the privilege of filing briefs was waived by counsel.

Thereupon this proceeding came on for final hearing before the Federal Trade Commission and was orally argued before the Commission by counsel for the respondent and by counsel for the Commission; and the Commission having duly considered the entire record and being now fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual who is and, at all times since the issuance of the complaint herein and for more than three years prior thereto, has been doing business as hereinafter described under the trade name and style T. E. Brooks & Co., with his office and place of business in the city of Red Lion in the State of Pennsylvania. The said business of respondent is the manufacture of cigars and the sale and distribution thereof to wholesale and retail dealers and to the consuming public throughout the several States of the United States. The said cigars are manufactured by respondent in York County, Pa., where they are packed, branded, and labeled by respondent for distribution and sale by himself and by his dealer-customers to the purchasing and consuming public of the United States. The sales of the cigars are made and purchase orders therefor procured by respondent through the personal solicitation of himself and of his salesmen and agents, and by means of

written correspondence and other communications with his customers and prospective customers, and through and by means of advertisements of said cigars in newspapers, magazines, placards, signs, posters, and other advertising mediums published and distributed by respondent among the purchasing and consuming public. In consummating the sale of the cigars and in filling said purchase orders and making delivery of said cigars to his customers, respondent causes and throughout the course and conduct of his business has caused the cigars so sold to be transported from his factory and place of business in the State of Pennsylvania through and into the several States other than the State of Pennsylvania to the respective purchasers thereof in such other States. In the course and conduct of said business respondent is and continuously has been engaged in interstate commerce in the sale and distribution of his said cigars; and he is and continuously has been at all times mentioned selling and distributing said cigars and conducting his said business in direct active competition with many other individuals, partnerships, and corporations also engaged in the sale, distribution, and delivery of cigars in commerce in, between, and among the several States of the United States to wholesale and retail dealers and to the consuming public.

PAR. 2. The said cigars manufactured, advertised, sold, and distributed competitively by respondent in interstate commerce as set forth in paragraph 1 hereof and, for several years last past and prior to the issuance of the complaint herein, have been sold and distributed by respondent in large and substantial quantities under the name, designation, and description of Havana Sweets cigars and under the following-described brands and labels affixed by respondent to the cigars themselves and to the containers thereof. The labels attached to the cigars themselves consist of a paper band placed by respondent around each cigar and bearing conspicuously the words "Havana Sweets" as descriptive of the cigars. The containers are the usual and customary cigar boxes or cigar containers of the respective capacities of twenty-five and fifty cigars each. The labels and brands attached to each box or container have been designed and affixed thereto by respondent and are as follows:

(1) Centered on the outside of the lid of the box, a label or brand bearing the words "Havana Sweets" and "Sweet to the last puff," the words "Havana Sweets" appear in large black and gold letters, while the statement "Sweet to the last puff" appears in smaller white letters.

(2) On each of the two outside ends of the box, a label or brand bearing the words "Havana Sweets," in large and conspicuous black

and red letters, and the statement "Sweet to the last puff" in much smaller black letters.

(3) On the inside of the lid, a large label or brand coextensive with said lid and reading as follows:

5¢ Straight

Sumatra Wrapper

HAVANA

SWEETS

SWEET TO THE LAST PUFF

Made exclusively of high grade domestic tobacco.

The words "Havana Sweets" in said label or brand are in large conspicuous black and red letters over a half-inch high. The words "5¢ Straight" and "Sumatra Wrapper" and the statement "Sweet to the last puff" are in comparatively small black and white letters. The words "Made exclusively of high grade domestic tobacco" are in still smaller letters of about one-eighth inch in height and printed in black on the bottom of the label or brand and adjacent to the hinge edge of the lid.

(4) On the inner side of the vertical part of the box to which the lid is hinged, a label or brand bearing in large black and red letters over one-half inch in height the words "Havana Sweets."

In the regular course of business and as intended by respondent, said cigars are and have been displayed, represented, and resold to the purchasing and consuming public as Havana Sweets cigars and in the original containers and under said labels, brands, and representations applied thereto by respondent as above described. Further, to promote the sale of his said cigars respondent advertises, describes, and represents such cigars to the purchasing and consuming public throughout the United States as Havana Sweets cigars in and by means of said advertising matter used by respondent as described in paragraph 1 hereof.

PAR. 3. The word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar purchasing and consuming public of the United States and by cigar manufacturers and dealers throughout the United States as meaning and designating tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in whole and in part only from such tobacco. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as

being cigar tobacco of high quality and excellence, and cigars made in whole or in part from said tobacco are in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco, and have believed and still believe that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

PAR. 4. In truth and in fact none of respondent's so-called Havana Sweets cigars manufactured, branded, labeled, advertised, and sold by the respondent and by dealers to the purchasing and consuming public, as hereinbefore described contain any Havana tobacco or tobacco grown on the Island of Cuba, nor have they at any time contained any such tobacco, but are and have been manufactured entirely from, and wholly composed of, tobacco grown in the United States, principally Pennsylvania tobacco. The effect of the use of the word "Havana" in said designation "Havana Sweets" in advertising, branding, labeling, and describing said cigars containing no Havana tobacco, all as hereinbefore set forth, is misleading and it has and had the capacity and tendency to and did mislead and deceive a large and substantial number of the purchasing and consuming public into purchasing said cigars in the erroneous belief that they are and were composed in whole and in part of Havana tobacco; that is, tobacco grown on the Island of Cuba.

PAR. 5. Of the competitors of respondent mentioned in paragraph 1 hereof there are many who sell and distribute in competition with respondent cigars composed in whole and also cigars composed in part only of Havana tobacco and who rightfully and truthfully advertise, represent, brand, and label such cigars as containing said Havana tobacco. There are also many of said competitors who sell and distribute, between and among the several States in competition with respondent, cigars containing no Havana tobacco, and being composed wholly of tobacco grown in the United States and elsewhere than on the Island of Cuba, and who do not brand, label, advertise, or otherwise represent that said cigars contain any Havana or Cuban tobacco. Respondent's so-called Havana Sweets cigars are displayed, offered for sale, and sold to the consuming public by respondent and in and by cigar stores and other dealer-establishments in competition with the said cigars of competitors. The respondent's use of the word "Havana" as hereinabove described in relation to cigars containing no Havana tobacco has the capacity, tendency, and effect of injuring the public and of unfairly diverting trade from respondent's competitors; and, further, tends to operate as a competitive burden upon the sale of said competing cigars.

CONCLUSION

The acts and practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are and have been to the injury and prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the entire record, including the complaint of the Commission, the answer of respondent thereto, the stipulation as to the facts agreed upon and approved, and the Commission having made its findings as to the facts with its conclusion that said respondent has been and is violating the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent T. E. Brooks, his agents, representatives, servants, employees, and successors in business, cease and desist, in connection with, or in the course of, the sale or distribution of cigars in interstate commerce—

(1) From using, or causing to be used, the word "Havana" in the brand name or designation Havana Sweets for any such cigars which do not contain Havana or Cuban tobacco, unless in each instance when and where so used said brand name or designation be immediately accompanied by a statement, assertion, or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars do not contain any Havana or Cuban tobacco, or that said cigars are composed entirely of certain tobacco none of which is Havana tobacco or tobacco grown in Cuba.

(2) From using, or causing to be used, the word "Havana" in the brand name or designation Havana Sweets for any such cigars which are not composed entirely of Havana or Cuban tobacco but contain such tobacco in part, unless in each instance when and where so used said brand name or designation containing the word "Havana" be immediately accompanied by a statement, assertion, or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars are not com-

posed wholly of Havana or Cuban tobacco or that the cigars contain certain tobacco which is not Havana tobacco or tobacco grown in Cuba.

(3) From directly or indirectly applying the word "Havana" singly to any such cigars which are not composed entirely of Havana or Cuban tobacco.

(4) From directly or indirectly applying to any of said cigars any other name, designation, statement, assertion, phrase, or representation which implies or imports that such cigars contain Havana or Cuban tobacco in whole or in part when such is not the fact.

It is further ordered, That said respondent T. E. Brooks shall, within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Syllabus

IN THE MATTER OF

HERBERT L. SMITH

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

Docket 1467. Complaint, June 22, 1927—Decision, Mar. 14, 1932

Where the words "Havana" or "Habana" had long since been used and understood by the cigar purchasing and consuming public of the United States and by cigar manufacturers and dealers thereof as meaning and designating tobacco grown on the Island of Cuba, such tobacco had long been imported into the United States and widely and extensively used and consumed therein in cigars made in whole or in part thereof and had long come to have the general reputation among the aforesaid cigar consuming and purchasing public as being cigar tobacco of highly desirable qualities and superior excellence, and cigars made in whole or in part thereof were in large demand, and purchase thereof was preferred by many of the dealers and a large and substantial part of the consuming public of the United States, who believed that use of said tobacco in cigars added to and increased the quality and desirability thereof; and thereafter an individual engaged in the manufacture of domestic cigars containing no Havana or Cuban tobacco, and sale thereof to wholesale and retail dealers and the consuming public,

Named, banded and advertised his said cigars "Havana Brown" and featured said name in sundry places on the usual and customary cigar boxes and containers in which displayed, offered and sold by him in the regular course of trade and with his knowledge and consent to his aforesaid customers, and in which displayed, offered and sold as aforesaid by his dealer purchasers and other dealers to the purchasing and consuming public throughout the United States;

With effect of misleading and deceiving a large and substantial number of the purchasing and consuming public into buying said cigars as and for those composed in whole or in part of Havana, i. e., tobacco grown in Cuba, and of unfairly diverting trade from competitors dealing in cigars so composed in fact and rightfully and truthfully so advertising, representing, banding, and labeling the same, and from competitors dealing in cigars composed wholly of domestic tobacco and neither banding, labeling, advertising, nor otherwise representing their said cigars as containing any Havana or Cuban tobacco, and with capacity and tendency so to mislead and deceive and unfairly divert trade from competitors and to operate as a competitive burden upon sale of aforesaid competitive cigars:

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

Mr. Henry Miller for the Commission.

Mr. John Walsh and *Mr. L. A. Spiess*, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual engaged in the manufacture of cigars and sale and distribution thereof to wholesale and retail dealers and the consuming public throughout the several States, and with office and place of business in Windsor, Pa., with naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, names, designates and advertises as "Havana Brown," cigars sold and distributed by him as aforesaid and composed wholly or substantially of tobacco other than Havana tobacco, i. e., tobacco grown on the Island of Cuba,¹ and conspicuously so bands said cigars, and labels the containers thereof in which in due course sold, with his knowledge and consent, to his wholesale dealer vendees and in which finally offered to the consuming public by his dealer purchasers and other dealers, thus designated, branded and labeled.

Use by respondent, as alleged, "of the word 'Havana' alone or in conjunction with the word 'Brown' in designating, branding, advertising, describing and representing his so-called 'Havana Brown' cigars" as aforesaid "is false and misleading and is calculated, has, and had the capacity and tendency to and does mislead and deceive many among the trade and many members of the consuming public, into the erroneous belief that said so-called 'Havana Brown' cigars are composed wholly of tobacco grown on the Island of Cuba or that the greater or a substantial part of said cigar is composed of such Cuban tobacco, and thereby cause purchasers to purchase said cigars in such erroneous belief," and said acts and practices "in connection with the sale and distribution of his so-called 'Havana Brown' cigars as hereinbefore set forth tend to and do divert trade from, and otherwise injure the business of" competitors, many of whom sell and dis-

¹ As alleged in paragraph 2 of the complaint, "At all times during which respondent has been engaged in business and for many years prior thereto, tobacco grown on the Island of Cuba and cigars made from such tobacco have been and are sold, purchased, referred to and designated as 'Havana' tobacco and 'Havana' cigars by the trade and public throughout the United States. The word 'Havana' when applied to tobacco, either manufactured or unmanufactured, has at all times herein mentioned signified and meant to the trade and consuming public of the United States tobacco grown on the Island of Cuba. For many years last past many among the trade and the consuming public throughout the United States have preferred and still prefer to purchase cigars made or composed in whole or in greater part of tobacco grown on the Island of Cuba, which as aforesaid, is known as and designated 'Havana' tobacco, and have considered and still consider such cigars to be superior in quality or value to cigars composed in whole or in greater part of tobacco grown elsewhere than on the Island of Cuba."

tribute cigars composed wholly of Cuban or Havana tobacco and rightfully and truthfully so represent the same, many of whom sell and distribute cigars made in part only of such tobacco, without in anywise representing their said products as composed wholly thereof, and many of whom sell and distribute cigars composed wholly of tobacco grown elsewhere than on the Island of Cuba without in anywise representing their products as containing such tobacco; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint in this proceeding upon Herbert L. Smith, respondent above-named, charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent entered his appearance in the proceeding and filed answer to said complaint. Thereafter, the matter being ready for the taking of testimony and other evidence with respect to the charges in the complaint, a stipulation as to the facts was agreed upon and entered by respondent and by counsel for the Commission, subject to the approval of the Commission, wherein it is stipulated and agreed that the statement of facts therein recited may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Federal Trade Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and may enter its order disposing of the proceeding. Said stipulation as to the facts was approved by the Commission, and the privilege of filing briefs was waived by counsel.

Thereupon this proceeding came on for final hearing before the Federal Trade Commission and was orally argued before the Commission by counsel for the respondent and by counsel for the Commission; and the Commission, having duly considered the entire record and being now fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Herbert L. Smith is an individual who is and, at all times since the issuance of the complaint herein and for more than three years prior thereto, has been engaged as hereinafter described in the business of manufacturing, selling and distributing cigars to wholesale and retail dealers and to the consuming public throughout the several States of the United States, having and maintaining his place of business in the city of Windsor in the State of Pennsylvania. The said cigars are manufactured by respondent in York County, Pa., where they are packed, branded and labeled by respondent for distribution and sale by himself and by his dealer-customers to the purchasing and consuming public of the United States. The sales of said cigars are made and purchase orders therefor procured by respondent through and by means of personal solicitation by himself and by his salesmen and agents, and by written correspondence and other communications with his customers and prospective customers, and through and by means of advertisements of said cigars in newspapers, magazines, placards, signs, posters and other advertising mediums which respondent causes to be published, circulated and distributed among the purchasing and consuming public throughout the several States. In consummating the sale of the cigars and in filling said purchase orders therefor and making delivery of the cigars to his customers, the purchasers thereof, respondent causes and throughout the course and conduct of his business has caused the cigars so sold to be transported from his factory and place of business in the State of Pennsylvania through and into the various States other than the State of Pennsylvania to the respective purchasers thereof in such other States. In the course and conduct of said business respondent is and, at all times herein mentioned, continuously has been engaged in interstate commerce in the sale and distribution of his cigars; and he is and continuously has been selling and distributing said cigars and conducting his said business in direct active competition with many other individuals, partnerships and corporations also engaged in the sale, distribution and delivery of cigars in commerce in, between and among the several States of the United States to wholesale and retail dealers and to the consuming public.

PAR. 2. Large and substantial quantities of the cigars sold and distributed competitively by respondent in interstate commerce as described in paragraph 1 hereof have been and still are so offered for sale, sold and distributed by him under the representation, designation, description and name "Havana Brown." Said so-

called "Havana Brown" cigars as and when so sold and distributed by respondent have been and are packed by him in the usual and customary cigar boxes and cigar containers bearing in sundry places and in large, prominent and conspicuous lettering, placed thereon by respondent, the words or phrase "Havana Brown" as the name, designation and description of the cigars; and each of said so-called "Havana Brown" cigars when so marketed had and have affixed to them by respondent a paper band or label bearing as the brand, designation and description of said cigars the words or phrase "Havana Brown" in large and conspicuous lettering. In accordance with respondent's method of distribution and in the regular course of trade and with his knowledge and consent, said so-called "Havana Brown" cigars have been and are displayed, offered for sale and sold by respondent to his aforesaid customers, and by respondent's dealer-purchasers and other dealers to the purchasing and consuming public throughout the United States in aforesaid boxes and other containers and under the designations, descriptions, brands and labels placed thereon and applied thereto by respondent as set forth above. Further, at all times in the marketing of said so-called "Havana Brown" cigars and for the purpose of promoting and aiding the sale and distribution thereof to the purchasing and consuming public throughout the United States, respondent caused and still causes said cigars to be advertised, represented and described to the trade and consuming public as "Havana Brown" cigars through and by means of magazine and newspaper advertisements, placards, posters, circular letters, leaflets and similar trade literature published and circulated by him throughout the several States.

PAR. 3. The said word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar purchasing and consuming public of the United States and by cigar manufacturers and dealers throughout the United States as meaning and designating tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in whole or in part from such tobacco. At all times since and for many years prior to the time respondent began business such Havana tobacco has had and still has the general reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highly desirable qualities and superior excellence, and cigars made in whole or in part from said tobacco are and have

been in large demand throughout the United States. Many of the cigar dealers and a large and substantial part of the consuming public of the United States prefer to purchase cigars containing Havana tobacco, and have believed and still believe that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

PAR. 4. In truth and in fact none of respondent's so-called "Havana Brown" cigars manufactured, branded, labeled, advertised and sold by respondent as hereinbefore described contain any Havana tobacco or tobacco grown on the Island of Cuba, nor have they at any time contained any such tobacco, but are and have been manufactured entirely from and wholly composed of tobacco grown in the United States, principally Pennsylvania tobacco. The effect of the use of the word "Havana" in said designation and name "Havana Brown" in advertising, branding, labeling and describing said cigars containing no Havana tobacco, all as hereinbefore set forth, is misleading and it has and had the capacity and tendency to and did mislead and deceive large and substantial numbers of the purchasing and consuming public into purchasing said cigars in the erroneous belief that they are and were composed in whole and in part of Havana tobacco, that is, tobacco grown on the Island of Cuba.

PAR. 5. Of the competitors of respondent mentioned in paragraph 1 hereof there are many who sell and distribute in competition with respondent cigars composed in whole and also cigars composed in part only of Havana tobacco and who rightfully and truthfully advertise, represent, brand and label such cigars as containing said Havana tobacco. There are also many of said competitors who sell and distribute in, between and among the several States in competition with respondent cigars containing no Havana tobacco, and being composed wholly of tobacco grown elsewhere than on the Island of Cuba, and who do not brand, label, advertise or otherwise represent that said cigars contain any Havana or Cuban tobacco. In the regular course of business respondent's so-called "Havana Brown" cigars are displayed, offered for sale and sold to the consuming public by respondent and in and by cigar stores and other dealer-establishments in competition with the said cigars of competitors. The respondent's use of the word "Havana" as hereinabove described in relation to cigars containing no Havana tobacco has the capacity, tendency and effect of injuring the public and of unfairly diverting trade from respondent's competitors; and, further, tends to operate as a competitive burden upon the sale of said competing cigars.

Order

CONCLUSION

The acts and practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are and have been to the injury and prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the entire record, including the complaint of the Commission, the answer of respondent thereto, the stipulation as to the facts agreed upon and approved; and the Commission having made its findings as to the facts with its conclusion that said respondent has been and is violating the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent Herbert L. Smith, his agents, representatives, servants, employees, and successors in business, cease and desist, in connection with, or in the course of, the sale or distribution of cigars in interstate commerce.

(1) From using, or causing to be used, the word "Havana" in the brand name or designation "Havana Brown" for any such cigars which do not contain Havana or Cuban tobacco, unless in each instance when and where so used said brand name or designation be immediately accompanied by a statement, assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that such cigars do not contain any Havana or Cuban tobacco, or that said cigars are composed entirely of certain tobacco none of which is Havana tobacco or tobacco grown in Cuba.

(2) From using, or causing to be used, the word "Havana" in the brand name or designation "Havana Brown" for any such cigars which are not composed entirely of Havana or Cuban tobacco but contain such tobacco in part only, unless in each instance when and where so used said brand name or designation containing the word "Havana" be immediately accompanied by a statement assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact that

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such cigars are not composed wholly of Havana or Cuban tobacco or that the cigars contain certain tobacco which is not Havana tobacco or tobacco grown in Cuba.

(3) From directly or indirectly applying the word "Havana" singly to any such cigars which are not composed entirely of Havana or Cuban tobacco.

(4) From directly or indirectly applying to any of said cigars any other names, designation, statement, assertion, phrase or representation which implies or imports that such cigars contain Havana or Cuban tobacco in whole or in part when such is not the fact.

It is further ordered, That said respondent Herbert L. Smith shall, within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
MAX DORF AND DORF & COMPANY

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

Docket 1968. Complaint, Aug. 31, 1931—Decision, Mar. 14, 1932

Where an individual engaged in the manufacture and sale of umbrellas to jobbers and retailers in the various cities, and a corporation through which as his selling agent said individual thus sold said articles, designated and described as "Servisilk" and "imported Swiss taffeta" the fabric covering thereof, in circulars, advertising matter and sample advertisements employed and furnished for promoting sale of said products, notwithstanding fact fabric in question was composed of 90 per cent cotton; with capacity and tendency to deceive dealers and ultimate purchasers into believing such covering to be made entirely of silk, and divert trade from competitors dealing in umbrellas actually so covered or with silk and cotton coverings as the case might be:

Held, That such practices, under the conditions and circumstances set forth, were to the injury of the public and competitors, and constituted unfair methods of competition.

Mr. Alfred M. Craven and *Mr. J. Butler Walsh* for the Commission.

Mr. Benjamin H. Saxen, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Max Dorf, an individual engaged as Liberty Umbrella Co. in manufacture of umbrellas and respondent Dorf & Co., a New York corporation officered and principally owned by him and engaged in sale of said umbrellas to jobbers and retailers throughout the various States, and with principal place of business in New York City, with naming product misleadingly, using misleading brand or trade name, advertising falsely or misleadingly and misbranding or mislabeling as to composition of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, designate and describe said umbrellas, and the fabric covering thereof by the brand or trade name "Servisilk," and said covering as "the finest silk-mixed imported Swiss taffeta" in advertisements, in newspapers, and periodicals of national circulation, in letters, circulars and other like literature distributed among the trade and general public and in advertising

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matter, leaflets, and other like literature furnished to aforesaid wholesale or retail dealers for printing in newspapers and periodicals, or for circulation among the trade and general public as the case may be; the facts being, term "Servisilk" denotes a fabric made of silk, product of the cocoon of the silkworm, and term "taffeta" denotes a fabric woven of silk in the taffeta weave, whereas fabric concerned is composed of 91.4 per cent cotton and 8.6 per cent silk.

Said acts and practices, as alleged, have capacity and tendency to deceive dealers and ultimate purchasers into belief that said umbrellas are covered with a fabric made entirely of silk, product of the cocoon of the silkworm, and to divert to respondents trade of competitors, whose products are made of the same kind and nature of fabric as their own, but truthfully advertised and represented, and also trade of competitors, coverings of whose umbrellas which are made entirely of silk, product of the cocoon of the silkworm; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 31st day of August, 1931, issued and thereafter served its complaint against the respondent Max Dorf and Dorf & Co. (a corporation), charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed an answer to said complaint, a hearing was had before a trial examiner therefore duly appointed, and testimony and evidence received in support of the charges stated in the complaint. Thereafter, this proceeding was submitted to the Commission for decision, without briefs or oral argument, it appearing that the respondents had, in writing filed herein, waived the filing of brief, and oral argument. And the Commission having now considered the record and being fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Dorf & Co. is a corporation organized and existing under the laws of the State of New York. Respondent Max Dorf is now, and has been for several years last

past, engaged in the business of manufacturing umbrellas, at New York City, N. Y., and in the sale thereof through respondent Dorf & Co. as a selling agent, to jobbers of, and retail dealers in umbrellas located throughout the various cities of the United States. Respondents, in the course and conduct of said business, make distribution of the umbrellas sold, by the transportation of same in interstate commerce from the place of business in New York to and through most of the States of the United States, to the purchasers thereof at their various points of location.

In the course and conduct of their aforesaid business, respondents are and have been for several years last past, in competition with other individuals, partnerships, and corporations located and doing business in the United States, and engaged in the sale in interstate commerce between and among the several States of the United States, (a) of umbrellas, coverings of which are made and manufactured from fabrics composed of cotton and silk, and (b) of umbrellas the coverings of which are made and manufactured of silk, the product of the cocoon of the silkworm.

PAR. 2. The respondents, in the course and conduct of their said business, and for the purpose of promoting the sale of their umbrellas, circulate among the trade and general public letters, circulars, and other like literature, and also furnish free of cost to dealers purchasing from them, advertising matter and sample advertisements to be inserted in newspapers and periodicals, and also furnish to said dealers leaflets and other advertising matter descriptive of their merchandise, for circulation by the dealers among the general public. In such advertising matter, and on tags attached to the umbrellas themselves, the said respondents designate and describe the fabric used in the covering of said umbrellas as "Servisilk," and also in said advertising matter describe said fabric as being "imported Swiss taffeta."

The fabric thus designated and described as "Servisilk" and "imported Swiss taffeta" is composed of about 10 per cent silk and 90 per cent cotton.

PAR. 3. The word "silk" means to the public at large, as well as to the trade, a fabric made entirely from the product of the cocoon of the silkworm. The coined word "Servisilk" does not affect the meaning of the word "silk" as above given.

The word "taffeta," when used as descriptive of the content of a fabric, denotes to the public as well as to the trade, that the material thus described is entirely silk.

PAR. 4. The designations and descriptions used by respondent, as mentioned in paragraph 2 hereof, are false and misleading and hav

the capacity and tendency to deceive dealers in, and ultimate purchasers of, said umbrellas, into the belief that the said umbrellas manufactured and sold by said respondents are covered with a fabric made entirely of silk, the product of the cocoon of the silkworm; and the sale in interstate commerce by the respondents of umbrellas so designated and described has the capacity and tendency to divert trade from the competitors of respondents, to the injury of such competitors.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and of respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and the testimony and evidence introduced, brief and oral argument having been waived, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That the respondents, Max Dorf, and Dorf & Co., its officers, agents, and employees, in connection with selling or offering for sale of its merchandise in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from: (1) Using in their advertising the coined word "Servisilk" as descriptive of an umbrella or its covering, unless said covering be entirely of silk; (2) Using in their advertising the word "taffeta," or "Swiss taffeta," as descriptive of the material constituting the covering of the umbrellas manufactured and sold by respondents, unless said coverings are entirely of silk.

It is further ordered, That the said respondents shall, within 30 days after the service upon it of a copy 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 hereinbefore set forth.

Complaint

IN THE MATTER OF
NATIONAL DAIRY UNION

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

Docket 1988. Complaint, Nov. 18, 1931—Decision, Mar. 28, 1932

Consent order requiring respondent corporation, its agents, etc., to cease and desist from representing, publishing, etc., in aid or furtherance of production, sale, and distribution of butter in interstate commerce, (a) any false and defamatory statements purporting to describe manufacture, sale, or composition of oleomargarine; (b) matter or information stating said product, or cocoanut oil contained therein, is foul, insanitary, etc., or unfit for human consumption; or (c) that sale of said product is a rich man's graft or false information concerning cost of materials used in manufacture thereof; all as in said order more specifically set forth.

Mr. PGad B. Morehouse for the Commission.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that National Dairy Union, a corporation hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, National Dairy Union, exists as a corporation organized in 1903 under the laws of the State of Illinois and has its office and principal place of business at No. 630 Louisiana Avenue NW., Washington, D. C. Said corporation is now and for more than two years last past has been engaged in the dissemination of information of interest to a large mailing list of dairy and creamery companies, its members, as well as nonmembers; the annual solicitation of funds from members and the continual solicitation of new memberships.

Respondent's officers, members, and prospective members are persons and companies engaged in the production, sale, and distribution, among other dairy products, of butter, which, when manufactured or produced, is shipped and transported from their respective places of business in the State thereof in, into, and through various other States of the United States to retailers, produce dealers, and other customers located therein for delivery and retail to the ultimate con-

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sumer. Respondent has in all from 250 to 300 of such members throughout the United States, particularly in the States of Minnesota, Wisconsin, Iowa, and Michigan. This contributing membership is subject to continual change.

PAR. 2. In the course and conduct of its business respondent acts on behalf of its members who are engaged in interstate commerce in dairy and creamery products, including butter, and its acts are approved and financially supported by the dairy and creamery company members aforesaid. Said members are and have been in competition over a coextensive area with other individuals, firms, and corporations engaged in the sale and distribution in interstate commerce of oleomargarine, a product widely used by the consuming public as a substitute for and in lieu of butter.

PAR. 3. In the course and conduct of this business aforesaid respondent, in manner and form designed and well calculated to injure and bring into disrepute generally its members' competitors who deal in and distribute oleomargarine in interstate commerce, widely publishes, republishes, and distributes, and furnishes its members with the means of publishing, republishing and distributing to retailers, produce dealers, and the consuming public, misleading, false, and defamatory statements purporting to be descriptive of the ordinary and usual process of manufacture and sale of oleomargarine, to wit:

That the manufacture and sale of oleomargarine "is a rich man's graft"; and that oleomargarines are made from cocoanut oil and certain other ingredients; that the cocoanut oil such as is used in American oleomargarine is made from copra. Respondent further disparages and maligns the competitive product oleomargarine conveying, by means of implication as well as direct statements, the misinformation to its members, retailers, produce dealers, and other consumers that in the ordinary and usual process of manufacture of oleomargarine the cocoanut oil contained therein is foul, filthy, and insanitary, or otherwise unfit and unhealthy for human consumption; that it is comparable to stable manure; that swarms of half naked Malays, perspiring under tropical heat, trample under bare feet the copra which is going to be made into the "poor man's butter," by "poor man's butter" meaning and intending oleomargarine; whereas in truth and in fact such statements are not descriptive of the ordinary and usual process of manufacture and composition of oleomargarine, and many brands and grades of oleomargarine do not contain cocoanut oil at all, but are made from beef fats, vegetable oils, nut margarine and other products ordinarily and usually manufactured and produced under sanitary and healthful conditions, in no way comparable to stable manure, or other compost or

filth, and are not derived from cocoanut oil obtained by stamping copra with the bare feet of sweating Malays under tropical heat, and which are not in any other way unfit or unhealthful for human consumption.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has published, republished, and distributed to its members, retailers, produce dealers, and other consumers, false, misleading, and disparaging statements designed and well calculated to cause the reader thereof to believe that 1,000 pounds of oleomargarine are made at a cost of \$107.50, and giving a certain recipe containing only four ingredients, thereby inducing the reader to the conclusion that such recipe, with the prices given, applies to all oleomargarine products, and that the sale and distribution thereof by respondent's members' competitors constitutes a "graft," thereby meaning and intending to imply that the public is swindled as well as injured in health in the purchase and consumption of said competitive product, when in truth and in fact such recipe and such cost neither fairly nor accurately represent either the usual ingredients, or the usual cost in connection with the ordinary and usual production of oleomargarine being distributed and sold in interstate commerce.

PAR. 5. That such false, misleading, and disparaging statements, publications, and republications have the tendency to, and substantially do, injure the sale and distribution in interstate commerce of the product known as oleomargarine, and tend to, and do, actually hinder and prevent and decrease its use by the consuming public as a substitute for the product dealt in by respondent's members, thereby threatening with injury or actually injuring to a substantial extent respondent's members' competitors in interstate commerce and diverting trade from said competitors to the members of the respondent corporation.

PAR. 6. The acts and things above alleged to have been done, and the false and misleading representations alleged to have been made, published, and distributed by respondents, are to the prejudice of the public and to the competitors of respondent's members, and constitutes unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon complaint and the answer of respondent in which respondent refrains from contesting the proceeding and consents

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that the Commission may make, enter, and serve upon it an order to cease and desist, from the methods of competition charged in the complaint, and the Commission being fully advised in the premises having thereupon concluded that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered that the respondent, National Dairy Union, a corporation, and its agents, representatives, servants, and employees, in the aid or furtherance of the production, sale, and distribution of butter in interstate commerce cease and desist from:

Representing, publishing, republishing, or distributing to its members, or directly or indirectly to retail dealers, produce dealers, or the consuming public (a) any false and defamatory statements, directly or indirectly purporting to be descriptive of the manufacture, or sale, or composition of oleomargarine; (b) any matter or information stating directly or by implication that oleomargarine in the ordinary and usual process of being manufactured, or cocoanut oil contained in such oleomargarine, is foul, filthy, or insanitary, or otherwise unfit for human consumption; (c) any direct statement or matter containing the implication that the sale of oleomargarine is a rich man's graft, or any false information concerning the cost of the materials used in the manufacture of oleomargarine.

It is further ordered, That the said respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
MACFADDEN PUBLICATIONS, INC.

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

Docket 1549. Complaint, Nov. 24, 1928—Decision, Apr. 11, 1932

Where a corporation engaged in operating, conducting, managing, controlling and directing various subsidiaries, publishers or printers of certain magazines, periodicals and tabloid dailies, and in acting as distributing agent for publications concerned, subscription, circulation and advertising activities of which it managed, controlled and directed; in soliciting subscriptions to said magazines through circulars and literature sent to from 50,000 to over a million and a half names, according to the particular magazine,

- (a) Represented subscription price of a periodical as \$2.50 for one year so that "at this rate it would ordinarily cost you \$5 for two years," but informed prospect that "by using the attached credit memorandum worth \$1 you pay only \$4 and you get two whole years," and offered special health or other advisory services and/or books without cost to prospect, attributing ability to offer such purported saving to economies effected through 2-year subscriptions and large subscription lists, and made representations of similar tenor in connection with solicitation of other subscriptions, facts being pretended reduced prices constituted its regular prices for various magazines and subscription periods concerned through agents and news dealers, books and services were regularly included with subscriptions, at no additional cost, and subscriber at pretended reduced prices made no savings:
- (b) Made such statements in aforesaid offers and solicitations as "the very nature of this big offer forces us to hold it open for the next thirty days only," facts being prices and terms held out were generally available as aforesaid, and without any such limitation of time; and
- (c) Falsely represented to prospect that he was being offered opportunity of said supposed special concessions in price and otherwise by reason of his membership in that class of the general public whose greater purchases and purchasing power make its members particularly desirable subscribers through enhancing the financial value of advertising in the particular periodical, advising prospect offer was "not to be broadcast," and "we do not want orders from anyone but you or members of your immediate family at this reduced rate";

With effect of deceiving and misleading purchasers and prospective purchasers into believing that prices offered as aforesaid constituted prices reduced from the regular and usual rate, and into subscribing in such belief, and of diverting trade from competitors to it, and with capacity and tendency so to mislead, deceive and divert, and otherwise injure competitors in their businesses:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Baldwin B. Bane for the Commission.

Mr. Joseph Schultz, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation owning and controlling the stock of other corporations engaged in the publication of various magazines, periodicals and tabloid dailies, and engaged in managing, controlling and directing said corporations, acting as their distributing agent, and managing, controlling and directing their subscription, circulation and advertising activities, and with principal office and place of business in New York City, with advertising falsely or misleadingly as to price, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent in circulars and letters to prospective purchasers or subscribers in the various States represented a certain sum as the usual full subscription price, and that it was offering the particular publication for a limited time to the particular person or to a few specially selected prospective customers at a reduced and special price, substantially smaller, fact being that purported reduced price was its regular and usual price to everyone; with tendency and capacity to mislead and deceive and with effect of misleading and deceiving public into subscribing to and buying aforesaid publications in the belief that they were being obtained at a reduced and special price; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and having filed its answer herein, hearings were had and evidence was thereupon introduced before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for decision by the Commission on the briefs submitted by counsel for the Commission and counsel for the respondent and argument by counsel for the Commission, counsel for the respondent failing to appear, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Macfadden Publications, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business in the City of New York, State of New York. Respondent is a holding company, owning and controlling the stock of other corporations engaged in the publishing or printing of various magazines, periodicals, and tabloid dailies. Respondent operates, conducts, manages, controls, and directs the corporations whose stock it owns and acts as the distributing agent for such publications, managing, controlling, and directing the subscription, circulation, and advertising activities for such publications. In the course and conduct of such business respondent sells said magazines, periodicals, and tabloid dailies to purchasers located in various States of the United States and causes said magazines, periodicals, and tabloid dailies to be shipped from their respective places of publication or printing through and into other States of the United States to the purchasers thereof; and it solicits and sells subscriptions to said magazines, periodicals, and tabloid dailies by means of circulars, pamphlets, and letters which it causes to be sent from its place of business through and into other States of the United States to prospective purchasers or subscribers. In the course and conduct of its aforesaid business respondent is in competition with other corporations, partnerships, and individuals.

PAR. 2. Among the magazines which respondent, in the course and conduct of its business as described above, distributes throughout the United States are True Story, True Romances, True Experiences, Physical Culture, True Detective Mysteries, Dream World, The Dance Magazine, Your Home, Ghost Stories, World's Greatest Stories, and True Strange Stories. These are all monthly magazines.

PAR. 3. Respondent solicits and obtains subscriptions to the magazines by each of the following methods: Direct mail efforts, circularization, advertising, individual spare time canvass, various magazine agencies, and newspaper dealers. In order to promote the sale of the magazines respondent from time to time sends out circu-

lars or letters to prospective subscribers. With these circulars or letters there is usually inclosed a credit coupon or check which sets forth a sum which the prospective subscriber is told will be credited to him on the price of the subscription which the respondent is soliciting. During the course of a year from about 50,000 names for some of the magazines to over 1,500,000 names for others are so circularized for subscriptions.

PAR. 4. Respondent solicits and obtains subscriptions to various of its magazines by such statements and representations as the following in the circulars and literature which it distributes throughout the United States:

(1) DEAR SUBSCRIBER:

Mr. Macfadden asks that you accept with his compliments the Credit Memorandum attached. It is worth \$1.00 when applied on your renewal subscription for Physical Culture.

In sending you this \$1.00 Credit, Mr. Macfadden is only further fulfilling his policy of service and saving to subscribers.

As you know the regular subscription price for Physical Culture is \$2.50 for one year, at this rate it would ordinarily cost you \$5.00 for two years. But you need not pay this amount. By using the attached Credit Memorandum worth \$1.00 you pay only \$4.00 and you get two whole years of Physical Culture.

Let us explain how this unusual offer can be made to you.

Every new subscription entered on our books costs us a surprising amount of money. And every time a subscription is removed—it costs us money.

Therefore by renewing your subscription now you save us this expense. And in recognition of this, Mr. Macfadden, instead of pocketing this saving—passes it along to you. And in sending you this \$1.00 Credit he wishes to cordially thank you for your past patronage and he hopes that he may again have the pleasure of serving you during the next two years.

Because of its extensive growth, Physical Culture during the next years will be better able to render the utmost in health service—give you fascinating fiction of the better sort—maintain a more complete health advice department for you subscribers. So—

Don't delay sending in your renewal. Just endorse and mail the Credit Memorandum today—you see the very nature of this big offer forces us to hold it open for the next 30 days only.

Cordially yours,

FRANK MARTIN, *Manager,*
Subscribers' Service Bureau.

The credit memorandum rendered to is as follows:

MACFADDEN PUBLICATIONS, INC.,
 1926 Broadway, New York City, N. Y.:
 Credit endorsee \$1.00

Under the full price to apply on a 2-year subscription for PHYSICAL CULTURE Magazine. The full regular price is \$5.00. By endorsing this credit on the back you need pay only \$4.00.

On the back of this credit memorandum is the following:

MACFADDEN PUBLICATIONS, INC.

I accept this Credit as part payment for my 2-Year Renewal Subscription for Physical Culture. Please enter same immediately.

Another form of credit memorandum used by respondent:

Physical Culture
 1926 Broadway
 New York City
 Saves You Saves You
 \$1.00 Special Credit Memorandum \$1.00

Macfadden Publications will credit the subscriber named below \$1.00 under the full price, to apply on a 2-year subscription for Physical Culture Magazine. The full regular price for such a subscription is \$5.00. By endorsing this credit memorandum on the back—you need pay only \$4.00.

When this letter and these so-called credit memoranda were used the full, regular subscription price for two years to the Physical Culture Magazine was \$4.00. The price at which the subscription was offered was not for only the next thirty days. Four dollars for a 2-year subscription had been and was the full, regular rate for a number of years.

(2) DEAR SUBSCRIBER:

The attached Cash Saving Credit is worth \$1.00 to you when applied on your renewal subscription for True Story Magazine. It has been drawn to your order and will be honored in full when signed on the back and returned to us.

The regular price for one year of True Story is \$2.50, at this rate it would ordinarily cost you \$5.00 for two years. But by using the attached check you need pay only \$4.00.

But why, you ask, do you offer me this saving? Let me explain.

Every time a new subscription is entered upon our books it costs us a surprising amount of money. And every time a sub-

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scription is taken off—additional expense is entailed. So by renewing your subscription now you save us this expense and—instead of pocketing the saving—we pass it along to you. It's part of the Macfadden policy of fairness and service which we pledge to all subscribers.

And in sending you this \$1.00 we want to cordially thank you for your past patronage. We trust that we may be able to be of more service to you during the next year.

Let me say a word about True Story. As you know this famous magazine has the largest news-stand sale in the world. Every month more than 2,225,000 enthusiastic readers buy True Story. It is America's favorite magazine. True Story's immense popularity has enabled the publishers to make a bigger and better magazine for you during the year to come. You know what that means. So—

Don't delay sending your renewal. Just sign your name on the back of the check and mail to-day. For the very nature of this remarkable offer forces us to hold it open for the next 30 days only.

Cordially yours,

FRANK MARTIN, *Manager.*
Subscribers' Service Bureau.

The cash saving credit referred to and attached to the letter is as follows:

MACFADDEN PUBLICATIONS, INC.,
1926 Broadway, New York City, N. Y.:

Credit endorsee \$1.00 Under the full price to apply on a two-year subscription for TRUE STORY Magazine. Such a subscription would ordinarily cost \$5.00. By endorsing this credit on the back you need pay only \$4.00.

On the back of this cash saving credit is the following:

MACFADDEN PUBLICATIONS, INC.

I accept this Credit as part payment for my 2-Year Renewal Subscription for True Story Magazine. Please enter same immediately.

At the time this letter was used the regular subscription rate to any and everyone for the True Story Magazine for two years was \$4.00, and such had been and remained the regular subscription rate to this magazine for several years.

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HOME BEAUTIFUL SERVICE
1926 Broadway
New York, N. Y.

Home Beautiful Service will credit Two Dollars (\$2.00) to the endorsee only under the full price of Own Your Own Home Magazine for two years. The regular price for Own Your Own Home Magazine is \$6.00 for two years. But by endorsing this credit coupon you need send only \$1.00 per month for four months. In addition you receive the Library of Home Planning and the Home Beautiful Service absolutely free.

FRANK MARTIN, *Manager*
Subscribers' Service Bureau.

At the time this credit coupon was used the full, regular price for a two-year subscription to Own Your Own Home Magazine, including the Library of Home Planning and the Home Beautiful Service, was \$4.00.

Home Beautiful Service
GUARANTEE

Your Home Magazine guarantees to credit the endorsee of the enclosed Cash Saving Certificate with \$2.00 under the full \$6.00 price or Your Home Magazine for two full years. It also guarantees all new subscribers FREE ADVICE SERVICE covering all home building and decorating problems.

It is further guaranteed that all those taking advantage of this special low price offer will receive the Complete Home Beautiful Library. This consists of three books. "Small Home Planning," "Beauty and Economy in Home Furnishing," and "How to Build Out of Income"—also a valuable Building Cost folder.

FRANK MARTIN, *Manager*
Subscribers' Service Bureau.

The cash saving certificate accompanying this guarantee read as follows:

YOUR HOME
Magazine
1926 Broadway
New York City, N. Y.

Credit Endorsee with Two and no/100 Dollars To Apply on
A Two Years Subscription for YOUR HOME Magazine.
\$2.00 CREDIT.

YOUR HOME MAGAZINE.
Per F. M.

And on the back of the cash saving certificate was the following:

YOUR HOME MAGAZINE,

1926 Broadway, New York, N. Y.:

Instead of the full regular price of \$6.00 you are to enter my subscription for two years of Your Home Magazine, send me the Complete Home Beautiful Library, and enter my name as one entitled to free home planning service for two years—All for only \$4.00.

At the time that this guarantee and cash saving certificate were used, the full, regular price for a 2-year subscription to Your Home Magazine was \$4.00. The advice on home building, planning, and decorating problems was free to all subscribers. The Complete Home Beautiful Library was given to all subscribers with a 2-year subscription at the regular price.

(5) **DEAR FRIEND:**

A few days ago I was called to a very important meeting with Mr. Macfadden and other Company executives. Our problem was to get more readers for Physical Culture Magazine.

For, although we now have thousands more readers than last year, Mr. Macfadden insists that the general public will subscribe in even larger groups if we come to them with the right proposition. And he had a very extraordinary plan to suggest.

He began by saying, "Our regular price for Physical Culture is twenty-five cents a copy. This makes the cost \$3.00 a year or \$6.00 for two years at the single-copy rate. It costs us almost that much to edit, manufacture and distribute the magazine.

"But," he continued, "I propose that we offer to mail the magazine to our new subscribers (and our old ones who want to renew their subscriptions) for the next two years—for only \$4.00.

"And that is not all," he insisted, "let's offer an added inducement. Let us give all those who take up this offer this beautiful and essential health book." He indicated with his hand Milo Hasting's new Food Directory which lay with his favorite books there on his desk.

"But", questioned one of the other executives, "if we put the price at \$4.00 and offer this rather expensive book in addition, wouldn't we lose money?"

Mr. Macfadden was quick to reply, "If we do as I propose we will get a response from the public so large that its very bulk

will make my proposition profitable." "And" he added, "I would be tempted to make the offer even more attractive."

The others of us looked at him in amazement.

"I would further offer our prospective readers Free Health Service for the next two years." He added, "We have a large staff of health experts here with us. Why not let them give expert advice to our new readers—free of charge?" "And", he continued, "we will not insist that this full \$4.00 price be paid in advance. Let them pay at the rate of \$1.00 a month."

Mr. Macfadden's suggestion was so liberal, so extraordinary that the rest of us hardly knew what to make of it. But knowing his keen insight in the publishing business, cognizant of the great success which came to him mostly through knowing just what the public wanted and needed—we all decided that we would indeed be short-sighted if we did not at least see how the public would accept his proposition.

We decided to test out Mr. Macfadden's idea. In other words, we would like to have you help us solve the problem.

Do you want two years of Physical Culture Magazine—a beautiful copy of Milo Hasting's Food Directory (150 pages bound in maroon leatherette, embossed in gold) two years Free Health Service for you and your family—all for only \$4.00, payable at the rate of only \$1.00 a month?

All you need do is sign and return the special \$2.00 Credit Voucher at the top of this letter, which represents your saving over the full \$6.00 single copy price of Physical Culture. Show us that it will be worth our while to go ahead on this basis and we will do it. Of course, you need send no money now—you can pay later upon receipt of memorandum.

Your answer counts—and counts big. Whether we go ahead or not, you, as one of those selected for the test, can order at this special price. Nowhere else can you get so much for so little money.

But act now. For this test bargain offer is open for the next thirty days only, as it is being tried only as an experiment—and in a very limited way.

Cordially yours,

FRANK MARTIN, *Manager*
Subscribers' Service Bureau.

P. S.—If you care to pay in full now and not be bothered with monthly payments—remit \$4.00 with the attached \$2.00

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voucher. And in return for this favor we will give you an extra issue of Physical Culture FREE—giving you a two-year and one-month subscription.

The credit voucher attached to this letter is as follows:

MACFADDEN PUBLICATIONS, INC.

1926 Broadway

New York City, N. Y.

Credit endorsee..... \$2.00

Under the full price to apply on a two-year subscription for Physical Culture Magazine.

TWO DOLLARS.

PHYSICAL CULTURE MAGAZINE,
Per F. M.

Manager Subscribers' Bureau.

And on the back of this credit slip was the following:

MACFADDEN PUBLICATIONS, INC.,

1926 Broadway, New York, N. Y.

Instead of the full regular price of \$6.00 you are to enter my subscription for two years of PHYSICAL CULTURE MAGAZINE, send me Milo Hasting's Food Directory, and enter my name as one entitled to free health service for two years—All for only \$4.00.

At the time this letter and so-called credit voucher were used the full, regular subscription rate for a 2-year subscription to Physical Culture Magazine was \$4.00. Diet books with no stated value were offered free to subscribers with 1-year, 18-month, and 2-year subscriptions at the regular rates, and such was not done for only 30 days. The so-called health service was free to all readers of the Physical Culture Magazine.

(6) DEAR READER:

Do you know that you are considered, in certain very interesting ways, a privileged person?

And that, because of this fact, you are able to buy certain merchandise for less than your friends and neighbors?

For instance, you will find a special \$2.00 Cash Saving Certificate enclosed with this letter. And we would further like you to accept a beautiful, new 200-page novel.

And this is why:

As you probably know, big national magazines get most of their revenue from their advertising pages. And, in order to

get this advertising, these magazines must prove that their readers are the really responsible, substantial folks in every community.

For the advertiser wants to reach only this so-called "preferred class"—folks who have the means to buy if they see fit.

This peculiar circumstance has made it necessary for publishers to conduct extensive investigations throughout the country. We have just finished a most complete one, which has enabled us to compile a list of the people in every community whom we want as readers of our magazine.

Your name is on this list. And therefore you are a privileged buyer. One who can not only buy our magazine for less than others pay. But you also are offered a beautiful new novel free with your True Story Magazine subscription if you act now.

You see True Story sells everywhere for 25¢ a copy. Over 2,000,000 people buy it at this price every month. At this rate it would ordinarily cost you \$6.00 for two years. But by signing the enclosed Cash Saving Certificate, you gain a \$2.00 reduction, and get True Story for two whole years.

Of course, the remaining \$4.00 (which is but slightly more than most folks pay for a single year of the magazine)—need not be paid now—if it isn't convenient. You can remit at the rate of only \$1.00 a month for four months—if you so desire.

And as a further inducement for you to become one of our regular subscribers. We want to give you one of the greatest True Story novels ever written. It is entitled "Wife or Stenographer—which?" And is fully described in the accompanying folder.

This book is not for sale. It can not be bought at any store or by mail for any amount of money. It was published in this beautiful red leatherette binding to be given to those who we particularly want as our subscribers. A copy is being reserved for you—and will be held for you for 30 days.

True Story Magazine needs no introduction. For you perhaps know it is without question the world's most popular magazine. Think of the real enjoyment for you—not for an evening—but every evening for two full years from the thrilling delightful stories that only True Story Magazine can offer you.

No doubt, the real sincerity of this offer will appeal to you. Certainly no other publisher has ever been half so liberal.

Just write your name and address in the space provided on the face of the Special \$2.00 Cash Saving Certificate. And

send it along to-day. You can pay later in easy installments if you prefer after the magazines start coming and you receive your copy of this most extraordinary gift book.

We ask only one favor of you. And that is if you or any member of your family can not use the enclosed \$2.00 Cash Saving Certificate, please destroy it. We can't afford to make this offer broadcast. It is only for the special class of folks we particularly want as subscribers.

Cordially yours,

FRANK MARTIN, *Manager*
Subscribers' Service Bureau.

During the time that this letter was used, the full, regular price for a 2-year subscription to True Story Magazine was \$4.00 to any and everyone who would subscribe for such a period, and various books of no advertised value were given free with 1-year, 2-year, and 18-month subscriptions.

(7) DEAR FRIEND:

As perhaps you know, magazines depend largely upon advertising for their revenue. Advertisers will pay for pages in a magazine not only according to the number of readers but also in consideration of their buying habits.

That brings us to you. By careful research, our statisticians have found that you belong to a "key" group. That not only do you buy large quantities of advertised goods yourself—but other people are strongly influenced by you in their purchases.

For this reason we have decided to make it profitable for you to read this letter—and profitable for you to become a reader of our magazine. Because frankly, we want you as a subscriber for True Story Magazine. And so in order to secure your good will, we have enclosed a dollar saving certificate that is worth \$1.00 in actual cash saving.

You see, over two million readers of True Story are now paying at the rate of \$5.00 for twenty issues—but you need send, for the reasons mentioned above, only \$4.00—at the rate of \$1.00 per month for four months if you prefer.

Besides, as an added inducement, we are going to give you two modern up-to-the-minute true novels—to make our offer irresistible, we hope. These novels are sent to you with the magazine, at the special rate of \$4.00 for the magazine alone—without a cent being paid for the books.

And let me assure you right now, that this offer is not to be broadcast. We do not want orders from anyone but you or members of your immediate family at this reduced rate.

True Story, as perhaps you know, is the only magazine that is comprised wholly of really true stories told by living men and women. Its millions of readers attest better than anything else its tremendous popularity.

In fairness to this great following, you can well understand why we are limiting this offer to you and a few others in each locality throughout the country.

And for this reason—and because of the limited number of novels we have available, we can not hold this offer open more than thirty days.

Moreover, it is important that you do fill out and mail the dollar saving certificate to-day. So that you will be certain to get your copies of the novels and your cash savings. You may be too late if you wait.

Cordially yours,

FRANK MARTIN, *Manager,*
Subscribers' Service Bureau.

P. S.—There is no truth in the rumors circulating about various parts of the country, that we are unable to print any more copies in addition to the two million three hundred thousand now issued each month. We have made special arrangements, and can guarantee deliveries of all copies ordered through this offer.

P. S.—If it is convenient for you to send the \$4.00 with the order we will send you an additional copy of the magazine for your trouble. Making twenty-one issues in all.

When this letter was used the full, regular subscription rate to True Story Magazine for 2 years (24 months) was \$4.50.

- (8) Here's your chance to get the two most remarkable true story novels ever written—without charge, with your True Romances renewal—if you act at once.

These two great books, "A Child of Love," and "The Truth About a College Girl," are unobtainable in any book shop, store, or library. They are not for sale anywhere. The only way they can be obtained is through a renewal and subscription to True Romances Magazine.

Think of it, with your one year's renewal to True Romances, you get either of these wonderful books. With your two years' renewal you may have them both.

And this most liberal offer comes at indeed an opportune time for you. For your True Romances subscription is now due for renewal.

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But you must act at once. Our supply of these great novels is limited. And as soon as our present stock is exhausted, this offer must be withdrawn.

And here is some more good news! The price of a year's subscription has been reduced from \$3.00 to \$2.50 but even so you get one book without charge. The price of a two year subscription is \$5.00—and you get two novels without charge.

You need send no money now if it is not convenient. Just sign and return the enclosed Gift Coupon at once. Your subscription will be entered, and your books will be reserved in your name. You can pay later, when we send you a memorandum.

If you care to remit now, the books you desire will be sent you immediately.

Cordially yours,

FRANK MARTIN, *Manager,*
Subscribers' Service Bureau.

This letter was used during times when the full, regular subscription prices to True Romances for two years were \$4.00 and \$4.50, and the novels of no stated value were given with one and 2-year subscriptions at the regular prices.

(9) Saves You

Saves You

\$1.00 SPECIAL CREDIT MEMORANDUM \$1.00

Macfadden Publications will credit the subscriber named below \$1.00 under the full price to apply on a Two Years' Subscription for True Romances. The full, regular price for such a subscription is \$6.00. By endorsing this Credit Memorandum on the back you need pay only \$5.00.

During a part of the period that this so-called credit memorandum was used, the full, regular price for a 2-year subscription was \$4.00, and for the balance of the period, \$4.50. At no time was the full, regular price for such a subscription \$6.00.

(10) Saves You

Saves You

\$1.00 SPECIAL CREDIT MEMORANDUM \$1.00

Macfadden Publications will credit the subscriber named below \$1.00 under the full price to apply on a Two Years' Subscription for Dream World. The full, regular price for such a subscription is \$6.00. By endorsing this Credit Memorandum on the back you need pay only \$5.00.

The full, regular prices for a 2-year subscription at different times during the period that this so-called credit memorandum was used were \$4.50, \$4.00, and \$5.00. At no time during the period was the full, regular price for such a subscription \$6.00.

Letters and so-called credit memoranda or vouchers similar to those set out above were used by respondent in soliciting subscriptions to various of the magazines distributed by it.

PAR. 5. In 1928 the total circulation of Dream World was over 250,000 a month, the subscription circulation was about 35,000 a month, to which figure it had grown from about 3,000 a month in the latter part of 1924. In 1928 the total circulation of Physical Culture Magazine was about 300,000 a month; the subscription circulation was about 150,000 a month, to which figure it had grown from about 60,000 a month in the early part of 1924. In 1928 the total circulation of True Detective Mysteries was about 180,000 a month; the subscription circulation was about 40,000 a month, to which figure it had grown from 1,970 a month in the latter part of 1924. In 1928 the total circulation of True Story Magazine was over 2,000,000 a month; the subscription circulation was about 200,000 a month, to which figure it had grown from about 65,000 a month in the early part of 1924. In 1928 the total circulation of True Romances was about 600,000 a month; the subscription circulation was about 70,000 a month, to which figure it had grown from about 3,000 a month in the early part of 1924. For each of the above magazines respondent circularizes for subscriptions, using the forms of letters, circulars, so-called credit vouchers, and literature set out above. In 1928 the total circulation of True Experiences was about 115,000 a month; the subscription circulation was about 450 a month. The subscription circulation of this magazine in the latter part of 1926 was about 500 a month. Respondent does not circularize for subscriptions to this magazine.

PAR. 6. Respondent regularly attempts to sell and sells subscriptions for one and two years to its various magazines through agents and news dealers at the prices which it represents in its circulars, letters, and literature as special or reduced prices. The prices at which the magazines are offered in the circulars, letters, and literature are the full, regular subscription rates or prices for the period of subscription solicited, or something above them. At the price offered by respondent through its literature the purchaser makes no saving on the price of the subscription solicited. The prices at which respondent in these circulars, letters, and literature offers to sell the subscriptions solicited are not reduced or special prices. Such offers are not made for only a 30-day period or to only the particu-

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lar persons to whom the literature is addressed. Such offers are to anyone who will subscribe for the period, and such continue in effect for two or more years at a time. At no time since January 1, 1924, has the full, regular subscription rate or price for two years to either True Story, True Experiences, True Romances, Physical Culture, Dream World, Your Home, or True Detective Mysteries been \$6.00. The "full regular price" for such a subscription to neither of these magazines was ever \$6.00.

PAR. 7. The use by respondent of such statements and representations in its literature as those set out and described above tends to and does deceive and mislead purchasers and prospective purchasers into the belief that the price at which respondent is offering the particular subscription solicited is a price reduced from the regular and usual price or rate for such subscription, and in such belief to subscribe for respondent's magazine or magazines, and tends to and does divert trade to respondent from its competitors and otherwise tends to injure competitors of respondent in their businesses.

CONCLUSION

The acts and practices of respondent as set forth in the foregoing findings as to the facts constitute, under the circumstances therein stated, unfair methods of competition in interstate commerce in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony, evidence, briefs, and argument by counsel for the Commission, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Macfadden Publications, Inc., its officers, agents, representatives, and employees, cease and desist from making statements or representations in advertisements in magazines, periodicals, or newspapers, or in circulars, letters, pamphlets, booklets, or other advertising literature circulated and distributed in

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connection with the offering for sale or sale in interstate commerce of any of its magazines or other publications,

- (1) That the regular or usual price of a particular subscription to such magazine or publication is a certain definitely set out sum when such is not the fact;
- (2) That prospective purchasers or subscribers are being offered a particular subscription to the magazine or publication at a reduced price for a limited period of time unless said subscription is actually so limited in point of time for acceptance at such price;
- (3) That the subscription to the magazine or publication at the stated price is offered only to a certain limited and specially selected group of persons when such is not the fact.

And it is further ordered, That respondent, within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with and conformed to.

IN THE MATTER OF
UNITED STATES PENCIL COMPANY, INC.

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

Docket 1905. Complaint, Jan. 21, 1931—Decision, Apr. 11, 1932

Where a corporation dealing in pencils bought by it from the manufacturer (1) complete and ready for sale and made in certain cases pursuant to its instructions and specifications, or (2) in the rough for painting and imprinting by it and addition of tips and erasers by a separate concern, and in sale of aforesaid pencils to jobbers, large chain store and retail organizations, and large business houses for their own use, and neither owning, controlling, operating, nor interested in any factory making pencils from the raw material into the finished product, nor equipped itself to manufacture pencils from the raw material into the finished product;

Caused itself to be described in a paid listing in a trade directory as "Makers of finest quality lead pencils" and made no effort to have changed a free and unauthorized listing in an earlier edition of the same directory in which its name, under heading, "Pencils," was immediately followed with the abbreviation "Mfrs.";

With tendency and capacity to mislead and deceive jobbers, retailers and purchasing public into buying from it as and for a manufacturer of pencils, and thereby divert trade to it from competitors who are in fact such manufacturers and from retailers who do not represent themselves as such:

Held, That such practice, under the circumstances set forth, was to the prejudice of the public and competitors and constituted an unfair method of competition.

Mr. G. Ed. Rowland for the Commission.

Miss Ruth Gottdiener, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale and distribution of lead pencils to jobbers, retailers, and ultimate consumers in the various States and the District of Columbia, and with principal office and place of business in New York City, with misrepresenting business status or advantages and advertising falsely or misleadingly in said respect, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that—

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Respondent, as charged, engaged as aforesaid, and neither manufacturing the pencils dealt in by it, nor owning, operating, or controlling any factory making the same, but purchasing its said pencils from the manufacturers completely finished in the case of about 50 per cent, and in the natural wood in the case of the others, which it paints and imprints with various names, addresses, and other identifying marks at its place of business, represented itself through trade directories and circulars as a manufacturer of lead pencils, authorizing and approving the following of its name in a trade directory by the abbreviation "Mfrs." and by the slogan, in a subsequent edition, "Makers of finest quality lead pencils," and falsely representing in circulars distributed to customers and prospective customers, "You save the jobber's profit by buying direct from us"; with effect of causing jobbers, retailers and the purchasing public to buy its pencils in the mistaken belief that said statements and representations were true, and with capacity and tendency so to do; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance, and having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Federal Trade Commission.

Thereupon this proceeding came on for final hearing on the brief of counsel and the record, counsel for respondent having waived oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, United States Pencil Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York. It was incorporated in 1918 and has its office and principal place of business at 487 Broadway, in the City of New York, State of New York, where for more than one year last past it has been engaged in the business of selling and distributing lead pencils, pencil cases, and pencil sets, to jobbers, retailers, and ultimate consumers located at points in various States of the

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United States, and the District of Columbia. The officers of respondent are D. Teitelbaum, president, and Samuel Fingerbut, secretary and treasurer. Its sales for the year 1930 amounted to approximately \$300,000. Respondent causes its pencils, when sold, to be transported from its place of business in the City of New York, State of New York, through and into other States of the United States and the District of Columbia to said purchasers thereof at their respective points of location. In the course and conduct of its said business respondent is in direct and active competition with other individuals, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution of lead pencils in interstate commerce among the several States of the United States and the District of Columbia.

PAR. 2. Respondent sells its pencils throughout the United States, about 90 per cent of its business being done through the mails and personal solicitation of the larger accounts, the balance by traveling representatives. Respondent sells to F. W. Woolworth, S. S. Kresge Co., and the American News Co., for resale to the public, and to individual business firms, such as banks and large business houses for their own office use. It obtains its customers principally by advertising circulars, which it sends to names secured from trade directories of various kinds. Respondent also sends with its circulars sample pencils, and if the recipient likes the pencil he sends an order for a supply.

PAR. 3. In the course and conduct of its aforesaid business respondent buys all the pencils which it sells from various manufacturers and distributors thereof. About 50 per cent of the pencils which it buys are completely finished and ready for sale to the trade and public, and about 50 per cent are pencils in the rough, i. e., complete pencils in the natural raw cedar, without paint, printing, tips, or erasers on them. Respondent paints these pencils and imprints names thereon. Where it is necessary to put tip and erasers on such pencils, respondent sends them to another factory in which it has no interest of any kind, to have this work done. Pencils which are painted and finished, but without any name or other lettering imprinted on them, are known in the trade as "blanks." Respondent sells pencil blanks to jobbers, and also imprints names on pencils at the order of jobbers or individual consumers.

PAR. 4. Respondent also sells two brands of pencils under the names "Two Tone" and "Evergreen." These pencils are made for it by the General Pencil Co., a manufacturer of pencils in Jersey City, N. J. The pencil sold by respondent under the brand name Evergreen is made for it by the General Pencil Co. under specifications furnished said General Pencil Co. by respondent. These specifica-

tions cover the kind and quality of wood to be used in the pencil, the quality and degrees of hardness of the lead used, and the finish put on the pencil. General Pencil Co. follows respondent's directions as to the materials from which the Evergreen pencil is made, and buys the wood and lead from certain manufacturers for said pencil. Respondent keeps in touch with the manufacture of its Evergreen pencil by sending representatives to the factory of the General Pencil Co. from time to time to consult with reference to the manufacturing process. Respondent does not perform any operation of any kind in connection with the manufacture of the Evergreen pencil. Respondent sells its Evergreen pencils principally to consumers direct, only a limited quantity being sold to jobbers. Where Evergreen pencils are sold to jobbers, respondent gives the jobber a better price than it does to the consumer whom it sells direct. General Pencil makes a pencil which it sells under the brand name "Semi-Hex," in which it uses the same wood and lead as it uses in the Evergreen pencil which it makes for respondent.

PAR. 5. Respondent paints and imprints lettering on the pencil blanks which it buys. It has special machinery in its place of business for painting pencils and for printing names and lettering on them, and has four employees for the purpose. It does not put tips or erasers on the pencils which it sells, but has this work done for it under contract. Respondent does not do, and has no machinery or facilities for doing, any operations in connection with the manufacture of pencils. The blank pencils as received by respondent are complete and can be used to write with. Painting and imprinting, such as done by respondent, are finishing operations, and not manufacturing operations. Fifty per cent of the pencils sold by respondent are received by it complete and ready for sale to the trade and public, all operations including painting, imprinting, and the affixing of tips and erasers having been done by General Pencil Co., the manufacturer thereof.

PAR. 6. In the 1929 edition of Donnelly's Industrial Directory, Eastern District, the name of respondent appears under the heading Pencils, with the abbreviation "Mfrs." immediately following, together with its address, thereby representing that it is a manufacturer of pencils. In the 1930 edition of the same directory, under the heading Pencils, respondent's name appears as follows:

UNITED STATES PENCIL COMPANY, INC.
Makers of Finest Quality Lead Pencils
487 Broadway, New York City. Canal 0010

The 1929 listing was a free listing, and not an advertisement, and respondent did not authorize it, but made no effort to have the listing

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changed to show it was not a manufacturer. The 1930 listing was an advertisement, contracted for and paid for by respondent through its secretary and treasurer, who authorized the party soliciting the advertisement to write it out for his approval, which was done, and he approved the wording.

PAR. 7. On the advertising circulars sent out and distributed by respondent to jobbers, retailers, and ultimate consumers appears the wording "You save the jobber's profit by buying direct from us." Respondent is not a jobber of pencils, but is a distributor and sells to jobbers. Respondent is distributor for all the pencils made by General Pencil Co. which that company does not itself sell under its own trade-mark names. Pencils sold by respondent, except the Evergreen pencil, are sold both to jobbers and consumers, and in some cases the pencils are sold direct to large consumers for as much as 25 per cent less than the same pencils are sold to jobbers, but in all cases are sold to the consumer for the same price or less than they are sold to jobbers.

PAR. 8. Respondent is not a manufacturer of pencils, and does not own, control, operate, or have any interest in, any factory where pencils are made from the raw material into the finished product. The representation by respondent that it is a manufacturer of pencils, as hereinabove set forth, is false, deceptive, and misleading, and has the tendency and capacity to mislead and deceive jobbers, retailers, and the purchasing public into buying pencils from respondent in the mistaken belief that such representation is true, and thereby diverts trade to respondent from competitors who are in fact manufacturers of pencils, and from retailers of pencils who do not represent themselves as manufacturers.

CONCLUSION

The practice of respondent, United States Pencil Co., Inc., of representing itself to be a manufacturer of pencils, under the conditions and circumstances set forth in the foregoing findings as to the facts, is to the prejudice of the public and respondent's competitors, and is an unfair method of competition in interstate commerce, and constitutes a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony taken and briefs filed herein, and the

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Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, United States Pencil Co., Inc., its officers, agents, representatives, and employees in connection with the sale and distribution of pencils in commerce between and among the several States of the United States and the District of Columbia cease and desist from representing in any manner, either directly or indirectly, that it is a manufacturer of pencils, unless and until said respondent actually owns, controls or operates a factory in which pencils are manufactured.

It is further ordered, That respondent shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

Commissioner Ferguson dissents.

IN THE MATTER OF
RELIANCE PENCIL CORPORATION

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

Docket 1924. Complaint, Mar. 6, 1931—Decision, Apr. 11, 1932

Where a corporation engaged in purchase of pencils both in the "rough" and as finished products, from the manufacturer thereof, and in the business of smoothing, polishing, painting, and stamping the former and attaching brass ferrules and erasers thereto at its factory for the performance of such so-called finishing operations, and in the sale to jobbers and retailers of its said pencils, which were (1) result of nearly two years' laboratory experiments and practical tests directed to development of desired smoothness, color, strength, and size of the lead used, as well as to matter of numerous brand names, shapes, and colors of the various pencils sold, and were (2) made for it by the manufacturer with cedar and lead specially prepared for it in accordance with its secret formulæ and specifications and subject in case of both substances to its continuing scrutiny and regular inspection and tests to secure quality and uniformity, but (3) came to it in all cases ready to sharpen and write with, due to prior completion by the manufacturer of the difficult and expensive operations necessary to bring the pencil to such stage,

Prominently displayed phrase "Manufacturers of pencils * * *" immediately under its corporate name, upon letterheads, billheads, catalogues, circular letters, and other stationery and in advertisements in various trade magazines, and referred in catalogues to a "new modern plant" at a certain point, as the plant in which its pencils were made, and as "the home of Reliance Pencils," in which, "under continuous laboratory supervision, the entire process is carried on under one roof, under one control," and in a circular letter sent to customers made the statement that the "lead is blended by our exclusive process," facts being it was not a pencil manufacturer, and neither owned, controlled, operated, nor had any interest in any pencil factory, and plant in question was that of the manufacturer from which it purchased pencils dealt in by it as aforesaid, and which had an undisclosed financial interest in it, but in which it itself had no interest of any kind;

With tendency and capacity to mislead and deceive jobbers and retailers into buying pencils from it in the mistaken belief that aforesaid statements and representations were true, and thereby divert trade to it from competitors who as manufacturers in fact of pencils shared the trade advantage due to jobber's and retailer's preference to deal with the manufacturer by reason of latter's financial responsibility and assurance of securing uniform quality and refund or exchange of defective pencils:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Brodek, Raphael & Eisner, of New York City, for respondent.

Complaint

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale and distribution of lead pencils to jobbers and retailers at points in the various States and the District of Columbia, and with principal office and place of business in New York City, with misrepresenting business status and advertising falsely or misleadingly in said respect, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid and neither manufacturing the pencils dealt in by it, nor owning, operating or controlling any factory making the same, and with no exclusive process for blending the lead used, but purchasing its said lead pencils in the rough, from the manufacturers, and finishing the same at its factory, where it smooths, polishes, and paints them, stamps the name thereon and affixes thereto a brass tip and eraser, falsely represents itself through letterheads, billheads, stationery, catalogues, and advertisements in trade magazines as a pencil manufacturer, making, among others, the following representations and statements:

Placing, on letterheads, billheads, circular letters, etc., immediately under its name, the words "Manufacturers of pencils, penholders, erasers";

Placing, immediately under its name, substantially the same words in its advertisement in various trade journals;

Placing the word "manufacturers" under its name in a catalogue prepared and distributed by it and the language, in connection with a description of a pencil factory, "the home of Reliance Pencils. Here, under continuous laboratory supervision the entire process is carried on under one roof, under one control."

Respondent further, as alleged, stated in a letter sent to customers and prospective customers "This lead is blended by our exclusive process * * *"

"Said false, deceptive, and misleading statements and representations," as alleged, "have the tendency and capacity to and do cause jobbers and retailers, residing in various States of the United States to purchase the lead pencils sold by respondent in the mistaken belief that such statements and representations are true," and said alleged acts and practices "are all to the prejudice of the public and respondent's competitors," some of whom "own and operate a factory in which are manufactured the lead pencils which they sell, and who sell said lead pencils in interstate commerce without any

false, deceptive, or misleading representations," and some of whom "buy the lead pencils which they sell from the manufacturers thereof, and who sell them in interstate commerce without representing that they are the manufacturers thereof."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance, and having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and respondent before an examiner of the Federal Trade Commission.

Thereupon this proceeding came on for final hearing on the briefs and arguments of counsel, and the record, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Reliance Pencil Corp., is a corporation, organized under the laws of the State of New York in April, 1929, having its office at 777 Broadway, in the city of New York, State of New York, and its factory in the city of Mt. Vernon, in the State of New York. The officers of respondent are Maurice E. Levine, president, and Louis Oskrov, secretary and treasurer. Respondent is now, and has been ever since its organization engaged in the business of smoothing, polishing, painting, and stamping lead pencils, and attaching brass ferrules and erasers thereto, and selling and distributing said finished lead pencils to jobbers and retail dealers located at points in the various States of the United States, and the District of Columbia. Respondent causes said pencils, when so sold, to be transported from its factory in the said city of Mt. Vernon, State of New York, through and into other States of the United States and the District of Columbia, to the purchasers thereof at their respective points of location.

In the course and conduct of its said business, as aforesaid, respondent is in direct and active competition with other individuals, partnerships, and corporations engaged in the manufacture, sale,

and distribution of lead pencils in interstate commerce among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business respondent has represented by its letterheads, billheads, circular letters, and other stationery, catalogues, and through advertisements in trade magazines having a general circulation throughout the various States of the United States, that it is a manufacturer of lead pencils. Upon its letterheads, billheads, catalogues, circular letters, and other stationery, and in its advertisements in various trade magazines, respondent prominently displays the phrase "Manufacturers of pencils, penholders, erasers" immediately under its corporate name. In its catalogues, which it distributes to its customers, respondent causes the word "manufacturers" to be printed immediately under its corporate name. Respondent advertises in such trade papers as Modern Stationery, Geyer's Stationery, Pacific Stationer, Southern Stationer, and Office Appliances.

In a catalogue formerly distributed by respondent to its customers, bearing date of September 1, 1929, appears a reference to a "new modern plant" at Lewisburg, Tenn., as the plant in which respondent's pencils are made, and said plant is further referred to in said catalogue, as follows:

This plant is the home of Reliance Pencils. Here, under continuous laboratory supervision, the entire process is carried on under one roof, under one control.

Respondent has discontinued using said catalogue, and has substituted one bearing the date of 1931, in which the above quoted statement does not appear. Respondent formerly sent out a circular letter to its customers containing the statement: "This lead is blended by our exclusive process." The use of this circular has been discontinued by respondent, and at the present time respondent does not send out circular letters of any kind.

PAR. 3. Respondent buys all of the pencils which it sells from Houston & Liggett, a company engaged in the manufacture of pencils, located at Lewisburg, Tenn. Respondent has no interest of any kind in the Houston & Liggett Co., and does not in any manner control said company, but Houston & Liggett has a financial interest in respondent's business, the nature and extent of which was not shown due to the objection of respondent's counsel. All of the processes of manufacture of the lead pencils which respondent sells are performed by Houston & Liggett at its factory at Lewisburg, Tenn.

The pencils as received by respondent from Houston & Liggett are in what is called in the trade the "rough." A pencil in the rough is a pencil which can be sharpened and used to the same extent as a fully finished pencil, but it is not salable to the public in the United States in that condition. Respondent maintains a factory at Mt. Vernon, N. Y., 50 by 54 feet in size, in which it employs from six to eleven workmen, who are engaged in smoothing, polishing, painting, and imprinting pencils received by respondent from Houston & Liggett, affixing brass tips and erasers thereto, and packing and shipping said pencils.

PAR. 4. Pencils are manufactured from pencil slats, which are thin pieces of wood, $7\frac{1}{2}$ inches long by $2\frac{1}{2}$ inches wide, two of which are required for the manufacture of seven lead pencils. The slats are grooved with seven grooves, the leads are then placed in the grooves of one of the slats and another slat, similarly grooved, is laid on the first slat containing the leads, and the two slats are securely glued together, forming what is called a "capped slat." The capped slat is then run through a shaping machine which separates it into rough pencils of the shape desired for the finished pencil. These are all manufacturing operations which are difficult and expensive, requiring a large investment in machinery, and the employment of skilled workmen. The pencils are then smoothed, polished, painted, imprinted with the name and grade of pencil, a brass tip and eraser affixed, and packed for shipment.

Some of the large manufacturers of lead pencils in the United States own timberlands from which the wood used in the production of their pencils is obtained, as well as sawmills which prepare the timber for use. Some of said manufacturers also compound and prepare the lead used in their pencils.

PAR. 5. The best wood for use in the manufacture of lead pencils is southern red cedar, the largest supply of which is found in the States of Tennessee, Alabama, Georgia, and Mississippi. Southern red cedar for use in the manufacture of lead pencils is produced in several grades, the highest of which is known as No. 1, and is southern fence rail cedar, from 75 to 150 years old; this is followed by Nos. 2 and 3, which range in age from 45 years to 80 years. Grades below No. 3 are not suitable for the manufacture of lead pencils. Owing to the scarcity of southern red cedar all manufacturers of lead pencils are using western cedar to a large and increasing extent in the manufacture of their pencils.

The lead pencil which retails at 5 cents comprises approximately 99 per cent of all pencil sales in the United States. Each of the

leading pencil manufacturers has a 5-cent pencil, which is its leader. Respondent markets 36 or 37 different brands of lead pencils of various grades. Its 5-cent leader is called Templar, and is made of the best grade southern red cedar. Its Utopian, Exclusive, Spectator, and Sceptoe brands are made of lower grades of southern red cedar, and its drawing pencils are made of the best grade of southern red cedar. The quality of the wood entering into the manufacture of respondent's pencils is indicated in its catalogue; where the best grade of wood is used it is so stated, and where lower grades are used the fact is indicated by the statement that the pencil is made of southern red cedar. Where no wood is mentioned the pencil is made of western cedar.

With the exception of one manufacturer, who uses both southern red cedar and western cedar in its 5-cent pencil, all the principal competitors of respondent use western cedar in the 5-cent pencils which they manufacture and sell. Southern red cedar costs approximately 50 cents more per gross of pencils than does western cedar.

PAR. 6. Respondent obtains all of the pencils which it sells from Houston & Liggett, located at Lewisburg, Tenn. Forty to fifty per cent of the pencils sold by respondent are received by it from Houston & Liggett completely finished, and ready for the market, the finishing operations having been done by Houston & Liggett. The remainder of its pencils are received by it in the rough, and respondent does the finishing operations at its factory at Mt. Vernon, N. Y. Houston & Liggett, through a holding company, owns or operates the largest supply of southern red cedar in the United States, and manufactures pencil slats which it sells to pencil manufacturers throughout the United States.

PAR. 7. Subsequent to its organization respondent did not offer for sale any pencils for a period of about a year and nine months. During that period the president of respondent was engaged in laboratory experiments and practical tests in developing the kind and quality of pencils which it desired to offer for sale. These experiments and tests were directed to the development of the smoothness, color, strength, and size of the lead used in its pencils, as well as the brand names, shapes, and colors of the various pencils which it sells. There are five degrees of lead in respondent's Templar pencil, and it required three months' experimentation to get the required quality of lead, and there are six degrees of lead in its drawing pencils, which required nine months of experimentation to perfect.

Respondent procures the lead it uses in its pencils from M. A. Furst & Co., of Atlanta, Ga., which is the only manufacturer of leads for the pencil industry, except the large pencil manufacturers who compound and prepare their own leads. M. A. Furst & Co. prepare leads according to the specifications furnished it by each pencil manufacturer. There are no standard degrees of lead known as No. 1, No. 2, No. 3, etc. Respondent furnished the specifications for the lead it desired to use in its pencils to Houston & Liggett, who placed orders for the lead with M. A. Furst & Co., which company furnished Houston & Liggett with the lead prepared in accordance with the specifications. The quality of lead used in respondent's leading brands of pencils is superior to that used in its other brands. The formulæ of the leads used by respondent in its pencils are not known to respondent's competitors.

Respondent devoted considerable time and thought to the selection of names for its 36 or 37 brands of pencils in order that they would not conflict with names used by competitors, and would be short and easily remembered. Respondent's pencils retail at from 1 cent each to 10 cents each.

At all times the president of respondent watches and inspects the quality of the cedar used in its pencils, and at intervals of from 30 to 60 days he visits the factory of Houston & Liggett for this purpose. The lead used in its pencils is regularly inspected and tested by respondent at its factory in Mt. Vernon, N. Y., so as to insure at all times a uniform product.

PAR. 8. Respondent is in competition with many manufacturers of pencils in the United States. Among these competitors are some who manufacture everything which goes into the finished lead pencil which they sell, including the slats, leads, and erasers. Other smaller competitors buy the pencil slats and begin their manufacturing processes at that point, as described in paragraph 4 herein. Each pencil manufacturer has a 5-cent pencil which is its largest selling pencil. Respondent's prices to the trade for its pencils are the same as those of its competitors for similar grades.

PAR. 9. There is an advantage in the trade in being known as a manufacturer of lead pencils because jobbers and retail dealers prefer to buy from a manufacturer because they are assured of getting pencils of a uniform quality at all times, and also because of the financial responsibility of the manufacturer, which assures the jobbers or retail dealers of being able to return any pencils which prove defective for exchange or refund. The pencils sold by respondent are of a uniform quality from year to year.

PAR. 10. Respondent is not a manufacturer of pencils, and does not own, control, operate, or have any interest in any factory where lead pencils are made. The operations which respondent performs, described in paragraph 3 herein, are known as finishing operations in the pencil industry, and while they are necessary in order to make the lead pencils merchantable in the United States, they are not essential operations to the manufacture of the pencil. A pencil in the rough is as efficient for writing purposes as is one that has been finished. Many thousands of gross of lead pencils without finish are sold by United States pencil manufacturers to foreign countries for use therein.

PAR. 11. The statements and representations made by respondent that it is a manufacturer of lead pencils, and describing the factory of Houston & Liggett as the "home of Reliance Pencils," as set forth in paragraph 2 herein, are false, deceptive, and misleading and have the tendency and capacity to mislead and deceive jobbers and retailers into buying pencils from respondent in the mistaken belief that such statements and representations are true, and thereby divert trade to respondent from competitors who are in fact manufacturers of lead pencils.

CONCLUSION

The practices of respondent, Reliance Pencil Corp., under the conditions and circumstances set forth in the foregoing findings as to the facts, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in interstate commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony taken and briefs filed herein, and oral argument of counsel, and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Reliance Pencil Corp., its officers, agents, representatives and employees, in connection with the sale and distribution of lead pencils in commerce between and among

Order

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the several States of the United States, and the District of Columbia, cease and desist from:

(1) Representing in any manner, either directly or indirectly, on its letterheads, billheads, envelopes, catalogues, circular letters, and any other stationery, that it is a manufacturer of lead pencils, unless and until said respondent actually owns, controls, or operates a factory in which it performs the operations necessary to the manufacture of a lead pencil.

(2) Inserting, or causing to be inserted in newspapers, magazines, or other periodicals, advertisements in which it represents itself to be a manufacturer of lead pencils, unless and until said respondent actually owns, controls, or operates, a factory in which it performs the operations necessary to the manufacture of a lead pencil.

(3) Representing in any manner, either directly or inferentially, that a factory belonging to a corporation in which respondent has no financial or proprietary interest, is a factory owned, controlled, or operated by respondent.

It is further ordered, That respondent shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

Commissioner Ferguson dissents.

Complaint

IN THE MATTER OF

J. MERRELL REDDING INDIVIDUALLY AND TRADING
AS THE NIX-NOX COMPANY

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

Docket 1983. Complaint, Feb. 6, 1932¹—Decision, Apr. 25, 1932

Where an individual engaged in sale of its so-called "Nix-Nox Fluid" for automotive use, falsely represented and advertised that said product mixed with gasoline in proportion of one part to a thousand would increase power, permit operation on a leaner mixture, and increase mileage considerably; with result of misleading and deceiving dealer purchasers and consuming public to whom such representations were repeated by said dealer purchasers, into believing same to be true, inducing purchase of product in question in reliance on such belief, and diverting trade from and otherwise injuring competitors of said individual, and with capacity and tendency so to mislead, deceive and divert:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice and injury of the public and competitors and to the detriment and restraint of fair and legitimate competition in industry concerned, and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

SYNOPSIS OF COMPLAINT¹

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged under his own name and also as aforesaid, in sale of a fluid for mixing with gasoline for automotive use, and with principal place of business in Dallas, Tex., with misrepresenting results of product and advertising falsely or misleadingly in said respect, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent falsely represented that his said product, mixed with gasoline in certain proportions for automotive use will increase power and permit operation on a leaner mixture, and increase mileage considerably if the carburetor is cut down, and printed and distributed advertisements containing such false representations and statements; with effect of misleading and deceiving dealer purchasers into believing said representations to be true, inducing their purchases in reliance upon such erroneous belief, and diverting trade from and otherwise injuring competitors, and of also misleading

¹ Amended.

Findings

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and deceiving consuming public into believing representations of similar tenor repeated to them by dealer purchasers thus misled, to be true, and thereby inducing purchase of mixture containing product in question, and with capacity and tendency so to mislead and deceive dealer purchasers of said product, and the consuming public and so to divert trade; to the prejudice and injury of the public and competitors, from whom trade is thus unfairly diverted, and to the restraint and detriment of free, fair, and legitimate competition in the motor fuel industry concerned.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on October 28, 1931, issued its complaint and thereupon served the same as required by law upon J. Merrell Redding, individually and trading under the name and style, The Nix-Nox Co., and on February 6, 1932, issued its amended complaint and thereupon served the same as required by law upon J. Merrell Redding, individually and trading under the name and style, The Nix-Nox Co., in which amended complaint it was charged that the respondent was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. By notice contained in said amended complaint respondent was notified and required within thirty days from the day of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said amended complaint; and in said notice respondent was further notified of the provisions of the Commission's rules of practice with respect to answer and failure to answer said provision being set forth in haec verba in said notice and providing in part as follows (Rule III, sub. div. 3):

(3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused his appearance to be entered in this proceeding nor has he during the said thirty-day period specified in said notice, or at any time, made or filed answer to said amended complaint. He has at no time required that the time within which he may file answer be extended, nor has the commission granted any such extension of time.

Thereupon this proceeding came on for final hearing; and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid rules of practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent, J. Merrell Redding, is an individual and has maintained a place of business in the city of Dallas, State of Texas. The said respondent for more than one year last past has been engaged in the sale in interstate commerce among the several States of the United States under his own name and under the trade name and style, The Nix-Nox Co., of a fluid for mixing with gasoline when the gasoline is to be used as a motor fuel, which fluid respondent has sold under the name Nix-Nox Fluid. Respondent has sold and distributed his said product to persons, firms, and corporations located in various States of the United States dealing in motor fuels and gasoline and the said dealer purchasers in turn have resold the said product after mixing it with gasoline to the consuming public. The said respondent has caused his said product when sold by him to be transported in interstate commerce from the city of Dallas in the State of Texas to the purchasers thereof located at various points in States of the United States other than the State of Texas. In the course and conduct of his said business said respondent has been in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of fluids for treating gasoline when the gasoline is to be used as a motor fuel so as to increase the power and allow the motor to operate on a leaner mixture. And respondent has also been in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of motor fuels which increase the power and allow the motor to operate on a leaner mixture than is possible with untreated gasoline.

PAR. 2. The said respondent in connection with the sale of his product in interstate commerce has made numerous statements and representations that his said product Nix-Nox Fluid is to be mixed with gasoline, and that when one part of his said product Nix-Nox Fluid is mixed to 1,000 parts of gasoline and used as a motor fuel that Nix-Nox Fluid increases the power and allows the motor to operate on a leaner mixture, and if the carbureter is cut down the mileage is increased considerably. These statements and representations are false and said fluid when mixed with gasoline and used

as a motor fuel does not increase the power and does not allow the motor to operate on a leaner mixture and the carburetor can not be cut down so as to furnish a leaner mixture by reason of the addition of Nix-Nox Fluid to the gasoline and the mileage is not thereby increased considerably.

PAR. 3. The said respondent has had printed advertisements containing all of the above representations and statements and for more than one year last past has caused said printed advertisements to be distributed to purchasers and prospective purchasers of his said product located in various States of the United States. The above stated representations and statements of respondent by means of which he has offered for sale and sold his said product are false and have had the capacity and tendency to mislead and deceive and have misled and deceived the dealers purchasing his product into the belief that the said representations were true and have the tendency to induce and have induced the purchasers of respondent's product to purchase the same in reliance upon such erroneous belief and have tended to divert trade from and have diverted trade from and otherwise injured competitors of respondent.

PAR. 4. The dealers who have purchased respondent's product Nix-Nox Fluid have mixed the same with gasoline in accordance with the directions of respondent and have sold the resulting mixture to the consuming public as a motor fuel. The said dealers in reliance upon the above mentioned representations and by means of the printed advertisements have sold the said resulting mixture to the consuming public under the false representations and statements made to them by the respondent that the said resulting mixture increases power and allows the motor to operate on a leaner mixture and if the carburetor is cut down the mileage is increased considerably. The above false representations and statements have had and have the capacity and tendency to mislead and deceive and have misled and deceived the consuming public into the belief that the said representations and statements were true and have the tendency to induce and have induced the purchase of the said resulting mixture containing respondent's product in reliance upon such erroneous belief.

CONCLUSION

The practices of said respondent, J. Merrell Redding, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon and a detriment to the freedom of fair and legiti-

mate competition in the motor fuel industry and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, and the Commission having made its report in which it stated its findings as to the facts and conclusion that respondent, J. Merrell Redding, individually and trading as The Nix-Nox Co. has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, J. Merrell Redding, his agents, servants, and employees in connection with the advertising, offering for sale or sale in interstate commerce of his product, which respondent describes and designates Nix-Nox Fluid, do cease and desist:

From representing or causing to be represented that his said product when mixed with gasoline and used as a motor fuel increases the power of the motor and allows the motor to operate on a leaner mixture and from representing or causing to be represented that the carbureter can be cut down by reason of the addition of respondent's product and the mileage is thereby increased considerably, or from making any such representations, either directly or indirectly, by any other word or words or statements of like import, unless and until respondent's said product actually contains properties which when mixed with gasoline and used as a motor fuel increases the power of the motor and allows the motor to operate on a leaner mixture and enables the carbureter mixture to be made leaner by reason of the addition of respondent's said product and thereby increasing the mileage.

It is further ordered, That the respondent, J. Merrell Redding shall, within 60 days after the service upon him of a copy of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist herein above set forth.

IN THE MATTER OF
CRESCENT CREAMERY COMPANY

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

Docket 1984. Complaint, Oct. 29, 1931—Order, Apr. 25, 1932

Consent order requiring respondent corporation, its agents, etc., to cease and desist, in aid or furtherance of production, sale, and distribution of butter in interstate commerce, from representing, publishing, etc. (a) any false and defamatory statements purporting to describe manufacture, sale, or composition of oleomargarine; (b) matter or information stating said product, or coconut oil contained therein, is foul, insanitary, etc., or unfit for human consumption, or (c) that sale of said product is a rich man's graft, or false information concerning cost of materials used in manufacture thereof; all as in said order more specifically set forth.

Mr. PGad B. Morehouse for the Commission.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Crescent Creamery Co., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Crescent Creamery Co., is a corporation organized and existing under the laws of the State of South Dakota and has its office and principal place of business at 801 North Main Street, in the city of Sioux Falls, State of South Dakota. Said corporation is now, and for more than two years last past, has been engaged in the manufacture, sale, and distribution of butter, which when manufactured or produced is shipped and transported from its principal place of business in the State of South Dakota in, into, and through the States of Iowa, Minnesota, and various other States of the United States to retailers, produce dealers and other customers located therein for delivery and resale to the ultimate consumer. In the course and conduct of the corporate business as aforesaid respondent is and has been in competition over a coextensive area with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of oleomar-

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garine, a product widely used by the consuming public as a substitute for, and in lieu of, butter.

PAR. 2. In the course and conduct of its business, as aforesaid, respondent, by its officers, agents, and employees, in a manner and form designed and well calculated to injure and bring into disrepute generally, all of its competitors dealing in and distributing oleomargarine in interstate commerce, has been widely publishing, republishing and distributing to retailers, produce dealers, and the consuming public misleading, false, and defamatory statements purporting to be descriptive of the ordinary and usual process of manufacture and composition of oleomargarine, to wit: That the manufacture and sale of oleomargarine "is a rich man's graft", and that oleomargarines are made from cocoanut oil and certain other ingredients; that the cocoanut oil, such as is used in American oleomargarine, is made from copra. Respondent further disparages and maligns the competitive product, oleomargarine, conveying by means of implication, as well as direct statements, the misinformation to retailers, produce dealers, and other consumers that in the ordinary and usual process of manufacture of oleomargarine the cocoanut oil contained therein is foul, filthy, and insanitary or otherwise unfit and unhealthy for human consumption; that it is of the same stock as is used for soap grease; that it is comparable with stable manure; and swarms of half-naked Malays, perspiring under tropical heat, trample under bare feet the copra which is going to be made into the "poor man's butter," by "poor man's butter" meaning and intending oleomargarine; whereas in truth and in fact such statements are not descriptive of the ordinary and usual process of manufacture and composition of oleomargarine, and certain grades of oleomargarine do not contain cocoanut oil, but are made from beef fats, vegetable oils, nut margarine and other products which ordinarily and usually are manufactured and produced under sanitary and healthful conditions and are in no way comparable with stable manure, or other compost or filth and are not derived from cocoanut oil obtained by stamping copra with the bare feet of sweating Malays under tropical heat, and which are not in any other way unfit or unhealthful for human consumption.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent has published, republished, and distributed to retailers, produce dealers, and other consumers false, misleading, and disparaging statements designed and well calculated to cause the reader thereof to believe that a thousand pounds of oleomargarine is made at a cost of \$107.50 and giving a certain recipe containing only four

ingredients, thereby inducing the reader to the conclusion that such recipe, with the prices given, applies to all oleomargarine products and that the sale and distribution thereof by respondent's competitors constitutes a "graft" thereby meaning and intending to imply that the public is swindled as well as injured in health in the purchase and consumption of said competitive product, when in truth and in fact such recipe and such cost neither fairly nor accurately represent either the usual ingredients or the usual cost in connection with the ordinary and usual production of oleomargarine being distributed and sold in interstate commerce.

PAR. 4. That such false, misleading, and disparaging statements, publications, and republications have the tendency to and substantially do injure the sale and distribution in interstate commerce of the product known as oleomargarine and tend to and do actually hinder and prevent and decrease its use by the consuming public as a substitute for respondent's product, thereby threatening with injury or actually injuring to a substantial extent respondent's competitors in interstate commerce and diverting trade from respondent's competitors to respondent.

PAR. 5. The acts and things above alleged to have been done and the false and misleading representations alleged to have been made, published, and distributed by respondents are to the prejudice of the public and competitors of respondents and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon complaint and the answer of respondent in which respondent refrains from contesting the proceeding and consents that the Commission may make, enter, and serve upon it an order to cease and desist, from the methods of competition charged in the complaint, and the Commission being fully advised in the premises having thereupon concluded that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Crescent Creamery Co., a corporation, and its agents, representatives, servants, and employees, in the aid or furtherance of the production, sale and distribution of butter in interstate commerce cease and desist from:

Order

Representing, publishing, republishing, or distributing to its members, or directly or indirectly to retail dealers, produce dealers or the consuming public (a) any false and defamatory statements, directly or indirectly purporting to be descriptive of the manufacture, or sale, or composition of oleomargarine; (b) any matter or information stating directly or by implication that oleomargarine in the ordinary and usual process of being manufactured, or coconut oil contained in such oleomargarine, is foul, filthy, or insanitary, or otherwise unfit for human consumption; (c) any direct statement or matter containing the implication that the sale of oleomargarine is a rich man's graft, or any false information concerning the cost of the materials used in the manufacture of oleomargarine.

It is further ordered, That the said respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
JOSEPH COOPER, DOING BUSINESS AS SILKTEX
HOSIERY & LINGERIE CO., ETC.

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

Docket 1997. Complaint, Jan. 20, 1932—Decision, Apr. 25, 1932

Where an individual engaged in purchase of hosiery, and of underwear or lingerie not composed of silk, and in resale thereof through house to house canvassers, in competition with manufacturers selling hosiery, silk and other lingerie direct to consuming public, and in competition with others purchasing such articles from manufacturers thereof and reselling same to retail and other dealers in the ordinary course of trade,

- (a) Set forth trade names employed by him including word "Mills," in advertisements for canvassers in newspapers and periodicals published in various States, and made such statements as "From mill to you", "Silk-tex Mills' factory prices", and "Manufacturing wearing apparel for the entire family", in descriptive leaflets, circulars, form letters, color cards, catalogues, etc., furnished by it to his canvassers or agents and by them displayed to customers and prospective customers, and set forth upon his letterheads two pictures representing mills or factories, together with word "lingerie" under one and word "hosiery" under the other, notwithstanding fact said individual neither owned, operated, nor controlled any mill or mills and was not a manufacturer; with capacity and tendency to mislead and deceive canvassers or prospective canvassers and purchasing public into believing him to be a manufacturer selling and distributing articles dealt in at a saving in price, and induce latter's purchases in reliance on such belief, and with effect of so misleading, etc.; and
- (b) Set forth in aforesaid advertisements for canvassers, words "complete line of silk underwear", and in descriptive leaflets, etc., supplied to such canvassers, as aforesaid, words "Silktex", "silk", "silk rayon", and "rayon silk" in connection with sale of its said lingerie; with capacity and tendency to mislead and deceive canvassers or prospective canvassers into believing said individual to be a dealer in silk underwear and induce many of the consuming public to purchase his said lingerie as and for articles composed in whole or in part of silk, i. e., material derived from the product of the silk worm, and with effect of so misleading, etc.:

Held, That such practices, under the circumstances set forth, unfairly diverted trade from and otherwise prejudiced and injured competitors, operated as a restraint upon and detriment to the freedom of fair and legitimate competition in the industry concerned, prejudiced and injured the public, and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Mr. Lewis Liberman, of Camden, N. J., for respondent.

Complaint

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the purchase of hosiery, lingerie and other merchandise, and in the resale thereof upon orders received by house canvassers or solicitors, and with place of business in Philadelphia, with using misleading trade names, misrepresenting business status or advantages, naming product misleadingly, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, and neither a manufacturer nor owning, operating or controlling any mills, or selling or distributing underwear composed of silk, employs such words and expressions in newspaper and periodical advertisements, directed to procuring house to house canvassers, as "Silktex Mills" and "complete line of silk underwear"; such phrases in leaflets, circulars, etc., furnished to his canvassers for their use and display in soliciting sale of his said hosiery, lingerie and other merchandise as "From mill to you", "Silktex Mills' factory prices" and "Manufacturing wearing apparel for the entire family"; and such words in the descriptive leaflets, circulars, etc., supplied to his aforesaid canvassers for their use and display, in connection with the sale of his said lingerie, as "Silktex", "silk", "silk rayon", "rayon silk".

Use of such words, expressions, etc., as alleged, have the effect of misleading and deceiving prospective canvassers into believing him to be a manufacturer, selling and distributing silk underwear, and of so misleading and deceiving the purchasing public and causing it to buy said merchandise in reliance upon the truth of said statements and representations, and in the belief that in so purchasing they are gaining an advantage in price through eliminating the middleman's profit, and of misleading and deceiving many of said public into purchasing said lingerie in the mistaken belief that the same is composed in whole or in part of silk, and have the capacity and tendency so to mislead and deceive.

Said acts or practices, as charged, thereby divert business from and otherwise prejudice and injure competitors who manufacture hosiery, etc., and sell same directly to the consuming public, competitors who purchase the hosiery, etc., dealt in by them from manufacturers and resell same to retail and other dealers and the consuming public in the ordinary course of trade, competitors who make and sell silk and other lingerie direct to the public as aforesaid and competitors

who purchase their lingerie and other merchandise from the manufacturers and resell same as aforesaid, and have the capacity and tendency so to divert; to the prejudice and injury of the public and competitors and to the detriment and restraint of free, fair, and legitimate competition in the hosiery and lingerie industry.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on January 20, 1932, issued its complaint against Joseph Cooper, doing business under the trade names and styles Silktex Hosiery & Lingerie Co., Silktex Mills, Silktex Hosiery Mills, Silktex Lingerie & Hosiery Mills, Silktex Lingerie & Hosiery Co., Silktex Lingerie Mills Co., Silktex Lingerie Mills, and on January 21, 1932, caused the said complaint to be served upon respondent as required by law, in which complaint it was charged that respondent was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. By notice contained in said complaint respondent was notified and required, within thirty days from aforesaid date of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of the Commission's rules of practice with respect to answer and failure to answer said provisions being set forth in haec verba in said notice and providing in part as follows (Rule III, Sub. Div. 3):

(3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused his appearance to be entered in this proceeding nor has he during the said thirty-day period specified in said notice, or at any time, made or filed answer to said complaint. He has at no time required that the time within which he may file answer be extended, nor has the Commission granted any such extension of time.

Thereupon this proceeding came on for final hearing; and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid rules of practice, having duly considered the

¹The "findings" *infra*, embody substantially, the allegations of the complaint, respondent having failed to appear or file answer.

record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent Joseph Cooper is an individual and has maintained a place of business in the city of Philadelphia, State of Pennsylvania. The said respondent for more than one year last past, under the trade names and styles, Silktex Hosiery & Lingerie Co., Silktex Mills, Silktex Hosiery Mills, Silktex Lingerie & Hosiery Mills, Silktex Lingerie & Hosiery Co., Silktex Lingerie Mills Co., Silktex Lingerie Mills, has been engaged in the business of purchasing hosiery, lingerie, and other merchandise and reselling the same in interstate commerce among the several States of the United States. Respondent has sold and distributed his products to purchasers thereof located at various points of location in the States other than the State of Pennsylvania upon orders solicited and received by house to house canvassers. The respondent has caused his said hosiery, lingerie, and other merchandise when sold by his house to house canvassers to be transported in interstate commerce from Philadelphia, Pa., to the purchasers thereof. In the course and conduct of his said business said respondent has been in competition with other individuals, partnerships, and corporations engaged in the sale and transportation in interstate commerce of hosiery, lingerie and other merchandise.

PAR. 2. Respondent has procured his agents or house to house canvassers by means of advertisements inserted in newspapers and periodicals published in various States of the United States and circulated in interstate commerce, such advertisements being advertisements of his merchandise and for agents to sell his merchandise. The advertisements which respondent has caused to be inserted and published as above stated contain the following words and phrases among others, to wit:

Run-proof hosiery. Guarantee with every pair. Silktex Mills, Philadelphia, Pa.

Agents—Run-proof hosiery, guaranteed full fashioned; Pure silk; low prices; every pair guaranteed in writing. Silktex Mills, Philadelphia, Pa.

Agents—Full fash. ladies' pure silk hose, 90¢. Complete line of silk underwear. Silktex Mills, 1001 Chestnut, 513 Victory Bldg., Phila.

The word "mills" and the expression "complete line of silk underwear" as used in the above advertisements are false and deceptive and have the capacity and tendency to mislead and deceive and do mislead and deceive persons seeking employment as agents or canvassers into the belief that respondent is a manufacturer and that he sells and distributes silk underwear, when in truth and

Findings

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in fact the respondent does not own, operate, or control any mill or mills and is not a manufacturer and does not sell or distribute underwear which is composed of silk. The word "silk" denotes to the trade and the purchasing public, as applied to a textile, that such textile is made from a material derived from the product of the cocoon of the silkworm.

PAR. 3. The respondent has furnished to his aforesaid canvassers or agents descriptive leaflets, circulars, form letters, color cards, illustrated catalogues, and other trade literature which said canvassers or agents have used and displayed to customers and prospective customers in connection with sales of respondent's said hosiery, lingerie, and other merchandise. Upon the aforesaid leaflets, circulars, form letters, color cards, catalogues, and other trade literature, respondent has caused to be set forth the phrases among others, to wit:

From mill to you

Silktex Mills' factory prices

Manufacturing wearing apparel for the entire family

Respondent also has on his letterheads two pictures representing mills or factories, and under one of such pictures appears the word "lingerie" and under the other of such pictures appears the word "hosiery."

The respondent also has in his various trade names as heretofore referred to the word "mills."

The above advertisements and representations and each of them are false and misleading in that respondent neither owns, operates, nor controls a mill or mills in which respondent manufactures the said merchandise, and respondent is not a manufacturer but purchases the said merchandise from others. The said advertisements and representations and each of them have the capacity and tendency to and do mislead and deceive the purchasing public and to induce the purchasing public to purchase said merchandise in the belief that said statements and representations are true and that the purchase of respondent's merchandise enables the purchaser to gain an advantage in price by reason of the elimination of a middleman's profit.

PAR. 4. Respondent furnishes to his aforesaid canvassers or agents descriptive leaflets, circulars, form letters, color cards, catalogues, and other trade literature which said canvassers or agents have used and displayed to customers and prospective customers in connection with sales of respondent's said lingerie. Upon the aforesaid leaflets, circulars, form letters, color cards, catalogues, and other trade literature respondent has caused to be set forth in connection with the sale of his said lingerie the words, to wit:

Conclusion

Silktex

Silk

Silk rayon

Rayon silk

The terms "Silktex," "silk," "silk rayon," and "rayon silk," and each and all of them used by respondent to designate and describe the aforesaid lingerie are false and misleading in that none of the lingerie of the respondent to which said terms are applied is composed in whole or in part of silk as defined in paragraph 2 hereof, but are all composed of rayon or other material than silk. The use of the said false and misleading terms "Silktex," "silk," "silk rayon," and "rayon silk" by the respondent as aforesaid has the capacity and tendency to mislead and deceive and does mislead and deceive and causes many of the consuming public to purchase respondent's said lingerie in the belief that same is composed in whole or in part of silk as above defined.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof a number of manufacturers of hosiery, lingerie, and other merchandise who sell their hosiery, lingerie, and other merchandise directly to the consuming public. There are many others of said competitors who purchase the hosiery, lingerie, and other merchandise, in which they deal, from others who manufacture the same, and who resell said hosiery, lingerie, and other merchandise to retail and other dealers and to the consuming public in the ordinary course of trade.

There are among the competitors of respondent referred to in paragraph 1 hereof a number of manufacturers of silk and other lingerie who sell their lingerie directly to the consuming public. There are many others of said competitors who purchase lingerie and other merchandise in which they deal from others who manufacture the same, and who resell said merchandise to retail and other dealers and to the consuming public in the ordinary course of trade.

CONCLUSION

The use by the respondent, Joseph Cooper, of the false representations, statements, and assertions under the conditions and circumstances set forth in the foregoing findings are unfair methods of competition in interstate commerce and (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon and detriment to the freedom of fair and legitimate competition in the hosiery and lingerie industry and constitute a violation of section 5 of an act of Congress entitled "An act to create a Federal Trade

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Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record and the Commission having made its report in which it stated its findings as to the facts and conclusion that respondent, Joseph Cooper, doing business under the trade names and styles, Silktex Hosiery & Lingerie Co., Silktex Mills, Silktex Hosiery Mills, Silktex Lingerie & Hosiery Mills, Silktex Lingerie & Hosiery Co., and Silktex Lingerie Mills, has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Joseph Cooper, his agents, representatives, servants, and employees do cease and desist:

1. From directly or indirectly using the word "silk" alone or in combination with other words in his advertising or on descriptive leaflets, circulars, form letters, color cards, illustrated catalogues, or in any other manner whatsoever in connection with the sale or offering for sale of hosiery, lingerie, or other merchandise in interstate commerce (a) unless the material of the hosiery or lingerie or other merchandise is derived entirely from the cocoon of the silkworm, or (b) unless where the hosiery, lingerie, or other merchandise is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery, lingerie, or other merchandise is in part composed.

2. From carrying on the business of selling hosiery, lingerie, or other merchandise in interstate commerce under a name which includes the word "mills" in combination with other words, and from making representations through advertisements, descriptive leaflets, circulars, form letters, color cards, illustrated catalogues, or in any manner whatsoever, that respondent is the owner of or controls a mill or mills or that the hosiery, lingerie, or other merchandise sold by respondent comes direct from the manufacturer to the purchaser, unless and until respondent actually owns and operates or directly and absolutely controls a factory or mill wherein is made any and all hosiery, lingerie, or other merchandise by him sold or offered for sale under such title or name.

It is further ordered, That respondent, Joseph Cooper, shall, within 60 days after the service upon him of a copy of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
GREEN RIVER MALT COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1975. Complaint, Oct. 20, 1931—Order, May 16, 1932*

Consent order requiring respondent corporation, its agents, etc., in connection with sale or offer of any domestic malt extract, sirup, or product in interstate commerce, to cease and desist designations, descriptions, brands, or labels "Canadian Crown", "Canadian Style", "Pride of Quebec", "Berliner" or "Faterland", or labels depicting scenes or illustrations suggestive of Canada, Germany, or any foreign country; all as in said order set forth and qualified.

Mr. James M. Brinson for the Commission.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Green River Malt Co., a corporation, hereinafter called respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Green River Malt Co., is, and for more than a year last past, has been a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business in the city of Boston, in said State. It has been and is engaged in offering for sale and selling in commerce, among and between the various States of the United States, malt extracts, malt sirup, and malt sirup products in competition with individuals, partnerships, and corporations engaged in the distribution and sale of similar products in interstate commerce. It sells its products at wholesale and retail, and when sold, causes them to be transported either from its place of business aforesaid or from Newark, N. J., where it has been and is manufactured for it, to purchasers located in other States than the State or States from which the shipments originate.

PAR. 2. It has been and is the practice of respondent to cause its malt or malt sirup products to be manufactured for it in the State of New Jersey. Certain products so manufactured it has offered

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for sale and sold, branded or labeled "Canadian Crown" and others as "Canadian Style". The brands or labels on containers in which such products have been and are sold have contained pictorial representations of scenes, emblems, and insignia characteristic of and associated in the public mind with Canada or the British Empire.

The respondent has offered for sale and sold other products branded or labeled "Pride of Quebec Type", with the words "Pride of Quebec" in large and conspicuous letters and the word "type" in letters relatively small and inconspicuous.

There have appeared in some instances on the aforesaid brands or labels certain descriptions of, or references to, such products in the French language, which is the language of a substantial proportion of the population of Quebec in the Dominion of Canada. In such instances the labels have been so arranged that when affixed to containers of its product the French words have appeared in a column adjoining and parallel with a column containing a translation of the French words into English words.

In truth and in fact the products offered for sale and sold by respondent, branded and labeled "Canadian Crown", "Canadian Style", and "Pride of Quebec" have not been, were not, and are not, manufactured in Canada, or any part thereof or from or out of Canadian ingredients or materials but have been, were, and are manufactured in the United States of domestic material entirely.

PAR. 3. The acts and practices of respondents described in paragraph 2 hereof have had and have the capacity and tendency to mislead and deceive, and have furnished and furnish dealers with the means to mislead and deceive, the public into the belief that the products so labeled and described have been either manufactured in Canada or from and out of Canadian ingredients, and to induce the purchase of the products so branded or labeled in reliance on such erroneous belief and thereby to divert trade to respondent from competitors selling in interstate commerce malt sirup and malt products.

PAR. 4. It has been and is the practice of respondent Green River Malt Co. to offer for sale and sell in commerce among and between the various States of the United States certain products manufactured for it as aforesaid, in containers with labels affixed thereto so arranged that on one side of the container have appeared the word "Berliner" in large and conspicuous letters on the upper portion of the label and on the lower portion thereof have appeared the following:

Hopfen Geschmack
MALZ EXTRACT
Nur Fur Lebensmittel

Between the word "Berliner" on the upper portion of the label and the German words on the lower portion have appeared a pictorial scene, design, or illustration typical and suggestive of Germany, presenting a structure supported by columns through which people appear to be passing. There are at the lowest part of the picture the words "Brandenburger Tor". On the opposite side of the container there appears on the label the same word "Berliner" above the same pictorial presentation with the following below it or on the lower part of the label:

Hop flavored

Malt Extract

For Food Purposes Only

Respondent Green River Malt Co. has offered for sale and sold in such commerce other products in containers with labels so arranged that on opposite sides of the container and on the upper portion of the label appear the word "Faterland" in large and conspicuous letters with the word "type" in small letters immediately below it. A pictorial representation of a scene typical and suggestive of Germany appears below Faterland on both sides of the container. Below the pictures on one side are the same German words as on the label affixed to the container of the product branded "Berliner", while below the picture on the other side is a translation of such German words into the English words. In truth and in fact the products sold by respondent branded or labeled Berliner and Faterland have not been, were not, and are not, manufactured in Berlin or in Germany or in any foreign country or from or out of German or other foreign material. Such products have been, were, and are manufactured in the United States out of domestic material only.

PAR. 5. Hops grown in Germany have been for a long period of time, and now are, widely, popularly, and favorably known in the United States, and they command a higher price than domestic hops, and malt sirups flavored with German hops are more popular and command a higher price than malt sirup flavored with domestic hops.

PAR. 6. The acts and practices of respondent described in paragraph 4 hereof have had and have the capacity and tendency to mislead and deceive, and they have furnished and furnish dealers with the means to mislead and deceive, the public into the purchase of such products in reliance on the erroneous belief that such products have been imported from Germany or flavored with imported hops, and thereby to divert trade to respondent from competitors selling in interstate commerce malt sirup and malt products.

PAR. 7. The above and foregoing practices of respondent have been and are all to the prejudice of the public and of respondent's competitors and have been and are unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission on the 13th day of October, 1931, issued its complaint against the respondent Green River Malt Co., a corporation, and caused the same to be duly served upon said respondent as required by law, in which complaint it is charged that the respondent has been, and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On November 14, 1931, the respondent filed its answer in writing to said complaint, wherein it consented that the Commission may make, enter, and serve upon it an order to cease and desist from the violation of the law alleged in the complaint, and the Commission having accepted and considered such answer, and being fully advised in the premises,

It is ordered, That the respondent Green River Malt Co., a corporation, cease and desist directly or indirectly from offering for sale or selling, in interstate commerce, any malt extract, malt sirup, or malt sirup product manufactured in the United States of domestic ingredients, designated, described, branded, or labeled as Canadian Crown, Canadian Style, Pride of Quebec, Berliner, or Faterland, or with labels containing pictorial scenes or illustrations suggestive of Canada, Germany, or any foreign country, unless accompanied by apt and adequate words clearly showing that the product or products so designated, described, branded, or labeled have been or are manufactured in the United States of domestic ingredients. Such words must conspicuously appear on the same side or part of the side of the container of such product or products as, and so that they may be read in connection with, the words "Canadian Crown", "Canadian Style", "Pride of Quebec", "Berliner", or "Faterland", and such pictorial scenes or illustrations suggestive of Canada, Germany, or other foreign country.

It is further ordered, That the respondent shall file, within 60 days from and after the service of this order, a report in writing, setting forth in detail the manner and form of its compliance therewith.

Complaint

IN THE MATTER OF
PERFOLASTIC, INCORPORATEDCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2010. Complaint, Feb. 12, 1932—Order, May 16, 1932*

Consent order requiring respondent corporation, its agents, etc., in connection with sale in interstate commerce of corsets and abdominal girdles, to cease and desist from representing (1) that the figure of the wearer takes on, instantly, youthful lines, use of corset or girdle breaks down the fat cells or takes years off the appearance of the wearer; or (2) that there is a special reduced price offer good for 10 days only, opportunity exists to make a purchase at a lower price than ever asked before, or than will ever be asked again, or that the price is special or reduced or article is sent on free trial, when such is not the fact; all as in said order set forth and qualified.

Mr. Richard P. Whiteley for the Commission.

Kaplan, Kosman & Streusand, of New York City, for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Perfolastic, Inc., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Perfolastic, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York in said State. It is now and for more than two years last past has been engaged in the manufacture of corsets and abdominal girdles and in the sale and distribution of such products in commerce between and among various States of the United States, has caused said products, when sold, to be shipped from its place of business in the State of New York, to purchasers thereof located in a State or States of the United States other than the State of New York. In the course and conduct of its busi-

ness, Perfolastic, Inc., was at all times herein referred to in competition with other corporations, individuals, and partnerships likewise engaged in the sale and distribution in interstate commerce of corsets and abdominal girdles.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, Perfolastic, Inc., in soliciting the sale of and selling of aforesaid products, to wit, corsets and abdominal girdles, in interstate commerce between and among various States of the United States for more than two years last past has caused and now causes advertisements to be inserted in publications having general circulation between and among the various States of the United States and by means of other advertising matter, such as letters, circulars, and pamphlets circulated by it in interstate commerce, as aforesaid, has made the following statements and representations concerning its said corsets or abdominal girdles:

NEW VENTILATED GIRDLE REDUCES WAIST AND HIPS

OFTEN 2 TO 4 INCHES IN 10 DAYS

Here's a wonderful new ventilated girdle that makes you look slimmer instantly and actually reduces your bulky hips and waist—often from 2 to 4 inches in 10 days.

Your figure takes on—Instantly—straight, slender youthful lines.

With every breath you draw—every step you take—its constant, gentle massage-like pressure breaks down the fat cells—which are 85 per cent water—and molds away unwanted flesh just as a skilled masseuse would.

Now isn't it worth \$7.50 to you to have the bulky, unsightly fat on waist and hips removed—your waistline lengthened—your figure become erect and graceful—and take years off your appearance? * * *

Truly, the Perfolastic girdle is the ideal way to reduce—comfortable, healthful, quick!

The special reduced price offer is good for 10 days only.

Here is an opportunity for you to secure this valuable reducing girdle at a lower price than has ever been asked before. A lower price than will ever be asked again.

You'll enjoy the comfort of wearing it all day long, knowing that it is at work every moment, gently but surely taking off the fat.

I inclose a little booklet, telling you more about the bandeau, which will be sent to you—absolutely free—with the special reduced price offer—if you send your order at once.

Free illustrated booklet gives full details and particulars of our 10-day trial offer with money-back guarantee that protects you from all risks.

You are completely unaware that it is gently and constantly at work removing excess fat with every move you make.

It drives the fat away while you walk, dance, or play.

Reclaim your lost figure—have the fashionable slim waist and tapering hips.

When in truth and in fact the said corset or abdominal girdle is not a new girdle which reduces the waist and hips; the user's figure

does not take on—instantly—straight, slender, youthful lines; is not so constructed that when worn every breath drawn—every step taken—imparts a constant, gentle massagelike pressure; does not break down the fat cells; does not mold away unwanted flesh just like a skilled masseuse; is not in all cases a remover of fat on waist and hips; is not so constructed that it is at work every moment gently but surely taking off the fat; is not so constructed that when worn it is constantly at work removing excess fat with every move the user makes; does not drive away the fat while the user walks, dances or plays; and when in truth and in fact the said corset or abdominal girdle is not sent on free trial without risk to the purchaser but the prospective purchaser is required to make a deposit or payment prior to its receipt and trial; and the price of said corset or abdominal girdle is not special, reduced, or less than the regular or prevailing price at which the said corset or abdominal girdle is regularly sold; and the time within which an offer may be accepted is not actually limited and orders received after the expiration of the stated limits are accepted.

PAR. 3. The above and foregoing representations in statements of respondent by means of which it has offered for sale and sold or is selling its products as set forth in this complaint, have had and have the capacity and tendency to mislead and deceive, and have misled and deceived the purchasing public into the belief that the said representations are true, and have tended to induce, and have induced, the purchase of respondent's corsets or abdominal girdles in reliance upon such erroneous belief, and have tended to divert trade from, and have diverted trade from, and otherwise injured, competitors of respondent.

PAR. 4. The use by respondent of the false, misleading, and deceptive representations, statements and assertions as herein above set forth constitutes practices or methods of competition which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon and a detriment to freedom of fair and legitimate competition.

PAR. 5. The above acts and things done by said respondent as aforesaid are unlawful and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Order

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ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 12th day of February, 1932, issued its complaint against Perfolastic, Inc., a corporation, respondent herein, and caused the same to be served upon said respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On May 16, 1932, respondent entered its appearance in this proceeding and filed its answer to said complaint formally stating in writing that it desired to waive hearing on the charges set forth in the complaint and not to contest the proceeding, and consented that the Commission might make, enter, and serve upon it an order to cease and desist from the violations of the law alleged in the complaint and more specifically enumerated in the following order. Respondent also requested in said answer that the Commission proceed to final disposition of this proceeding upon said answer pursuant to the provisions of paragraph 2 of Rule III of the Commission's Rules of Practice and without further hearings.

The said answer of respondent was duly accepted and filed by the Commission, and thereupon this proceeding came on before the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, and the Commission being now fully advised in the premises,

It is now ordered, That respondent, Perfolastic, Inc., its agents, representatives, servants, employees, and successors in business, in connection with or in the course of the sale or distribution of corsets and abdominal girdles in interstate commerce, do cease and desist:

(1) From representing that the figure of the wearer of said corset or girdle takes on—instantly—youthful lines, or that the use of the corset or girdle breaks down the fat cells.

(2) From representing that the said corset or girdle takes years off the appearance of its wearer.

(3) From representing that the special reduced price offer is good for 10 days only when such is not the fact.

(4) From representing that the opportunity exists for the purchaser to secure said corset or abdominal girdle at a lower price than has ever been asked before, when such is not the fact.

(5) From representing that the opportunity exists for the purchaser to secure said corset or abdominal girdle at a lower price than will ever be asked again.

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(6) From representing that the price of said corset or abdominal girdle is special or reduced or less than the regular or prevailing price at which the said corset or abdominal girdle is regularly sold unless such be the fact, or that the said corset or abdominal girdle is sent on free trial when the purchaser is required to make a deposit or payment prior to its receipt and trial, unless respondent, in said statement or advertisement, agrees that the purchase price of said corset or girdle, together with the return postage, is to be refunded upon the request of the purchaser of the same.

It is further ordered, That said respondent Perfolastic, Inc., shall, within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
GEORGE E. SITTENFELD, TRADING AS GOODYEAR
MANUFACTURING COMPANY

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

Docket 1678. Complaint, June 1, 1929—Decision, May 24, 1932

Where an individual engaged in sale to consumer by mail order of raincoats purchased by him from various manufacturers, and neither operating nor controlling any factory making articles so dealt in,

- (a) Included word "Manufacturing" in his trade name and prominently displayed said name, and slogan "For less money direct to wearer," upon the circulars, letterheads, invoices, and other literature distributed by him, with capacity and tendency to mislead and deceive purchasers and consumers throughout the various States into the erroneous belief that said individual was a manufacturer of raincoats who could and did sell same direct to consumer at only one profit;
- (b) Made use of merchandising discount checks of a purported value of \$5 in connection with offer and sale of said raincoats and represented in circulars, invoices, and other advertising literature distributed to prospective customers that he would accept said check at its full value of \$5 in part payment of his "introductory wholesale price," and in acceptance blanks and otherwise set forth regular price as \$12.95, reduced to recipient through employment of said check to only \$7.95, notwithstanding fact said check had no actual value, but constituted said individual's usual procedure to attract attention to his offer and to identify style and material of particular article offered with check inclosed; with capacity and tendency to mislead and deceive prospective purchasers and ultimate consumers into erroneous belief that a special price was being made to consumer far below the ordinary and regular selling price of the coats concerned;
- (c) Made such statements in circulars, invoices, etc. sent as above set forth as "You're Lucky! You have been awarded a GOODYEAR ADVERTISING CHECK," with "a value of exactly \$5," of which "only a limited number" have "been issued," and advised prospect that "a definite sum for advertising purposes" had been set aside and that it had "been decided" that the wearing of the garment concerned by the prospect addressed would serve such "advertising purpose to the best advantage" and that "the inclosed \$5 check if endorsed on the back and mailed to us within ten days will be accepted by us as part payment * * * so that the actual cost to you will be only the small balance of \$7.95 * * *," notwithstanding fact that award of said valueless check was not result of chance, coats were not limited, but were offered to every prospective customer on precisely same terms, prices were not specially reduced, and there was no special investigation or selection of prospective customers, but circulars, etc., were mailed by said individual to thousands of names at a time, from lists of doctors, lawyers, teachers, etc., obtained by him; with capacity and tendency to mislead and deceive prospective purchasers

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and ultimate consumers into erroneous belief that supposed special offer had been made by reason of some special investigation or selection of prospect, and that in order not to lose advantage of the supposed special bargain and lucky award, offer must be accepted very promptly, due to limited time or number available; and

- (d) Included word "Goodyear" in his trade name and prominently displayed such name in circulars, invoices, etc. distributed to prospective customers, and referred to his said garments as "Goodyear" and "Goodyear All-Weather"; with effect of misleading and deceiving purchasers and ultimate consumers into believing said individual or business to be identical with or a branch of the well-known Goodyear Tire and Rubber Co., long owner and user of registered slogan "All-Weather" and "Goodyear All-Weather," and of inducing many to buy said raincoats in reliance upon such erroneous belief, and with capacity and tendency so to mislead and deceive and to divert trade to said individual from competitors, who do not so advertise or solicit:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. PGad B. Morehouse for the Commission.

Mr. Arthur Miller, of Kansas City, Mo., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in Kansas City, Mo., in the sale of dress coats and rain coats to purchasers in the various States, with using misleading trade name, misrepresenting business status and prices, offering falsely goods as free, simulating slogans of long established concern, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, and neither manufacturing the articles dealt in by him nor owning, controlling, operating nor interested in or connected with any factory or plant making such products (which are not made under or in accordance with the so-called Goodyear patents), in the course of his said business, "uses the name Goodyear Manufacturing Company and prominently displays such name and the slogan 'For Less Money Direct to Wearer' upon the circulars, letterheads, invoices, and other literature distributed by him among purchasers and prospective purchasers in the various States of the United States, thereby representing that he manufactures and makes the articles offered for sale and

sold by him and that a purchaser is buying direct from the manufacturer and thus saving the profits of the middlemen."

Respondent further, as charged, falsely represents through circulars, letters, invoices and other literature sent to purchasers and prospective purchasers that he is located in the "Goodyear Building" at 2615-2617-2619 Walnut Street, in city in question, uses a wholly fictitious name with which to sign his letters and literature, under title Director of Sales, and in course of his business uses such slogans as "Best in the Long Rain," "All-Weather Coat," "Goodyear All-Weather Garment," facts being there is no such building in said city, respondent occupies only a small portion of the "Service Building" at 2615 Walnut Street, and slogans "Best in the Long Run" and "All-Weather Tread" had long been adopted and used by the large, well-known Goodyear Tire & Rubber Co.; many of the large tire and rubber companies make and sell raincoats, and "respondent's use of such slogans together with the other practices and acts above set out, tend to and do mislead and deceive purchasers and prospective purchasers into the belief that the products are made and are being offered for sale and sold by" said well-known and long-established Goodyear Tire & Rubber Co.

Respondent further, as charged, in his circulars, letters and other literature represents his usual selling prices as being far in excess of those at which he actually sells his products and, to prospective purchasers, that "they are lucky in that they have been awarded a cooperative advertising check or merchandise discount check, represented by a voucher inclosed, for a certain amount which will be accepted by respondent at its face value for a certain limited time in part payment for said products, and that thus said purchasers will obtain the products at substantially reduced prices"; that he will give free with the purchase of a coat, a sport sweater, and that manufacturers have told him that the coats offered by him are the greatest improvement in coats since the weaving of cloth was invented, facts being no such statements were made to him, prices paid through the use of the aforesaid voucher constituted his usual prices, and price of the sweater, purportedly offered as free, is included in that of the raincoat.

According to the complaint, "the foregoing statements, representations and practices of respondent have the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers into the belief that said respondent is the manufacturer of the products advertised and sold by him, and that when buying from

respondent the products are obtained at a reduction in price and a saving of the middleman's profit, and that the products are made and being sold by a well-known and large rubber company"; to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, George M. Sittenfeld, trading as Goodyear Manufacturing Co., charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered his appearance and filed his answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and respondent before a trial examiner of the Commission duly appointed thereto, and said trial examiner having filed his findings of fact herein and counsel for respondent having filed exceptions thereto.

Thereupon, this proceeding came on for final hearing on the record herein, briefs and oral arguments of both counsel for the Commission and respondent, and the Commission, having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, George M. Sittenfeld, is an individual who has been engaged in selling raincoats from 1905 to 1925 through both agents and mail orders, and since 1925 only through mail orders direct to the consumer. From 1905 to 1927 respondent traded under the name and style Goodyear Manufacturing Co. About February, 1927, at the instance of this Commission he discontinued the word "Manufacturing" as part of his trade name and thereafter conducted his business as The Goodyear Co., or simply Goodyear. At the oral argument on February 24, 1932, respondent advised the Commission that he had discontinued his mail order business in October, 1931, as unprofitable to him and at that time had no intention of resuming, but "would not be willing to state that he would not at some time in the future resume the mail order raincoat business." Although these suggestions as to the discontinuance of respondent's business were made after the close of the taking of

testimony on behalf of both Commission and respondent, the Commission has given to the same its full consideration.

Respondent's principal office and place of business is 2615-2617 Walnut Street, Kansas City, Mo. When said raincoats are sold, respondent causes the same to be transported from that place of business into and through other States of the United States to the purchasers. In the course and conduct of his business, respondent is in competition with other individuals, partnerships, and corporations engaged in commerce in raincoats between and among the various States of the United States.

PAR. 2. In the course and conduct of his aforesaid business until February, 1927, respondent used the name Goodyear Manufacturing Co. and prominently displayed such name and the slogan: "For less money direct to wearer," upon the circulars, letterheads, invoices, and other literature distributed by him among purchasers and prospective purchasers in the various States of the United States, thereby representing that he manufactured and made the raincoats offered for sale and sold by him and that the purchaser was buying direct from the manufacturer, thus saving the profits of the middleman. By means of circulars such as Commission's Exhibit No. 8, millions of which were distributed subsequently to February, 1927, and while respondent was trading as Goodyear and Goodyear Co., respondent continued to advertise his sales as "Direct to wearer." In truth and in fact respondent has never manufactured the raincoats by him sold, but has purchased his goods from the Badger Raincoat Co. of Port Washington, Wis., The Chicago Rubber Coat Co. of Racine, Wis., and others. Neither individually, nor as Goodyear Manufacturing Co., nor as Goodyear Co. has respondent at any time owned, operated, or controlled any manufactory wherein the said raincoats have been fabricated.

PAR. 3. The respondent while conducting his business under the name Goodyear Manufacturing Co., in connection with the offering for sale and sale in interstate commerce of said raincoats, distributed to prospective customers, circulars, invoices, and other advertising literature upon which the following representations were made:

Goodyear Manufacturing Co.

Rain-proof overcoats for less money direct to wearer.

BEST-IN-THE-LONG-RAIN.

\$5.00 Man's Beautiful Sport Sweater Free!

Your're Lucky! You have been awarded a GOODYEAR ADVERTISING CHECK. It is inclosed and it has a value of exactly \$5—no more—no less.

Only a limited number of these cooperative advertising checks have been issued.

We have set aside a definite sum for advertising purposes; and it has been decided that a GOODYEAR All-Weather garment worn by you will serve this advertising purpose to the best advantage.

We are willing to lose every cent of profit in furnishing you with a GOODYEAR so that you can enjoy for yourself its wonderful and practical all-year value and stylish comfort at a REAL SAVING IN DOLLARS.

We have just brought out a brand new coat which manufacturers tell us is the greatest improvement in dress coats and raincoats since the weaving of cloth was invented.

Our introductory wholesale price on the new GOODYEAR will be only \$12.95, yet if you will help introduce it, it need not cost you even that.

Just promise you will show your coat to a few friends and recommend it and we will accept the inclosed advertising check at its full face value of \$5.00 in part payment of the wholesale price. This makes your sample coat cost you only \$7.95—ONLY ONE COAT AT THIS PRICE. P. S. If you will mail the coupon right away I will include a man's \$5.00 sport sweater coat (see style picture inclosed) absolutely free. This offer is void after 10 days. (Com. Ex. 1.)¹

Attached to and made part of this circular letter was a remittance blank for the use of the prospective customer, which, in addition to spaces wherein the customer could set the measurements for the coat and the size of the sweater, contained the following statement:

GENTLEMEN: I accept your special offer. Inclosed find your special check for \$5.00. Send me the new \$12.95 all-weather coat and the man's sport sweater coat by parcel post. Upon arrival I will pay the postmaster only \$7.95 balance. (Com. Ex. 1.)

Accompanying this circular letter was a credit or merchandise discount check upon which the heading Goodyear Manufacturing Co. was prominently displayed and the slogan "Best in the Long Rain". The body of the check reads:

PAY TO THE ORDER OF _____ Cash or Bearer _____ \$5.00
 FIVE DOLLARS and no/100 _____

GOODYEAR MANUFACTURING Co.

By S. M. George, Director of Sales.

There was also inclosed with this letter a cut showing a picture of the sweater and a picture of the raincoat to which was attached a swatch of the material of which the coat was made. (Com. Ex. 1-A.) The above letter and the accompanying credit or merchandise discount check and the picture of the sweater and raincoat was used by the respondent from approximately 1905 to 1925, and filled the double purpose of being an offer to the individual prospective customer whereby he might be induced to order a coat for himself, and, if after receiving the coat, he was pleased with same, he then was

¹ Exhibits not published.

offered an opportunity of acting as agent or representative for the respondent, and by showing and recommending the coat to others, secure their orders for coats, and in the event of his securing orders for five coats, the respondent offered to and did refund the \$7.95 which he had paid for the first coat.

If the recipient of this letter showed interest in the proposition, it was followed up by other letters in which the prospect was offered an opportunity to become "An exclusive sales agent to represent the Big Goodyear Manufacturing Co. in your locality", and was also told—

Now, this is your big opportunity. It is a chance to establish yourself with the Big Goodyear Manufacturing Co., in a big, paying, profitable, prominent position. (Com. Ex. No. 5.)

On circulars sent out the following language appears "Goodyear Manufacturing Co."—"Best in the Long Rain Coats"—"Every Goodyear Customer is a Goodyear Booster"—"Our Price \$12.95—See letter for special reduced price, good for 10 days." (Com. Ex. 10.)

Respondent while operating as Goodyear Co. and as Goodyear, in connection with the offering for sale and sale in interstate commerce of said raincoats distributed to prospective customers circulars, invoices, and other advertising literature upon which the following representations were made:

I'll pay you \$10 just to read and respond to this letter. Here's my check for \$5 right now and the other \$5 I believe you'll say is generously covered by the handsome sport model 5 button coat sweater I am sending you absolutely free! Goodyear All-Weather water proofed WONDER coats.

Please be on the outlook for the sweater coming to you by separate mail as our positive outright good-will gift to you with no strings or conditions attached other than that you read and reply to this letter.

We're not going to ask you our very low price \$12.95 for this coat even though you might expect to pay double that amount if you purchased the coat in the usual way.

The inclosed \$5 check if indorsed on the back and mailed to us within 10 days will be accepted by us as part payment on your Goodyear so that the actual cost to you will be only the small balance of \$7.95 which you pay your postman when he delivers to you the neatly wrapped package containing the Goodyear coat and the gift sweater and

We're not allowing you to take one particle of risk! If the coat does not more than surpass your expectations—if it does not fit you like it had been built to your measure—if it doesn't make you feel like a million dollars when you put it on—if it doesn't look like the biggest \$12.95 value you ever saw or heard about, just put it back in the box, return it to us and we'll immediately refund your \$7.95, and listen, friend, the sweater is YOURS—you KEEP the sweater along with our good wishes and our appreciation for your courtesy in

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reading this letter an permitting us to send the Goodyear coat for your examination whether or not you keep it.

The last paragraph on the back of the check does not apply in your case about returning both the coat and sweater. You return the coat if you want a full refund of your \$7.95, but you DO NOT return the sweater. THAT'S YOURS FOR KEEPS without cost or condition or obligation of any kind.

As we have set aside only a limited number of the gift sweaters, I must limit the acceptance time to 10 days, so kindly let me hear from you by return mail if convenient. (Com. Ex. No. 2.)

Accompanying this data was a credit or merchandise discount check reading as follows:

GOODYEAR COMPANY

2615-17-18 Walnut St.,

KANSAS CITY, MO.

CREDIT CHECK

No. 4623

"Best-in-the-long-rain"

MERCHANDISE DISCOUNT CHECK

Pay to the * * * Cash or Bearer * * \$5.00

Order of

* * * Five Dollars and no/100

GOODYEAR COMPANY,

By GEO. M. SITTENFELD, Sales Manager.

This credit check will be accepted as a \$5.00 part payment on order if sent to the Goodyear Company, Kansas City, Mo., as per letter accompanying it, but is not good in any other way, and can be used only on the special offer accompanying it, within 10 days after its receipt.

NOT GOOD AFTER 10 DAYS

BACK OF CHECK

GOODYEAR COMPANY,

2615 Walnut Street, Kansas City, Mo.

Instead of the full scheduled price of \$12.95 you are to enter my order for one of your new Goodyear All-Weather "Wonder" coats at a discount of \$5, represented by this check which you accept as part payment. The net balance of \$7.95 I will pay to the postman when he delivers the coat.

The sport model sweater you are awarding me as a gift is to come in the same package with the coat both by prepaid parcel post.

Name----- My chest measure-----inches
St. or R. F. D.----- Height-----
City----- Weight-----lbs.
State----- Sweater size-----

If I'm not wholly pleased with the coat and sweater, I may return them within 5 days, and your're to refund my money immediately.

(If remittance accompanies this order send only \$7.95)

In all circulars sent out the respondent used the names Goodyear, Goodyear Company, Goodyear All-Weather, all purpose Jersey Coat. This sport model sweater absolutely free. An outright gift if you inspect our All-Weather Jersey Coat.

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We are not going to ask you our very low schedule price of \$12.95 for this coat even though you might expect to pay double our price if you purchased the coat in the usual way. If it doesn't look like the biggest \$12.95 you ever saw or heard about just put it back in the box, return to us and we'll immediately refund your \$7.95. (Com. Ex. 7.)

You know the "Jersey" coat must make good or we'd never have made a million Goodyear friends in the direct-to-wearer sale of this splendid garment (Com. Ex. No. 8).

The truth is that respondent has made no special investigation or selection of the prospective customer as is represented, but obtains by purchase or otherwise lists of names of doctors, lawyers, teachers, nurses, dentists, automobile registrants, and others, from which lists respondent selects from two to fifty thousand names at a time, and that during the year 1926 in such manner the respondent caused to be mailed 12,834,865 pieces of mail containing such circular letters, discount checks, and sample swatches of cloth; during the year 1927, 11,829,887 pieces of such mail; during 1928, 10,440,826 pieces of such mail. The evidence further disclosed that the merchandise discount check hereinabove referred to had no actual value; its award was not the result of any drawing or chance element involved; but was respondent's usual procedure to attract attention to his offer, as well as a means of identifying the style and material of the particular raincoat offered for sale with the check inclosed. Such use of the discount check together with the other representations contained in the circular about respondent's regular and ordinary selling price were calculated and had the tendency to mislead and deceive the purchaser and prospective purchaser as to the ordinary and regular selling price of respondent's coats and to operate as a false and misleading inducement to the prospect to buy. These raincoats were offered for sale to every prospective customer on precisely the same terms and the prices at which such coats were offered were respondent's regular selling price and not a specially reduced price as represented; the time within which the said offer must be accepted was not, in fact, limited by respondent to ten days or any other particular period of time. The representation of respondent as to the number of coats for sale being limited to such an extent that prompt action was necessary was misleading in view of the fact that from 1926 to 1929, inclusive, respondent in this manner sold approximately 443,134 raincoats.

PAR. 4. Paragraph 6 of the complaint reads as follows:

Respondent had adopted and uses in connection with and in the course of his aforesaid business such slogans as, "Best in the Long Rain," "All-Weather Coat," "Goodyear All-Weather Garment". The Goodyear Tire & Rubber Co., a large and well-known manufacturer of tires and rubber goods, has long

adopted and used as a slogan for its goods, "Best in the Long Run," and "All-Weather tread". A great many of the large tire and rubber companies make and sell raincoats. Respondent's use of such slogans together with the other practices and acts above set out tend to and do mislead and deceive purchasers and prospective purchasers into the belief that the products are made and are being offered for sale and sold by the well-known and long established rubber concern; that is the Goodyear Tire & Rubber Co.

The proof showed that the Goodyear Tire & Rubber Co. used the slogan "All-Weather" and the slogan "All-Weather Tread" and that the B. F. Goodrich Co. has used the slogan "Best in the Long Run" and during the course of the hearing, it was agreed and stipulated by and between counsel that the said paragraph 6 of the complaint may be amended so as to meet the proof in this case which said proof shows that the B. F. Goodrich Co. of Akron, Ohio, used as a slogan on certain of its products "Best in the Long Run" and that the Goodyear Tire & Rubber Co. likewise of Akron, Ohio, used on some of its goods the words, "All-Weather" and "All-Weather Tread."

The B. F. Goodrich Co. is not now and has not been a competitor of the respondent since about the year 1919.

The Goodyear Tire & Rubber Co., is a corporation with headquarters at Akron, Ohio, which for many years has been engaged in the manufacture, sale and distribution in and among all the States of the United States of automobile tires and some two thousand different products made from rubber. It was incorporated about the year 1898, doing an annual business of approximately \$260,000,000, has offices and agents in all parts of the world except Russia, advertising expenses approximately \$4,000,000 per annum.

From 1904 to 1908 the Goodyear Tire & Rubber Co. manufactured and sold raincoats, but the manufacture of such coats was discontinued and they do not manufacture, sell, or distribute raincoats.

In the course and conduct of its business, the Goodyear Tire & Rubber Co. made use of the slogan "All-weather" and on September 28, 1920, these words were admitted to registration as a trade-mark for rubber, and rubber and fabric vehicle tires and treads therefor. (Com. Ex. 3.) They also used the slogan "Goodyear All-Weather Tread on the Highways of the World." These words were admitted to registration October 10, 1922, as a trade-mark for vehicle tires composed of rubber and rubber and fabric. (Com. Ex. 24.) These slogans have been used by the Goodyear Tire & Rubber Co. in connection with certain types of tires which they manufacture, sell, and distribute throughout the United States.

The Goodyear Tire & Rubber Co. received periodically communications from people calling attention to the advertisements of the respondent.

Dealers in the products of the Goodyear Tire & Rubber Co. and others made inquiry as to whether there was any connection between the Goodyear Manufacturing Co. of Kansas City and the Goodyear Tire & Rubber Co.

About the year 1918 or 1919, dealers located in Oklahoma who were handling the tires and accessories distributed by the Goodyear Tire & Rubber Co. reported to the home office at Akron, Ohio, that the Ku-Klux Klan in Oklahoma were boycotting the goods of the Goodyear Tire & Rubber Co. and that such action was a result of confusion of identity which existed in the minds of the members of this organization between the Goodyear Tire & Rubber Co. and the Goodyear Manufacturing Co., the respondent, and it became necessary for the sales manager of the Goodyear Tire & Rubber Co. to make a special trip to Oklahoma to remove from the minds of these people this confusion of identity.

The fact of competition was admitted in the answer. Respondent testified that certain people from time to time had been confused as to his identity on account of his name, thinking he was a branch of the Goodyear Tire & Rubber Co., and that this fact had been invited to his attention by competitors.

The Commission finds that respondent's use of the slogan "All-Weather" and the name "Goodyear" and "Goodyear Co." has tended to mislead and actually has misled and deceived purchasers and prospective purchasers into the belief that the raincoats offered for sale by respondent are being offered for sale and sold by the said Goodyear Tire & Rubber Co. of Akron, Ohio. The Commission finds that such confusion of identity is calculated and tends to operate to the benefit of respondent and tends to divert trade to respondent from competitors engaged in the similar sale of raincoats by mail order in interstate commerce, who do not advertise or solicit sales in such manner as to confuse their identity with that of the Goodyear Tire & Rubber Co. aforesaid, or of any other prior established concern dealing in rubber goods to which the Goodyear process or invention is applied.

PAR. 5. It was charged in paragraph 2 of the complaint that the respondent's raincoats were not made under or in accordance with the so-called Goodyear patents which in a general way relate to the application of heat and sulphur to so-called crude rubber, causing a setting-up, hardening, or thickening of the rubber to a point where

it is fit for commercial use. The evidence, however, failed to sustain this particular charge. The process known as Goodyear's invention or process is not subject to exclusive appropriation (*Goodyear India Rubber Glove Manufacturing Co. v. Goodyear Rubber Co.*, 128 U. S. 598,) and is and has been used on the raincoats sold by the respondent.

PAR. 6. The complaint in paragraph 3 hereof charged that respondent misrepresented the extent of his business headquarters, namely, that he occupied the Goodyear Building at Nos. 2615, 2617, and 2619 Walnut Street, Kansas City, Mo., whereas in truth and in fact the building was not known as the Goodyear Building, and respondent only occupied a small portion of the building at 2615 Walnut Street; further, that respondent used a fictitious name with the title "Director of Sales" in signing letters and circulars to prospective customers. Respondent had the permission of his landlord to call the building the Goodyear Building or any other name that he chose. He occupied three floors of the seven-story building called by its owner the Quaker Building, but no name appears on the building and there is but one street number. Respondent used the name S. M. George as "Director of Sales." This was his effort to avert local prejudice against his Jewish nationality in territories subject to the activities of the Klu Klux Klan, and comprises his initials in reverse order. Such practice was discontinued as soon as necessity for it ceased and it was not resumed. The Commission finds that such representations as to the extent of his occupancy at the address named was harmless puffing and that the use of the name S. M. George was not made for fraudulent purposes; also that the evidence as a whole does not justify the Commission in considering that the acts and practices complained of in paragraph 3 of the complaint constitute unfair competition within the meaning of section 5 of the Federal Trade Commission Act, *supra*.

PAR. 7. It is charged as a part of paragraph 4 of the complaint that "respondent also represents to such prospective purchasers that he will give free with the purchase of a coat a sport sweater, whereas in truth and in fact the price of said sweater is included in the price of the product offered for sale by respondent. The fact is respondent does give free with the purchase of such coat a sport sweater as represented. In many cases the raincoat is returned by dissatisfied purchasers who keep the sport sweater and still receive refund so that in such cases at least the sport sweater is absolutely free as represented and its price not included in the price of the raincoat.

PAR. 8. The complaint further alleges in paragraph 5 thereof that respondent misrepresented with regard to the quality of the coats offered by him for sale, namely, that he had been told by manufac-

turers that his coats represented the greatest improvement in coats since the weaving of cloth was invented, whereas no such representations had been made to respondent. The Commission finds that the evidence does not sustain such charges.

PAR. 9. The use by the respondent of the foregoing statements, representations, and phrases in his circulars, pamphlets, and other advertising referred to in paragraphs 1, 2, 3, and 4, supra, has the capacity and tendency to mislead and deceive prospective purchasers and ultimate consumers throughout the various States of the United States into the erroneous belief that respondent is a manufacturer of his raincoats and can and does sell such coats direct to the said consumer at only one profit; that a special price is being made to the consumer far below the ordinary and regular selling price of respondent's coats; that this offer of sale has been made by reason of some special investigation or selection of the prospective customer and that by reason thereof, as well as by reason of the valueless trade check the prospective customer is "lucky"; that the offer must be accepted very promptly or the prospective customer will lose the advantage of such special bargain and lucky award by reason of the time limitation or because the number of coats available for sale is a small one; and that respondent is identical with, or a branch of the Goodyear Tire & Rubber Co. Many of the said prospective customers in the various States of the United States believing and relying upon the truth of this erroneous belief have been induced to buy raincoats of respondent to the injury of respondent's competitors, in that such practices are calculated to and have a tendency to divert trade from respondent's competitors to the respondent.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing paragraphs 1 to 4, inclusive, are to the prejudice of the public and of respondent's competitors and are unfair methods of competition in interstate commerce and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its power and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent thereto, the testimony taken and briefs filed herein, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated

the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, George M. Sittenfeld, an individual trading as "Goodyear Manufacturing Co.," his agents, representatives, servants, and employees in connection with the sale or offering for sale in interstate commerce, of raincoats, cease and desist as follows:

(1) From representing that he is a manufacturer of raincoats unless and until such time as he shall actually own, operate, or control an establishment, plant, or factory wherein such raincoats are made.

(2) From misrepresenting directly or indirectly by means of merchandise discount checks or in any other manner the ordinary, regular, and usual price at which such raincoats are sold.

(3) From representing to prospective customers, expressly or impliedly by means of trade checks, or in any other manner such prospective customer is "lucky," or that there has been some special investigation or selection of him to receive respondent's offer of sale.

(4) From misrepresenting to or misleading prospective customers either as to the extent of time within which his offer must be accepted or as to the quantity of raincoats available for sale.

(5) From using the slogan "All-Weather" or the name "Goodyear" unless used in connection with equally conspicuous words "not connected with the Goodyear Tire & Rubber Co." or some other similar words sufficient to distinguish respondent's concern from that company and to prevent any recognition by the public of respondent as being connected with that company.

It is further ordered, That the complaint be and it is hereby dismissed as to that part of paragraph 2 which charges that the coats which respondent sells are not made under or in accordance with the so-called Goodyear patents; as to all of paragraph 3; as to that part of paragraph 4 which charges that respondent also represents to such prospective purchasers that it will give free with the purchase of a coat a sport sweater, whereas in truth and in fact the price of said sweater is included in the price of the product offered for sale by respondent; and as to all of paragraph 5.

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

IN THE MATTER OF
WESTERN LEATHER CLOTHING COMPANY

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

Docket 1820. Complaint, May 3, 1930—Decision, May 24, 1932

Where a corporation engaged in manufacture and sale of horsehide and cowhide leather coats, labeled garments of latter leather "genuine horsehide, front quarter" and sold same thus labeled to wholesale and retail dealers, by whom said coats were displayed and sold to consuming public as and for horsehide; with result that purchasers were misled and with tendency and capacity to mislead and deceive public and purchasers and prospective purchasers into believing such garments to be made of the preferred and similar appearing, but more expensive horsehide, and induce purchase thereof in reliance upon such belief, and truth and accuracy of aforesaid labels, and thereby divert trade to it from competitors dealing in horsehide and cowhide coats without such misrepresentation:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

Greensfelder & Grand, of St. Louis, Mo., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Missouri corporation engaged in the manufacture and sale of leather clothing and with principal office and place of business in St. Louis, with misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent, engaged as aforesaid, sold certain of its products, not made from the hide of the horse, with labels attached by it reading "Genuine Horsehide"; with capacity and tendency to mislead and deceive the purchasing public as to the composition of said products; to the prejudice of the public and competitors.

Upon the forgoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent herein, Western Leather

Clothing Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced before an examiner of the Federal Trade Commission theretofore duly appointed. Thereafter counsel for the Federal Trade Commission and counsel for the respondent having submitted briefs the case was submitted to the Commission upon the briefs and the record without oral argument, oral argument having been waived by counsel for the Commission and counsel for the respondent. Thereupon this proceeding came on for final consideration and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Western Leather Clothing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its principal office and factory located in the city of St. Louis in the State of Missouri. The respondent is now and for more than seven years last past has been engaged in the business of manufacturing and selling clothing, including leather coats and other leather garments.

PAR. 2. The leather garments manufactured by respondent when sold have been shipped from the place of business of respondent in St. Louis, Mo., to purchasers located in various States of the United States other than the State of Missouri. In the course and conduct of its business respondent is in competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of leather coats and other leather garments. In the course and conduct of its business respondent has manufactured coats of cowhide and has also manufactured coats of horsehide. When these leathers are tanned for use in the manufacture of coats very few people are able to distinguish between tanned horsehide and tanned cowhide. This difficulty is shared by persons in the trade engaged in the manufacture of garments from such cowhide or such horsehide.

PAR. 3. In the course and conduct of its business respondent has caused labels bearing the words "genuine horsehide, front quarter" to be affixed by sewing into the lining of certain coats manufactured by it from cowhide and which coats made from cowhide and labeled "genuine horsehide, front quarter" respondent sold and shipped

from its place of business in the city of St. Louis, State of Missouri to the retail dealers and wholesale dealers who were the purchasers thereof located in other States of the United States.

PAR. 4. The cowhide garments so sold by the respondent in interstate commerce and bearing the labels "genuine horsehide, front quarter" were resold by the wholesale dealers, to whom respondent sold such garments to retail dealers and in some instances were resold by the said wholesale dealers direct to the consuming public. The said garments were exposed for sale and sold in either case as and for horsehide garments and with the said labels affixed upon them. The said garments were exposed for sale and sold by the retail dealers to whom the said garments came in the usual course of trade, to the consuming public as and for horsehide garments and with the said labels affixed upon said garments. The said labels which had been affixed to the garments by the respondent and which were on the garments when they were exposed for sale and sold to the consuming public, led purchasers thereof to believe that the said cowhide garments, manufactured and labeled by the respondent as aforesaid, were in fact made of horsehide.

PAR. 5. The consuming public in the purchase of leather garments prefers garments made of horsehide to those made of cowhide. The average cowhide coat can be manufactured for from 50 cents to 75 cents less than the average horsehide coat.

PAR. 6. There are in this country competitors of the respondent engaged in the manufacture and sale in interstate commerce of leather garments, including cowhide coats and horsehide coats. Certain of these competitors do not label cowhide garments with horsehide labels. At least one of these competitors has not been able to sell cowhide coats because purchasers preferred garments with the horsehide label.

PAR. 7. Respondent since and including its "1930 season" has ceased labeling the cowhide garments manufactured by it as "horsehide".

PAR. 8. The labeling by respondent of cowhide garments with labels bearing the words "genuine horsehide, front quarter" as set forth herein is false and misleading and the use of such labels by respondent, Western Leather Clothing Co., on garments not made of front quarter horsehide in the manner and form above alleged, has the tendency and capacity to mislead and deceive the public and prospective purchasers and purchasers of such garments into the erroneous belief that the said garments are manufactured of front quarter horsehide and to induce prospective purchasers of such garments to

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purchase such garments in reliance upon and by reason of their belief in the truth and accuracy of such labels and thereby to divert trade to respondent, Western Leather Clothing Co., and from its competitors.

CONCLUSION

The acts and practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled "An act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony taken and the briefs filed herein and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Western Leather Clothing Co., a corporation, its officers, agents, representatives, and employees cease and desist, directly or indirectly in connection with the offering for sale or sale in interstate commerce or in the District of Columbia of garments not made from the tanned hide of the horse:

From using the word "horsehide" as a brand name, or on labels or other markings or otherwise to represent, advertise, or describe such garments.

It is further ordered, That respondent, within 30 days from and after the date of the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
METAL TILE CONSTRUCTION COMPANY, INC.

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

Docket 1955. Complaint, June 1, 1931—Decision, May 31, 1932

Where a corporation engaged in importing a Belgian wall and ceiling covering composed of zinc plates so enameled, stamped, and made as to imitate different colors, and mortar lines of genuine tile, and exact appearance thereof installed in place, and in sale of said product to jobbers, contractors, builders, and public generally, described same as "Belgian Tile" or "Belgiantile" in advertisements in periodicals of national circulation, and in catalogues, circulars, leaflets, etc., circulated among trade and general public; with tendency and capacity to deceive purchasers into believing said product to be that kiln baked, clay tile installed and set by tile setters, and generally understood from the word, and to divert to it trade of competitors engaged in sale of genuine imported Belgian, or domestic tile, as the case might be:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven and *Mr. J. Butler Walsh* for the Commission.

Mr. Max Wittenberg, of Brooklyn, N. Y., for respondent.

Mr. Sol A. Herzog, of New York City, for Associated Tile Manufacturers, Inc., intervenor.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation long engaged in the importation from Belgium of a zinc covered sheet so prepared as to imitate tiling, and in the sale of said tile and tiling substitute to jobbers, contractors, builders, and the general public for walls and ceilings of bathrooms, kitchens, breakfast rooms, as well as in hospitals, shops, and hotels, and with principal place of business in New York City, with advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that in its advertising catalogues, circulars, leaflets and other like literature it falsely and misleadingly designates aforesaid product as "Belgian Tile"; with tendency and capacity to deceive purchasers thereof into believing same to be tile, and to divert to it trade of competitors engaged in sale of similar products, truthfully advertised and

described, and trade of competitors engaged in manufacture and sale of genuine tile; to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 1st day of June, 1931, issued and served its complaint against the respondent Metal Tile Construction Co., Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter, this proceeding came on regularly for final hearing, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Metal Tile Construction Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the City of New York. It is now, and has been for many years, engaged in the business of importing from Belgium and selling to jobbers, contractors, builders, and the public generally, a product used for the covering of walls and ceilings. Said respondent causes said product, when sold, to be transported in interstate commerce from its principal place of business into and through numerous States of the United States, other than New York, to the purchasers thereof, at their respective points of location. In the course and conduct of its business, respondent is and has been, in competition with other individuals, partnerships, and corporations located and doing business in the United States, engaged in the sale and transportation, in interstate commerce between and among the various States of the United States, of tiles, which are prepared and shaped accordingly to the purpose required, out of clay and baked in kilns, and which are properly described and designated as tile.

PAR. 2. Respondent solicits its business by advertising in periodicals of national circulation and by the circulation among the trade and general public of catalogues, circulars, leaflets, and other like literature, in all of which advertising it describes and designates the product imported and sold by it as "Belgian Tile" or sometimes as "Belgiantile".

PAR. 3. "Tile" as generally understood in the building trades and by the general public is a clay product, shaped in comparatively small sized units and baked in a kiln. Tile for the covering of walls and ceilings is usually shaped into units of about 4 inches square, and is installed upon the proper base by being set in cement by workmen who are termed "tile setters". Most of the tile used in the United States is of domestic manufacture, there being in the United States approximately a hundred tile factories with an output in value exceeding fifteen million dollars. A considerable amount of tile sold in the United States is imported from other countries, including Belgium. The tile imported and sold in this country from Belgium is called "Belgian Tile" and the tile imported from other countries is usually designated by the name of the country of manufacture.

The product of the respondent is a zinc plate upon which is imposed a coat of enamel, varying in color to imitate the common colors of genuine tile, whether domestic or imported. The size of the zinc plate ordinarily sold by respondent is 17 by 21 inches, which is in close approximation to the size of twenty units of tile, each $4\frac{1}{4}$ by $4\frac{1}{4}$ inches, set or installed upon a wall or ceiling. In the manufacture of respondent's product, a stamp is used, whereby mortar lines are made in imitation of the mortar lines appearing on the installation of genuine tile. A plate of respondent's products 17 by 21 inches in dimension, is an exact imitation of twenty units of tile each $4\frac{1}{4}$ by $4\frac{1}{4}$ inches installed on a wall or ceiling.

PAR. 4. Designation by the respondent of its product as "Belgian Tile" or "Belgiantile" as set out in paragraph 2 hereof, is false and misleading, and has the tendency and capacity to deceive the purchasers of said product into the belief that respondent's said product is tile. Said description also has the tendency and capacity to divert to the respondent the trade of competitors engaged in selling tile, both that imported from Belgium as well as that of domestic manufacture.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and constitute a

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violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and briefs by counsel for the Commission and for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Metal Tile Construction Co., Inc., its officers, agents and employees, in connection with the sale or offering for sale of its products in interstate commerce between and among the various States of the United States and in the District of Columbia, cease and desist from—

Describing the product of respondent as "Belgian Tile" or "Belgiantile" or using, in the descriptions of the product sold by respondent, the word "tile," unless in immediate conjunction therewith there appear the words "imitation tile made of metal."

It is further ordered, That the said respondent shall, within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

UNITED TAILORING COMPANY, INC., CURTIS CLOTHING CORPORATION, AND VICTOR KLEIN, HERBERT KLEIN, AND ARTHUR KLEIN, DOING BUSINESS UNDER TRADE NAME AND STYLE OF CONTINENTAL TAILORING COMPANY

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

Docket 1947. Complaint, May 8, 1931—Decision, June 3, 1932

Where a corporation, several subsidiaries, and three individuals engaged in sale of men's ready-made clothing direct to public through said various companies, which they owned, officered, controlled, and operated, together with an unincorporated business, as part of a common enterprise, but held out to the public under their different corporate and trade names as separate and independent,

- (a) Represented through their various agents or solicitors that garments furnished pursuant to orders would be tailored to the individual's measurements, and supplied, for their agents' use and display, order blanks with provision for measurements necessary for a made-to-order suit, and stated through printed receipt forms that clothes would be cut on the block system and adjusted to measurements called for, facts being they filled orders either by selecting from their common stock, a ready-made garment which in a general way came near the measurements concerned, or, lacking such, by supplying clothes with no regard therefor, and thus supplied short men with clothes for tall men, and thin men with those for stout men, and vice versa, and thereby grotesquely outfitted purchasers carefully measured and ordered for; with effect of misleading and deceiving public into believing garments in question were tailor made in accordance with individual measurements of the purchaser, and of diverting trade to them from competitors offering the consuming public through agents or otherwise, suits of greatly superior quality, at similar prices, and in fact so made, and cut according to the block system as commonly understood, and with capacity and tendency so to do;
- (b) Represented through their solicitors that suits ordered by purchaser would be made out of cloth corresponding with the sample selected by latter, facts being garments were made of cheaper and inferior cloth and in many instances of such poor quality that purchasers were unable and unwilling to use them and necessarily sustained loss of money paid, with no return; with effect of misleading and deceiving public, and of diverting trade to them from competitors in fact making garments in accordance with purchaser's selection or designation, and with capacity and tendency so to do;
- (c) Falsely represented through their solicitors that alterations would be made at a new store about to be opened; with effect of misleading and deceiving public into believing that needed fittings and alterations could

and would be made at branch places in said purchaser's localities, and of diverting trade to them from competitors offering as inducement to purchase, the making of needed alterations in branches in fact maintained by said competitors in the localities concerned, and in which branches such fittings and alterations were in fact made in accordance with representations of said competitor's agents, and with capacity and tendency so to do; and

- (d) Represented through their said agents or solicitors that a special price would be made and two suits of clothes furnished for the price of one, or one be given free, as a special advertising offer, facts being cost of additional suit was included in purchase price so as to yield a profit on the transaction as a whole, and supposed special offer was their regular price in the usual course of business; with effect of misleading and deceiving public into believing clothes in question were being sold at special introductory prices, and bringing about their purchase in reliance on such erroneous belief, and with capacity and tendency so to do:

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

Mr. James M. Brinson for the Commission.

Mr. Thomas F. Frawley and *Zimmerman & Zimmerman*, of New York City, and *Mr. John Walsh* and *Mr. L. A. Spiess*, of Washington, D. C., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent United Tailoring Co., a New York corporation with principal place of business in New York City; respondent Curtis Clothing Corporation, a New York corporation and subsidiary of said first named respondent; and individual respondents Victor, Herbert, and Arthur Klein, (a) conducting under the trade name Continental Tailoring Co., a business likewise owned and controlled by said first named respondent, and (b) respectively president, vice president, and secretary-treasurer of aforesaid corporations, and unincorporated company, which they owned, dominated, controlled and directed;¹ variously engaged in the sale and distribution of

¹ As alleged in the complaint, "they have created, formed, instituted, and have maintained and directed the policies, methods, and practices of said respondent corporations and of said Continental Tailoring Co., and of each of them, and have at all times hereinafter mentioned, dominated, controlled, and directed the representations, transactions, sales, and other activities of said respondent corporations and of the Continental Tailoring Co. and of each of them, in their commerce among or between the various States of the United States. The said corporate respondents and the said respondent Continental Tailoring Co., under the direction and control of respondents Victor Klein, Herbert Klein, and Arthur Klein, have cooperated with each other and in the course and conduct of their

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men's ready-made clothes in commerce among the various States through salesmen or agents employed by them to solicit orders directly from members of the consuming public; with misrepresenting nature of product offered, offering samples not conforming to product supplied on orders pursuant thereto, misrepresenting prices or free product, and misrepresenting circumstances incident to completion of transaction, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as aforesaid, have made it their practice in soliciting orders through their agents, falsely to represent that—

The suits would be custom tailored or made to measure, furnishing order blanks setting forth various measurements purporting to be necessary for such a suit (and so worded as to signify that clothes ordered would be made to order), for the use of their said agents, who used and displayed such blanks in soliciting and receiving orders, facts being suits supplied pursuant to orders thus taken were of the "ready made" variety altered in accordance with the measurements set forth;

Suits ordered by purchaser would be made out of cloth represented by or corresponding to sample exhibited by agent and selected by purchaser, facts being suits supplied did not so conform;

A special price was being or would be made, or two suits would be furnished for one, or one suit was or would be given free to the purchaser of a suit, as a special advertising offer, facts being offer made was the usual offer in the usual course of business, affording the particular respondent a profit on the entire transaction;

Alterations of suits purchased could be made at a new store or stores of respondents, opened or about to be opened within a short time by the particular respondent represented, in the particular locality convenient for the prospective purchaser, facts being no such stores were opened or contemplated.

"The above acts and practices of respondent," as alleged, "have had, and have and each of them has had and has the capacity and

several businesses, and by concert of action have reflected the policies and effectuated the purposes of said individual respondents Victor Klein, Herbert Klein, and Arthur Klein, and have maintained, and now maintain, close and intimate relationships, connections, and in interdependence, by and through which, without disclosure of their subordination to, or control by, said Victor Klein, Herbert Klein, and Arthur Klein, or of the relationship or connection between the several respondents, they have been and are enabled to act, and do act, in conjunction with each other, in use of the methods and in employment of the practices hereinafter set forth."

tendency to mislead and deceive the purchasing public into the belief, and to induce purchase of their products in reliance on such erroneous belief, that suits of clothes ordered from respondents, or either or any of them by or through their agents and solicitors, would be 'custom tailored' or 'made to order' from, and out of cloth represented by, and corresponding to the sample thereof selected by customers from samples of cloth exhibited to them by salesmen or agents of the particular soliciting respondent; that two suits of clothes would be furnished at the price of one as a special advertising offer, and that any alterations desired by the purchaser of the suit or suits furnished by respondent could or would be made at branch places of business thereafter shortly to be established by respondents or the particular soliciting respondent within easy reach of the purchaser," and said "acts and practices," as charged, "have had, and have and each of them has had and has the capacity and tendency to divert trade to respondents from competitors selling suits of men's clothes in interstate commerce by fair and truthful representation"; all to the prejudice of competitors and the public.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon United Tailoring Co., Inc., a corporation, and Curtis Clothing Corporation, a corporation, and Victor Klein, Herbert Klein, and Arthur Klein, doing business under the trade name and style of Continental Tailoring Co., charging them and each of them with unfair methods of competition in commerce in violation of the provisions of said act. The respondents having entered their appearance and filed answer, testimony and documentary evidence were received, duly recorded, and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and evidence and brief in support of the complaint by counsel for the Commission, respondents having submitted no brief or argument, and the Commission having duly considered the same now makes this its report in writing, and states its findings as to the facts and conclusion drawn therefrom as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Victor Klein, Herbert Klein, and Arthur Klein are brothers who now are, and for many years last past have been, engaged in the clothing business in the City and State of New York. In 1928 they acquired the control of respondent Curtis Clothing Corporation, a corporation organized and existing under the laws of the State of New York with its principal office and place of business in the City of New York in said State, and in the same year was organized respondent United Tailoring Co., Inc., under and by virtue of the laws of the State of New York by one Nathan E. Gellens. Respondent Herbert Klein became president and Nathan E. Gellens secretary and treasurer of respondent United Tailoring Co., Inc., which positions they occupied until June 19, 1930, when respondents Victor Klein, Herbert Klein, and Arthur Klein acquired the entire ownership and complete control. Such respondent company also acquired, owned, and controlled respondent Curtis Clothing Corporation. Respondents Herbert Klein, Victor Klein, and Arthur Klein have controlled and directed the affairs of respondent United Tailoring Co., Inc., from the time when they first became interested therein or associated therewith, and ever since have controlled and now control and direct the policies, methods, and practices of said respondent United Tailoring Co., Inc., and of the respondent Curtis Clothing Corporation, and its activities and the activities of any other subsidiary or agency of respondent United Tailoring Co., Inc.

Respondents Victor Klein, Herbert Klein, and Arthur Klein have also engaged in business under the trade name and style of Continental Tailoring Co., and in 1931 said respondents caused to be organized as one of their corporate agencies or facilities the Biltmore Woolen Corporation and later changed the name to that of the Cortland Clothing Corporation. The stock of both of these corporations was, and is, owned by respondent United Tailoring Co., Inc.

PAR. 2. Respondents United Tailoring Co., Inc., and its subsidiary the Curtis Clothing Corporation under the control and direction of the individual respondents Victor Klein, Herbert Klein, and Arthur Klein, and such individual respondents under the trade name and style of Continental Tailoring Co. have been engaged since 1928 in the sale and distribution of men's clothes in commerce among and between the various States of the United States, and they have caused such clothes when sold to be transported from their place of business in the City of New York and State of New

York purchasers located in the various other States than the State of New York. In 1931 the individual respondents caused their corporate agency, to wit, respondent United Tailoring Co., Inc., to use the Biltmore Woolen Corporation or Cortland Woolen Corporation as a subsidiary in its business instead of respondent Curtis Clothing Corporation and the trade name Continental Tailoring Co. Respondent Curtis Clothing Corporation is still available for use of said individual respondents whenever they may so desire.

In the course and conduct of their business respondents have been, were at all times hereinafter mentioned, and now are, engaged in competition with individuals, partnerships and corporations selling men's clothes in interstate commerce as will hereinafter appear.

Respondents Victor Klein, Herbert Klein, and Arthur Klein have been and are respectively president, vice president, and secretary-treasurer of respondent corporations United Tailoring Co., Inc., Curtis Clothing Corporation and the unincorporated company Continental Tailoring Co. They have owned, dominated, controlled, and directed, and still own, dominate, control, and direct said respondent corporations, and said Continental Tailoring Co. They have created, formed, instituted, and have maintained and directed the policies, methods, and practices of said respondent corporations and of said Continental Tailoring Co. and of each of them, and have, at all times hereinafter mentioned, dominated, controlled, and directed the representations, transactions, sales, and other activities of said respondent corporations and of the Continental Tailoring Co. and of each of them. The said corporate respondents and the said respondent Continental Tailoring Co. under the direction and control of respondents Victor Klein, Herbert Klein, and Arthur Klein have been and are agencies or facilities by means of which said individual respondents have been and are enabled to conduct and operate their business under and by means of the methods of competition hereinafter described. They have been and are able to conduct and do conduct such corporate and other agencies as one unit, each operating in conjunction with the other or others while at the same time they have been and are held out to the purchasing public as separate, distinct, and independent units without any connection with each other or with said individual respondents.

PAR. 3. It has been the policy and practice of respondents, and of each of them, as will more fully appear in paragraph 4 hereof, including the unincorporated concern Continental Tailoring Corporation and the Biltmore Woolen Corporation or Cortland Woolen Corporation, later subsidiaries of respondent United Tailoring Co., Inc., to offer for sale and sell ready-made clothes by means of direct

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contact with the consuming public through salesmen or agents in the various States of the United States whom respondents have caused to solicit orders for men's clothes from purchasers and prospective purchasers by representing that such clothes will be tailor-made, according to the individual measurements of purchasers, out of cloth selected by purchasers, and that necessary alterations could and would be made in such clothes at a branch place of business which respondents caused their salesmen and agents to represent was about to be, and would be, opened in the locality so solicited by the particular respondent represented by the particular solicitor. Orders so solicited and received by such salesmen or agents of respondents have been and are forwarded to the particular respondent represented by the solicitor or salesman receiving the order, which respondent has thereupon, when filling the order or orders, or purporting or professing to fill them, transported and delivered, or caused to be transported and delivered, clothes to the purchasers in the various States of the United States, in pretended or purported compliance with orders, which have been taken from or out of the common stock of ready-made clothes used by respondent corporations and Continental Tailoring Co. as agencies of the individual respondents Victor Klein, Herbert Klein, and Arthur Klein.

Sometimes respondents have caused their agents to solicit orders for men's clothes in the same communities, at or during the same period of time, in pretended competition with each other. At other times, respondents have solicited orders in one or more communities through one of their corporate or other agencies, while soliciting orders in other communities through another or others of their corporate or other agencies. At times when, by reason of the acts and practices described in paragraph 4 hereof, there have been difficulties or controversies in particular communities with one of the corporate or other agencies of respondents Victor Klein, Herbert Klein, and Arthur Klein, they have caused their clothes to be offered for sale and sold in such communities by means of, or through, one of their other corporate agencies or other agencies which had not theretofore operated in such community or communities.

PAR. 4. The methods of competition mentioned in paragraph 3 hereof as employed by respondents Victor Klein, Herbert Klein, and Arthur Klein individually by means of respondent corporations and other agencies such as Continental Tailoring Co., have been, more particularly, the following, to wit, the representation, through their various agents, salesmen, or solicitors, to purchasers and prospective purchasers that the clothes furnished by them, in purported

or professed pursuance of orders received, would be tailored, or made to measure, the equipment of such salesmen or agents with order blanks setting forth various measurements purporting to be necessary for the making of a tailored suit, the use and display of such order blanks by agents, salesmen, and solicitors of respondents to purchasers and prospective purchasers in soliciting and receiving orders for suits, the equipment of such salesmen or agents with printed forms of receipts to be signed by the salesmen or agents and delivered to the purchasers containing, among other representations, the statement that the clothes to be furnished would be cut on the block system and adjusted to the measurements called for; the representation by respondents, through their agents, that suits ordered by the purchaser would be made from or out of cloth represented by or corresponding with a sample thereof exhibited by agents or salesmen of respondent and selected by the purchase; the representation of respondents, through their agents, salesmen, and solicitors, to purchasers and prospective purchasers, that alterations of suits purchased would be made at a new store of respondents which was about to be opened in the particular locality of the purchaser by the respondent represented by the particular agent, salesman, or solicitor; the representation of respondents, through their agents, that a special price would be made and two suits of clothes would be furnished for the price of one, or that one suit was being given or would be given free to the purchaser of a suit as a special advertising offer.

In truth and in fact clothes for men sold by respondents have not been, and are not, tailor made, have not been, and are not, cut according to the block system, have not been, and are not, made according to the individual measurements of purchasers. The words "block system" signify and mean, and are understood to signify and mean, the system of cutting garments one at a time according to individual measurements, using for the purpose a regular pattern altered for the purpose according to the requirements of each individual case.

On the contrary, it has been and is the practice of respondents, when professing or attempting to fill orders, to fill them with so-called ready-made clothes. It has been and is their practice, when orders are received, to select, from clothes already made, garments which appear, in a general way, to come near the measurements given in the orders, if they have any such garments, and thereupon to deliver such garments to the purchaser without further regard for, or reference to, the measurements specified in the orders re-

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ceived. If no garments in their ready-made stock correspond with the required measurements, it has been the practice of respondents, as a systematic method of competition, to furnish ready-made clothes to purchasers who have ordered tailor-made clothes in reliance on the authorized representations of respondents' agents, salesmen, or solicitors, without any regard for, or reference to, the specifications or requirements of the orders received. Short men have been furnished clothes that could fit tall men, tall men clothes for short men, stout men clothes for thin men, and thin men clothes for stout men. Instead of clothes cut to the measurements of the purchasers, clothes have been furnished by respondents to purchasers whose measurements have apparently been carefully taken and forwarded to respondents by their agents, salesmen, or solicitors, which have been such misfits as to produce a grotesque appearance when worn, or attempted to be worn, by the purchasers.

It has been and is the practice of respondents to deliver to purchasers ordering clothes from them, suits which have not been and were not and are not made from or out of cloth corresponding with the sample exhibited by respondents' agents or salesmen and selected by the purchasers for suits, but have been made from and out of cheaper and inferior cloth or fabric which, in many instances, has been so cheap and inferior that the purchasers have been unable and unwilling to use the garments, but have been compelled to sustain the loss of the money paid respondents without any return or advantage therefrom.

The offer of two suits for the price of one, or of one suit to be given free to the purchaser of a suit as a special advertising offer has been and was false and misleading. The cost of the suit offered as free has been, was, and is, included by respondents in the purchase price of a single suit, resulting in a profit to respondents from such transactions or sales, and the offer described as a special offer or special price was not a special offer or price but has been, was, and is, the usual offer made by, or on behalf of, respondents in the regular course of their business.

No branch place of business or store has been established or opened by respondents, or any of them, in or at any of the places in which they have sold or offered their clothes for sale, and in connection with such sales or offer to sell they have represented their purpose to open branch places of business.

It has been the policy, method and practice of respondents to refuse to refund any money received as a result of the false and misleading representations of their agents, salesmen and solicitors,

or to consent to any adjustment of complaints or grievances resulting therefrom, except in those cases in which the purchasers have appealed for assistance to their local Better Business Bureau. In such cases, on demand of such Better Business Bureaus, respondents have generally exchanged another suit or other suits for the first suit or suits delivered to the purchasers, but in none of such cases was the purchaser furnished a tailored suit cut to his or their individual measurements or which fitted the purchaser.

PAR. 5. There have been, were and are competitors of respondents offering for sale and selling in interstate commerce, through agents, salesmen, or solicitors by direct contact with the consuming public, garments or suits for men at a price or prices similar to the price or prices at which the clothes of the respondents have been and are offered for sale and sold, who have represented, through their agents in connection with the sale of their clothes or suits for men, that clothes or suits ordered or purchased from them would be tailor-made according to the individual measurements of the purchaser, and such competitors have furnished and do furnish, in accordance with such orders, clothes or suits which have been and are tailored and which have been or are cut according to the block system and made according to measurements of individual purchasers out of cloth selected or designated by them. Such competitors of respondents have also sold and sell, at such price or prices, garments so made consisting of material greatly superior in quality to that used by respondents in the clothes they furnish purchasers from them.

There have been and are competitors of respondents offering, as inducements to the purchase of their clothes needed fitting, or alteration of clothes at branch places of business in the localities in which purchasers reside, and such competitors have maintained, and do maintain in such localities, branch places of business as represented, and have fitted and altered, and do fit and alter, clothes purchased from them as their agents have represented would be done when soliciting and receiving orders therefor.

There have been and are competitors of respondents offering for sale and selling in interstate commerce clothes for men to retail dealers in clothes, and through them to the consuming public, at prices comparable with the prices at which clothes of respondents have been and are sold, which clothes have been and are made from the material or cloth selected or designated by the purchasers and have been and are tailored or cut by the block system, adjusted to individual measurements specified in the order for such clothes.

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PAR. 6. The practices of respondents, as described in paragraph 4 hereof, have had and have the capacity and tendency to mislead and deceive, and have misled and deceived, and do mislead and deceive, the public into the belief that the garments or clothes offered for sale and sold by respondents, and by each and all of them, have been and are garments or clothes tailor made in accordance with individual measurements of the purchasers, and from and out of cloth selected or designated by the purchasers that needed fitting, and alteration of such clothes could and would be made at branch places of business maintained by respondents in localities wherein reside the purchasers of such clothes, and that the price or prices at which clothes of respondents have been and are sold have been and are special introductory prices, and into the purchase of garments or clothes from respondents in reliance on such erroneous belief.

The aforesaid practices of respondents, and of each and all of them, have had, and have the capacity and tendency to divert, and have diverted, and do divert, trade to respondents from their competitors offering for sale and selling in interstate commerce clothes or garments for men by means of truthful representations in respect to the manner in which, and the material out of which, clothes offered for sale by them have been and are manufactured.

CONCLUSION

The acts and practices described in the above and foregoing findings as to the facts have been and are all to the prejudice of the public and of respondents' competitors, and have constituted unfair methods of competition in commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondents, the testimony and evidence, and brief of counsel for the Commission, and the Commission having made a report, in writing, stating its findings as to the facts with its conclusion that the respondents have violated the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

Now, therefore, it is ordered, That respondents, United Tailoring Co., Inc., Curtis Clothing Corporation, their officers, agents, servants,

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and employees, and Victor Klein, Herbert Klein, and Arthur Klein as officers of said respondent companies, and as individuals, trading under the firm name and style of Continental Tailoring Co., or under any other trade name, cease and desist directly and indirectly from representing in connection with offering for sale or selling clothes for men in interstate commerce—

(a) That such clothes have been, are, or will be tailor made in accordance with measurements of individual purchasers, unless such clothes, after orders therefor, have been, are, or will be tailor made in accordance with the correct measurements of the individuals ordering them; or that such clothes have been, are, or will be cut by the block system and adjusted to the required measurements, unless after orders received for such clothes they have been, are, or will be cut one suit at a time by means or use of blocks or patterns and adjusted to correct measurements of the individual purchasers before cutting;

(b) That such clothes have been, are, or will be made from and out of cloth selected by purchasers unless such is the fact;

(c) That a branch place of business is about to be or will be opened in the locality in which any purchasers reside, at which clothes furnished by respondents, or any or either of them, can or will be fitted or altered, unless such is the fact;

(d) That respondents are offering two suits for the price of one as a special or introductory offer, or to advertise the business they are about to establish in such localities, unless such is the fact.

It is further ordered, That respondents, and each and all of them, file with the Commission, within 60 days from and after service of this order, a report, in writing, setting forth in detail the manner and form of their compliance with the provisions of the order.

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IN THE MATTER OF
FLEMING BROTHERS

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

Docket 2014. Complaint, Mar. 1, 1932.—Order, June 8, 1932

Consent order requiring respondent corporation, its agents, etc., in connection with sale or offer in interstate commerce of its so-called "Fleming No. 6 Powder" from representing directly or by implication that said preparation is a preventive or cure of the horse disease known as heaves.

Mr. PGad B. Morehouse for the Commission.

Mr. Edward Clifford and *Mr. H. H. Shinnick*, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Fleming Bros., a corporation, has been and is now using unfair methods of competition in interstate commerce, in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Fleming Bros. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with principal place of business located in the city of Chicago, State of Illinois. It is now and for more than one year last past has been engaged in the manufacture of veterinary remedies, including an alleged remedy for heaves formerly sold by respondent under the name "Tonic Heave Powders", and now sold and distributed as "Fleming's No. 6 Powder". When sold, respondent causes the said product to be shipped and transported from the place of manufacture in the State of Illinois into and through various other States of the United States to the purchasers thereof.

In the course and conduct of the business as aforesaid, respondent is in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of veterinary remedies and tonics for livestock.

PAR. 2. In the course and conduct of its business as aforesaid, by the use of various advertising media brought to the attention of prospective purchasers, respondent does represent and has represented falsely both by direct statement and by implication, that the powder or veterinary remedy as aforesaid is an efficient preventive

and cure of a disease common to horses known as heaves; that the consumer purchasers of the said Fleming's No. 6 Powder believing and relying upon the truth of said representation buy this product from the respondent, whereas in truth and in fact the said Fleming's No. 6 Powder is not an efficient preventive or cure for the heaves.

PAR. 3. The foregoing false representation is calculated, and has a tendency to mislead and deceive purchasers and prospective purchasers of respondent's aforesaid product into the erroneous belief that the use of it in accordance with directions will operate as an efficient preventive or cure for heaves in livestock; and to induce the purchase by consumers of respondent's aforesaid powder in reliance upon such erroneous belief; and to divert trade from and otherwise injure competitors of respondent.

PAR. 4. The above acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon complaint and substitute answer of respondent, in which respondent refrains from contesting the proceeding and consents that the Commission may make, enter, and serve upon it an order to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises having thereupon considered that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent Fleming Bros., a corporation and its agents, representatives, servants, and employees, in connection with the offering for sale, or sale, in interstate commerce of a certain preparation or product now sold and distributed as Fleming No. 6 Power, cease and desist from representing, either by direct statement or implication, that said preparation or powder is a preventative or cure of a disease common to horses known as heaves.

It is further ordered, That respondent shall, within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with and conformed to.

IN THE MATTER OF
INETCO, INCORPORATED

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

Docket 1452. Complaint, Apr. 6, 1927—Decision, June 20, 1932

Where a corporation engaged in manufacture and sale of a hair dye, which was (1) professedly based on a patent which set forth "Para" or "Paraphenylene diamine," the so-called "Criminal Ingredient," as a component part of "the best example" of the dye in question, and was (2) disclosed by analyses as based principally on the amino compound paratoluylene diamine, the toxic, poisonous, and harmful effects of which were similar to those caused by amino compound paraphenylene diamine; in offering and selling aforesaid dye, which it extensively advertised in women's and other periodicals and in circulars and other trade literature, to the purchasing and consuming public throughout the United States, through drug stores, department stores and other dealers, beauty parlors and hair dressing establishments, and direct by mail order for home use,

- (a) Featured and stressed in aforesaid advertisements the alleged natural and effective action of said dye in performing its function, and the long desired safe and harmless qualities, and results, thereof, and welcome absence therefrom of "Para," dangers of which it set forth and emphasized, or of any other poisonous or injurious ingredient, and resulting advantages to hair dressers, who were thereby relieved of necessity for the common "behind the ear" test, and danger of suits or difficulties attendant upon use of other dyes not so safely compounded, and represented aforesaid asserted safety as demonstrated by thousands of sales, from none of which had there been adverse effects or claims against the company through which it insured its dealers; facts being preparation in question was dangerously toxic, and poisonous, contained a toxic dye base and poisonous and injurious ingredients, was neither safe nor harmless, and had led to serious ailments and difficulties for users in a great many instances, reported from time to time to it and aforesaid insuring company, and to numerous claims against the latter; and
- (b) Featured trade or brand name "Notox" in sale, labels, and advertisement of its aforesaid product, together with such statements as "No Para—No Toxins—Notox", "Notox is safe", "Notox is non-toxic", "No element of chance in Notox", "Non-toxic dye base", "Safe because * * * free of paraphenylene diamine", and falsely represented said name, "suggested by the words, non-toxic" as proven an appropriate selection by hundreds of thousands of successful and safe applications, and advertised same to women as "a symbol of safety";

With capacity and tendency to lead public to believe dye in question to be a nontoxic or nonpoisonous and therefore safe and harmless hair dye, and to induce purchase and resale and/or use in reliance upon such erroneous belief, and upon the truth of the aforesaid various representations, and with result of increasing its sales at the expense of competitive products through thus taking advantage of public's preference for nontoxic, safe,

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and harmless hair dyes, and urging hair dressing and beauty shop customers to profit by its aforesaid nation-wide advertising, and asserted dominance of its product in field concerned, and featured, supposed safety thereof, which its said customers were requested to stress; and

- (c) Set forth in booklets circulated among customers and prospective customers, the purported text of some 50 letters or parts thereof praising and commending product in question and results of application thereof, and purported to offer, upon cover of said booklet, a large reward for anyone proving any of supposed testimonials unauthentic or unsolicited, facts being some 48 thereof were in existence prior to time it began business and sale of its said product, and had been published verbatim as tributes to its predecessor's dye and as unsolicited letters on file in said predecessor's office, and did not pertain to its own product, which it distinguished from the other as free of the "Para" contained by the latter;

With capacity and tendency to mislead and deceive purchasing public into believing said testimonials to be genuine and unsolicited indorsements of its product, and with effect of injuring public and unfairly diverting trade from its competitors and otherwise injuring and prejudicing them in their business, and operating as an unfair competitive advantage to it and a detriment to and burden upon the legitimate hair dyeing manufacturing and marketing industry:

Held, that such acts and practices, under the circumstances set forth, constituted unfair methods of competition to the injury and prejudice of the public and competitors.

Mr. Henry Miller and *Mr. Richard P. Whiteley* for the Commission.

Hulbert & Heermance, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation engaged in the manufacture of a hair dye by it named and designated "Inecto Rapid Notox", and in the sale and distribution thereof to wholesale and retail dealers, owners, and operators of hair dressing establishments, and the consuming public, with advertising falsely or misleadingly as to said product and indorsement thereof, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about three years last past has caused to be set forth many false and misleading statements and representations concerning its aforesaid product in its advertisements in trade journals, magazines, periodicals, and other publications of general circulation among wholesale and retail dealers, the hair-dressing trade, and the consuming public, and in pamphlets, leaflets, booklets,

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letters, and other trade literature and correspondence sent to customers and prospective customers among the aforesaid classes, to the effect, among other things, that—

The dyeing and coloring content of the dye in question penetrates the hair and thereby causes a permanent coloration;

Prominent and well known hair-dressing establishments in the United States use said dye exclusively;

Said dye is safe and harmless and, when applied, produces no harmful effect upon the scalp, fact being it frequently causes irritation, toxic poisoning, and other deleterious effects upon the scalp.

Many thousand applications of its dye have been made to the hair, without in any instances causing any harmful effect to the scalp.

Respondent further, as charged, sends to prospective customers certain booklets containing the text of purported letters praising and commending its dye and the results of its application, and represents said letters as unsolicited testimonials of customers, facts being letters were not such unsolicited testimonials, or written to it.

Aforesaid false and misleading statements and representations, as alleged, "have the capacity and tendency to and do cause many of aforesaid dealers and practitioners to deal in, use and dispense, and many of the consuming public to purchase and use, respondent's said dye in the belief that said statements and representations are true," and said acts and practices, as charged, "tend to and do divert business from and otherwise injure and prejudice" competitors, many of whom "in nowise misrepresent the nature, properties, and characteristics of the hair dyes sold and distributed by them in interstate commerce"; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on April 6, 1927, issued and thereupon served its complaint in this proceeding upon Inecto, Inc., respondent above named, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent entered its appearance by counsel and filed its answer to said complaint by which answer respondent denied the charges

excepting certain parts of the complaint, including all of paragraph 1 thereof, which are expressly admitted by respondent. Thereafter the proceeding being ready for the taking of evidence, hearings therefor were held before an examiner of the Commission thereunto duly appointed. At such hearings oral testimony and other evidence with respect to the charges in the complaint were introduced by counsel for the Commission through many witnesses including officers or employees of respondent. Respondent was present and represented at all such hearings by counsel, cross examined the witnesses and developed oral testimony and introduced documentary evidence on its behalf. Upon completion of the introduction of evidence in chief by counsel for the Commission, further opportunity was afforded respondent for the introduction of such evidence as it might desire to present in the proceeding, and hearings before the examiner were duly held for such purposes at the expiration of certain continuances granted by the examiner and the Commission upon respondent's request. Prior to the conclusion of the hearings for the taking of evidence before the examiner various matters were presented by respondent and ruled upon by the Commission in the several respects shown in the record. Such questions were, in the main, raised by appeals by respondent to the Commission from rulings of the examiner (a) in granting motion to strike out as immaterial, incompetent, and impertinent to the complaint paragraphs 9 to 27, inclusive, of respondent's answer; (b) in receiving in evidence over respondent's objection and refusing to strike out certain documents and other evidence introduced by counsel for the Commission; (c) in directing witnesses Evans and Morgan, respondent's technical director and chemist, respectively, to testify as to the ingredients or contents of respondent's hair dye; (d) in refusing to recommend to the Commission that the complaint or any part thereof be dismissed; and also by motion of respondent to the Commission to dismiss the complaint.

Thereafter further opportunity was afforded respondent for the introduction of such evidence as it desired to offer in the proceedings and to this end a further session of the hearings before the examiner was held in New York City, July 21, 1931, at which hearing respondent appeared by counsel and thereupon rested. The introduction of evidence having been concluded, such hearings before the examiner were closed; and the evidence, including a transcript of the testimony, was filed of record in the office of the Commission. Thereafter the examiner filed his report upon the facts to which exceptions were entered by counsel for the Commission and counsel for the respondent.

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Thereupon this proceeding came on for final hearing before the Commission, and briefs and oral argument were presented to the Commission by counsel for the Commission and by counsel for the respondent; and the Commission, having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Delaware with its office and place of business in the City and State of New York. At all times since the issuance of the complaint herein and for the period of about three years immediately prior thereto, respondent has engaged and still engages in the business of manufacturing hair dye, which is named, designated, described, and branded by it as "Inecto Rapid Notox" (also commonly referred to merely as "Inecto" or as "Notox") and in the business of selling and distributing such brand of hair dye to the purchasing and consuming public throughout the United States, including wholesale and retail dealers, owners and operators of hair-dressing establishments and users located and residing respectively at places in various States of the United States. Said sales of the product are and have been made by respondent (a) to drug stores, department stores, and other dealers for resale by them to the using and consuming public; (b) to beauty parlors or shops and hair-dressing parlors for use in dyeing or tinting the hair of the patrons of such establishments and for resale by them to the consuming public for home use; and (c) direct to the using and consuming public by mail order for home use. In such distribution of said hair dye and in making delivery thereof to its customers pursuant to sales, respondent has caused throughout the course of such business and still causes said product as and when sold to be transported and delivered in commerce from its place of business in the City and State of New York into and through other States of the United States to the respective purchasers thereof in such other States. In carrying on said business respondent is and has been engaged in interstate commerce and at all times mentioned has continuously maintained a current of commerce between and among the several States in the sale and distribution of its said hair dye. There are many different brands of hair dye (represented by respondent as being hundreds) which are manufactured and marketed by others to the purchasing and consuming public of the United States; and in the sale and distribution of respondent's

hair dye to such public, as above described, the same has been and is marketed and trade therefor solicited by respondent in general competition with other brands or makes of hair dyes. Also in and throughout the course and conduct of its said business respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the business of selling and distributing hair dye in commerce between and among various States of the United States.

PAR. 2. Said sale and distribution of its hair dye is and has been promoted and effected by respondent through and by means of advertising matter or trade promotional literature concerning the product and respondent's business therein, principally of the following forms: (a) Advertisements published by respondent in journals, magazines, and similar periodicals and publications of general circulation among the trade and the purchasing and consuming public throughout the United States and in various sections thereof; and (b) printed or written circulars, pamphlets, leaflets, booklets, letters, and similar communications distributed by respondent to purchasers and prospective purchasers of said dye and to the hair-dyeing and hair-dressing trade and the consuming public generally throughout the United States. Said advertising matter (also herein referred to as trade promotional literature) has been and is widely and extensively published and disseminated by respondent in promoting the sale of its said hair dye and the purchase and use of the same in the trade and by the consuming public. It has been reported or represented by respondent in the course of its business that, with respect to the advertising of said hair dye, its annual expenditures ran as high as \$300,000, and that advertisements of the dye reached as many as twenty million women monthly. In the course of such advertising respondent has used as mediums for the publication and dissemination thereof practically every woman's magazine in the country, besides various trade journals, trade periodicals, and the other forms of trade promotional literature above described.

PAR. 3. In addition to the name "Inecto Rapid" respondent, during the period of about three years prior to the issuance of the complaint and at all times since, has branded and labeled its said hair dye with the word "Notox". Such brands or labels are affixed to the containers by respondent. They bear the word "Notox" printed prominently in a diamond-shaped device with the printed name "Inecto Rapid" framed in a larger oval-shaped device. It is under these labels that the product is marketed to the trade and consuming

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public by respondent and in turn resold by dealers to the consumers and users. In its trade promotional literature respondent also refers to and designates said dye with the word "Notox". Also in its trade promotional literature or advertising matter hereinabove described, and in promoting and effecting the sale of said hair dye to, and the purchase and use thereof by, the trade and consuming public throughout the United States, respondent has made and continued to make, during the period of about three years prior to the issuance of the complaint and thereafter, many representations, statements, and assertions of and concerning said dye, its nature, properties, and characteristics, which representations, statements, and assertions are of the following import and effect:

(1) That said hair dye is safe and harmless and when applied produces no harmful or deleterious effects upon the scalp, that in the many thousands of applications of said hair dye there have been no instances of any such harmful or deleterious effects upon the users thereof.

(2) That the said hair dye is "a coloring at all times safe"; "Notox is non-toxic"; "Notox is safe"; that the said product produces shades of human hair "so safely as to still even the least concern"; that it has "the absolute safety consumers deserve"; that "by actual mass test, it has established itself as absolutely safe"; that it is "positively safe"; that it is "perfectly safe in action"; that it is "safe for both hair and scalp"; that "there is no risk in the use of Inecto Rapid Notox"; that it eliminates "the risk of injuring a customer"; that "There is no element of chance in the Notox process of hair coloring. Its safety and efficiency are facts firmly established every day"; that "For one and most important thing, it delivers the hairdresser of the fear of poisoning a customer, with its inevitable consequences of loss of prestige and loss of money from damage suits"; that "For ages women have wanted such a coloring—one both safe and natural—but they have insisted stubbornly that it be exactly that"; that "it does not contain paraphenylene diamine or other injurious ingredient", or "any other poisonous ingredient"; that "its composition is safe"; that it has a "nontoxic dyebase"; that said Inecto Rapid Notox is the result of the respondent's making "an instantaneous dye without using a poison"; that "Notox is composed entirely of organic pigments. It contains nothing to damage either the scalp or the hair"; that it has been "proven safe by an unblemished record"; that the "magic eight-bottle Notox case is a symbol of safety to hundreds of thousands of women".

(3) Further instances of such representations, statements, and assertions made in this respect by respondent are shown by the following excerpts from its trade promotional literature:

Why risk uncertainty of shade, impermanency, injury to the health of customers, when Inecto Rapid NoToX eliminates every such chance of dissatisfaction? More than two years of scientific research and creative work in the laboratory, by one of the most highly qualified organic chemists in the country, have eliminated the element of chance from Inecto Rapid NoToX.

It is safe, it can not injure texture or growth. The ease of application enables anyone to apply it with invariable success in the privacy of her own home.

In other words, safety pays. There is a reason for this, of course. You have seen how, in "The Criminal Ingredient", poisonous hair colorings, containing paraphenylene diamine, have alarmed the women of this country and others. So there is little wonder, when they see, in Inecto Rapid NoToX advertising—which reaches 20,000,000 women every month—"It contains no paraphenylene diamine", that they insist upon this, the one natural coloring that is safe. They know it is as safe as its results are beautiful. They know it by name and they ask for it by name.

And now by actual mass test it has established itself as absolutely safe. When, out of two hundred thousand outfits consumed, the number of instances of impairment of health or hair or scalp is zero, there is no need to claim safety. The product has proven itself safe. (Com. Ex. 47, December, 1924.)¹ No Para—No Toxins—Notox * * * A little over two years ago, when Mr. Ralph L. Evans, organic chemist, undertook to create a coloring expressly for use upon the sensitive living organism of human hair, it was considered impossible to get a dye-base as effective as paraphenylene diamine—often referred to as "para". * * * One of Mr. Evans' hardest problems was to replace para with a nontoxic dye base. That he solved it successfully is found in the safety record that Inecto Rapid NoToX has established. The makers of this tint might easily and truly have prophesied this record, were prophecy and unsupported claim a part of their policy. From the formula it was virtually inevitable that perfect safety would be obtained. * * *

Now the facts have accumulated: one hundred thousand outfits of Inecto Rapid NoToX have been consumed, and the number of instances of impairment of health or hair or scalp zero. Every hairdresser using Inecto Rapid NoToX is insured against damages which might possibly be done, to the extent of \$5,000 and \$10,000. Insurance companies write insurance for no other hair-coloring. Fundamentally safe in theory, safeguarded rigidly throughout all processes of manufacture, proven safe by an unblemished record—Inecto Rapid NoToX is a coloring from which every element of chance has been eliminated, yet, which, for all that, is insured safe. (Com. Ex. 64, July, 1924.)

More than 200,000 outfits of Inecto Rapid NoToX have been consumed without a single instance of impairment of health or hair or scalp. Inecto national advertising in American magazines reaches 20,000,000 women readers every month. In the last year she has been particularly enthusiastic about Inecto colorings. There has been so much in the newspapers about the dangers hidden in hair dyes—particularly about the threat to health in a drug with a long name and a longer list of victims. Paraphenylene diamine, they call it. A quotation from the Journal of the American Medical Association designated

¹ Exhibits not published.

paraphenylene diamine as "the most dangerous drug of all" used in beauty preparations. Then, happening upon an advertisement of Inecto Rapid NoTox in a current magazine, she saw the line: "Contains no paraphenylene diamine." It gave her a sense of security. The tint not only saved her from grayness, it protected her from being poisoned. Not only were its shades like nature's; its harmlessness was, too. (Com. Ex. 68, January, 1925.)

The public has become weary, indignant, up in arms against being poisoned by hair coloring. It demands a natural coloring, yes, but it demands at the same time a safe one. It demands a dye without disaster—such disaster as an ingredient like paraphenylene diamine so frequently inflicts. * * *

Coloring hair is becoming as common as matches, because it has become as safe. Cash in by carrying only the coloring which has accomplished this: Inecto Rapid Notox.

Inecto Rapid Notox, safe because it is free of paraphenylene diamine; proven safe by more than half a million applications. * * *

Every outfit of Inecto Rapid Notox contains: * * * A coloring proven safe by actual use in hundreds of thousands of cases. There has not been, from its use, a single serious case of impairment of hair or health or scalp. (Com. Ex. 73, July, 1925.)

* * * Notox assures naturalness and safety. This publicity is of vital interest to women who have found, or are just finding, the first sign of gray! And these women will be equally interested in your shop if you inform them that you expertly apply Inecto Rapid Notox. With the public fully informed that gray hair is a disease (Canities) and that Notox is its safe corrective, it is no wonder that women are displaying such interest in it.

The properties of naturalness and safety are simple to say. But it took a score of centuries to evolve a hair coloring that had them in combination. It has been evolved now, however, and women will have no other. They insist upon it—Inecto Rapid Notox. The Inecto Rapid Notox advertising, in magazines reaching 20,000,000 women buyers, tells them. The druggist who carries Inecto Rapid Notox sells them.

At no time in the history of hair coloring have you had such an opportunity. A bit of an effort—and concentration on Notox—will win you new trade and added income from your present patrons. The great magazines are carrying the Notox message to millions. * * *

The ads point out why Notox is totally unique . . . distinctive . . . different from any other hair coloring. They explain that Notox is a Symbol of Safety—a perfected product, never-failing in its results, unmatched in its supremacy. * * *

Use these features of NoToX to increase your NoToX sales. * * *

NoToX is nontoxic. It may be used without any bothersome "behind-the-ear test." It requires no waiting for possible reaction. You can make your every sale with perfect confidence in its safety.

Does a test have to be made before application? If so, the makers of the dye know that it is sometimes poisonous. The test implies toxicity.

No Test Required. The test for safety, a procedure frequently terrifying to a patron, is not necessary in applying Inecto Rapid Notox. The tint is safe—and, without a test, insured safe.

DISCARD THE TEST THAT TERRIFIES

* * * Take a look at some of the policies covering para dyes. Then take a look at an Inecto Rapid Notox insurance policy—to which every user of Inecto

Rapid Notox is entitled, free of charge. You'll find no catch clause calling for a test before application. Inecto Rapid Notox needs no test. It's safe. Its makers don't ask the hairdresser to experiment with her customers. They know, just as you know, that you can't hold a patron's confidence if you experiment upon her, as you would on a guinea pig.

INECTO RAPID NOTOX IS SAFE

More than a million applications without mishap have proven it safe. Inecto Rapid Notox contains no paraphenylene diamine. Inecto Rapid Notox is so safe that, when it is used exclusively, the insurance on the entire shop is reduced 15 per cent. Insurance on Inecto Rapid Notox costs the shop nothing. Every package is insured under a blanket policy by Inecto, Inc., through the United States Guaranty & Fidelity Co. Insurance companies do not require, in insuring anyone using Inecto Rapid Notox, that there be a preliminary test upon a customer. With certain other colorings, unless a test is made, insurance is voided. And if a test is made the customer usually is badly frightened by it.

The United States Fidelity and Guaranty Co. which insures all users of Inecto Rapid Notox, has yet to have occasion to pay damages for any injury resulting from an application of this hair coloring. Naturally, the reason for this is that there have been no injuries. Inecto Rapid Notox is a safe hair coloring. Not because its makers claim it is safe—but because insurance statistics prove it so. * * * Caesar's wife, they say, is, or rather was—for the Impeccable empress is no longer with us—above suspicion. In that her reputation for virtue is exactly like that of Inecto Rapid Notox for safety.

For the United States Fidelity & Guaranty Co., which insures all hair dressers—without cost to them—using this coloring, does not require, in its policy, that there be any sort of test of the coloring by the hairdresser upon her customer.

It is not necessary—as in the case of some colorings—that first a bit of coloring be applied to a customer and left on for a while to see if any harm develops, before insurance be allowed.

That is like betting on a horse the day after a race. No such preliminary test is required of Inecto Rapid Notox. So certain, apparently, is the insurance company that nothing can happen that it doesn't bother with this requirement.

As a matter of fact, however the insurance company in not taking any considerable chances. It knows that both in formula and performance Inecto Rapid Notox is as near to being absolutely safe as any preparation used in beautifying. In the first place, Inecto Rapid Notox contains none of that substance referred to in the Journal of the American Medical Association as "the most dangerous drug of all"—paraphenylene diamine.

Again, more than one hundred thousand outfits of Inecto Rapid Notox have been consumed without a single instance of impairment of hair or health or scalp. And still again, the United States Fidelity & Guaranty Co. has never had occasion to pay one cent for any sort of injury from an Inecto Rapid Notox application. No wonder it should require no test of Inecto Rapid Notox—that it should regard its safety as did the members of the imperial Roman court the reputation of Mrs. Caesar—above suspicion. * * *

Absences then are frequently more significant than presences. Which is the reason for our emphasizing so pointedly the absence from Inecto Rapid Notox of the now disreputable and dangerous chemical, paraphenylene diamine. To-day, when organizations such as the American Medical Association, the

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American Cosmeticians' Society, and the National Hairdressers' Association have passed resolutions condemning the use of paraphenylene diamine in hair colorings and furthermore put themselves on record as urging the passage of criminal laws to prevent the use of para in such colorings, every hairdresser, realizing that such agitation must mean that para in a coloring is a real menace to her customers' health and her business prosperity, wants to know whether or not a given coloring contains para. Hairdressers know that para is frequently, unforeseeably poisonous and occasionally fatally so. The one thing they insist upon about the drug is that it not be in any coloring they use. * * *

Proven safest by the fact that more than one hundred thousand outfits have been consumed without a single instance of impairment of health or hair or scalp, proven safest, too, by the statistics of the United States Fidelity & Guaranty Co.—all because Inecto Rapid Notox was designed to be safest by insisting that, of its ingredients, paraphenylene diamine be among those absent. * * *

No Para—No Toxins—Notox. (Com. Ex. 97, November, 1924.)

NO TEST FOR NOTOX

No better evidence of the safety of a hair coloring can exist than that which is provided in the insurance policy issued by the United States Fidelity & Guaranty Co., which insured every hairdresser using this coloring. This policy insures the user without requiring any preliminary test of the coloring upon a subject. The hairdresser does not first have to apply the coloring, then wait to see if anything happens before being covered by insurance. The hairdresser is insured from the start. The United States Fidelity & Guaranty Co., of course, knows what it is doing. Insurance companies are not rash chance-takers. They know Inecto Rapid Notox is Safe. Hence their *carte blanche* policy. Their "No test for Notox" insurance is final evidence that this is the safest, as well as the most beautifully effective hair coloring in the world today.

Notox is safe. It contains no paraphenylene diamine or any other poisonous ingredient. The undeniable unbiased proof of the safety of Notox is found in the fact that one of the largest indemnity companies in the world—the United States Fidelity & Guaranty Co.—lowers the insurance rate upon an entire shop if Notox is used exclusively in hair coloring work. (Com. Ex. 26, July, 1926.)

Developed by a noted organic chemist, who has forever eliminated the dangerous paraphenylene diamine, there have been 100,000 applications of Inecto Rapid NoToX and not a single case of damage to health, or hair or scalp. "It aint-a-gonna rain no more" as far as hair-dye troubles are concerned. But we still provide our distributors and every one of their customers with a good strong umbrella. Every druggist who sells Inecto Rapid NoToX and every woman who buys and uses it is insured against all possible damage by the United States Fidelity & Guaranty Co. Not a single damage claim has ever been filed in this connection—but the protection is still there just the same. * * *

The makers of Inecto Rapid Notox—or Notox, as it is beginning to be called—state that it is a safe hair coloring. They back that statement with free insurance, to the extent of \$10,000 and \$20,000. And moreover, the insurance company which issues this policy, the United States Fidelity & Guaranty Co.—one of the largest indemnity companies in the world—offers a reduction of 15 per cent in insurance rates upon the entire shop where Notox is used exclusively.

Not only are the makers of Notox so sure Notox is safe that they insure hairdressers free of charge (without testing or any other jokers tied to the contract). But an outside company, one of the greatest of its kind in the world, is so sure that Notox is safe that it puts up its own money to back its knowledge. You can't have any stronger evidence than this of the reliability or safety of any thing in the world. In choosing a hair coloring, you want to choose a safe one. One that you are absolutely sure is safe. * * *

Use Notox—the one coloring that proves to you beyond all question that it is safe—and absolutely right in quality.

Since the issuance of the first case of Inecto Rapid Notox, there has not been a single instance of injury to health or hair or scalp reported to the United States Fidelity & Guaranty Company, which insures every hairdresser using this tint. * * *

Safety, of course, was assured. The threat of "the most dangerous drug of all", paraphenylene diamine, was eliminated by evolving a nontoxic dye base. (Com. Ex. 69, March, 1925.)

The existence of such a hair coloring as Inecto Rapid Notox, perfectly safe and perfectly natural, has created a confidence in hair colorings, a confidence comparable to public confidence in paper money backed by the gold reserve in a nation's treasury. * * *

As to the claim that a dye is the same as old Inecto Rapid, the dye formerly made by Inecto, Inc., bear this in mind: Old Inecto Rapid contained paraphenylene diamine. If a dye offered as being identical to old Inecto Rapid really is identical, then it contains paraphenylene diamine. If a dye offered as old Inecto Rapid does not contain paraphenylene diamine, then it is not the same as old Inecto Rapid. If a counterfeit dye is not the same as old Inecto Rapid, then it is not as effective; if it is the same, it is poisonous.

PAR. 4. The word "Notox", in addition to the phrase "Inecto Rapid", has been used by respondent in advertising, designating, and describing its hair dye since about March, 1924. Prior thereto respondent sold its dye under the designation "Inecto Rapid" without the word "Notox". It represented in its advertising matter that said product to which it applied the word "Notox" is a new or improved hair dye developed with a nontoxic dye base. When respondent put its hair dye upon the market as such new or improved hair dye, the change was also made in the designation by applying the word "Notox" to the product and adding such word to the name "Inecto Rapid". The change on the labels under which the dye is sold was made by adding the word "Notox" printed in a diamond-shaped device with the term "Inecto Rapid" framed in a larger oval-shaped device as described in paragraph 3 hereof. In certain instances respondent has referred to said word "Notox" as a trade-mark. It has printed such word "NoToX" in some places with the letters "N", "T" and "X" as capital letters and the two letters "o" as noncapital or lower case letters; and has designated the word so printed with the term trade-mark. In promoting the sale of such

"Inecto Rapid Notox" dye, respondent advertised and represented that—

The name NoToX is suggested by the words, non-toxic. And hundreds of thousands of applications prove that it is appropriately named. (Com. Ex. 28.)

As set forth in paragraph 3 hereof respondent also printed conspicuously such catch words as "No Para—No Toxins—Notox", "Notox is non-toxic"; and referred to the product designated "Notox" as the "Symbol of Safety", stating that its advertisements to women "explain that Notox is a *Symbol of Safety*—a perfected product, never-failing in its results, unmatched in its supremacy . . ." (Underscoring has been supplied to show part italicized. Com. Ex. 56.) In respondent's so-called text-book entitled "Canitics", authorized, used, and sold by respondent for teaching hair-dressers or beauty parlor operators information concerning its "Inecto Rapid Notox" brand of hair dye and the use and application thereof, representations, written by the author on behalf of respondent, are set forth as to the origin and development of said dye by Ralph L. Evans with the statement that—

Finally, in March, 1924, Dr. Evans formally presented to the public the new preparation called "NoToX" (from "non-toxic", or nonpoisonous).

In oral testimony adduced with respect to the meaning of said word "Notox" as used, a chemist of the United States Department of Agriculture testified that to him the word conveys the impression that "it has no toxic properties"; "that it is harmless" and that to his knowledge the word "tox" is not used in chemistry. Another witness, a physician and chemist formerly employed by the United States Department of Agriculture in the matter of the enforcement of the Food and Drugs Act and now secretary of the U. S. Pharmacopoeia Convention, testified that the word "Notox" to him means nonpoisonous; that the term "tox" is "the root of many words. That means toxic", and he cited the words "toxic", "toxalbumen", "toxicology", "toxemia", and the word "toxitablet" in the U. S. Pharmacopoeia, which he testified means poison tablet; also that the term "tox" is generally considered synonymous with poison. A third witness, a practicing physician, specialist in skin diseases and professor of dermatology, testified that said word "Notox" to his means "nontoxic or nonpoisonous"; that "tox, I think, is a very frequent abbreviation of toxic and toxic means poisonous", and that it is "quite generally used as a prefix or suffix to words to indicate poison or non poison".

Upon consideration of all the evidence in the matter and the record, the Commission finds that the word "Notox" as used and

applied by respondent in designating, describing, and advertising its said hair dye, as above set forth, is indicative of nontoxic or nonpoisonous and has a capacity and tendency to lead the public to believe, and constitutes a representation to the effect, that said hair dye is nontoxic or nonpoisonous, and is therefore, a safe and harmless hair dye.

PAR. 5. Respondent's said Inecto Rapid Notox brand of hair dye is sold in small bottles or vials to be used in pairs consisting of one bottle marked A and one bottle marked B. The usual package in which it is marketed is a small sealed case or carton containing four pairs or a total of eight bottles or vials. The product was advertised by respondent prior to the issuance of the complaint as retailing at \$5 for each such case or carton of eight bottles with an advertised price of \$36 per dozen cases or cartons to retailers. The A bottles contain the dye stuff and the B bottles contain hydrogen peroxide, the purpose of which is to act as an oxidizing agent when mixed with the contents of the A bottle, which admixture is to be made when applying the product to the hair. In the mixture of the contents of the A bottle with the peroxide in the B bottle and the application thereof to the hair, oxidation takes place, and as a result of the chemical reaction thus set up, the tint or color is formed upon the hair. In the matter of the ingredients in the contents of the A bottles, Commission witness Ralph L. Evans, respondent's technical director who is represented in respondent's literature as the chemist that developed said dye, and William E. Morgan, another chemist employed by respondent, refused, upon advice of respondent's counsel, to testify in response to questions as to whether it contained certain ingredients. With respect to the nature and the alleged unsafe, harmful and deleterious character of said dye and its ingredients, and the harmful and deleterious effects in the use thereof, much evidence was adduced among which is testimony or other evidence of the following character:

(a) That in addition to respondent's representing in its advertising matter that its said Inecto Rapid Notox hair dye contained no paraphenylenediamine or any poisonous or injurious ingredient, respondent also made representations therein to the effect that respondent's said dye was invented and is a patented product, fully covered by letters patent; that it is a discovery of or was invented by said Ralph L. Evans, respondent's technical director in charge of the production of said dye. He testified that United States letters patent No. 1497262 (in the record as Com. Ex. No. 1 and in which he is the patentee) are the only letters patent covering said

Inecto Rapid Notox hair dye as sold by the respondent in the United States. Said letters patent are for "an alleged new and useful improvement in hair dye" and were granted June 10, 1924, upon application of said Evans, filed February 24, 1923, Serial No. 621032. The product, as covered in said letters patent and specified therein by the applicant Ralph L. Evans, is a hair dye having as its base amino compounds such as paraphenylene diamine and described in part as follows:

The following is the best example of my improved hair dye which I have produced with the proportions given by weight.

I dissolve 1 to 5 parts of para phenylenediamin ($C_6H_4(NH_2)_2$) in 100 parts of water and add thereto $1\frac{1}{2}$ to $7\frac{1}{2}$ parts of acetone sodium bisulfite ($C_3H_7SO_3Na$) which chemically combines with the amine to form the triple compound para phenylenediamin-acetone-sodium bisulfite ($C_6H_4N_2SO_3Na$). This compound may be used for dyeing in the usual manner by the addition of a suitable oxidizing agent, such as hydrogen peroxide.

While I have described this invention as a hair dye, it is suitable for other purposes, such as dyeing fur, feathers, etc., hence I do not wish to limit myself to a hair dye, but

What I claim is:—

1. A dye including an aromatic amino compound chemically coupled with a carbonyl containing compound of the type formula $RC:OR'$ where R and R' may be H or organic radicals connected through carbon.

2. A dye including an aromatic amino compound chemically coupled with a carbonyl containing compound of the type formula $RC:OR'$ where R and R' may be H or organic radicals connected through carbon, and a sulfur containing compound.

3. A dye including para phenylenediamin and acetone sodium bisulfite.

4. A dye including para phenylenediamin and acetone sodium bisulfite in the substantial proportions of 1 to 5 parts of para phenylenediamin and $1\frac{1}{2}$ to $7\frac{1}{2}$ parts of acetone sodium bisulfite.

5. A dye including water, para phenylenediamin and acetone sodium bisulfite in the substantial proportions of 100 parts of water; 1 to 5 parts of para phenylenediamin, and $1\frac{1}{2}$ to $7\frac{1}{2}$ parts of acetone sodium bisulfite.

(b) That in the course of its business respondent made announcements, statements, and representations, principally in bulletins and trade magazines, to the hair dye and hair-dressing trade and the public generally, to the effect that paraphenylene diamine is a dangerous and harmful substance, and when used in hair dye renders such hair dye unsafe to use and a poisonous, dangerous, and harmful product; that if a hair dye—

contains paraphenylene diamin, "The Criminal Ingredient," it will poison—whether a test is made before or not—one out of every one hundred and twenty persons. The degree of poisoning is sometimes such as to undermine the constitution. (Com. Ex. 35);

that as an ingredient in hair dye—

the drug carries always a potential injury. It is not invariably injurious, but it is occasionally and unforeseeably so. The hairdresser might use a dye containing it a hundred times without mishap, and again in another hundred cases find himself facing half a dozen damage suits for injuries inflicted by para (Com. Ex. 37).

That "free paraphenylene diamine poisons 1 out of every 120 persons. And there's no way of foretelling whom it will poison" (Com. Ex. 51); that, with respect to excerpts published from the *Journal of American Medical Association*, "these quotations of medical authority indicate that paraphenylene diamine is frequently poisonous, occasionally fatally so" (Com. Ex. 66); also that it is so known to hairdressers (Com. Ex. 97). In connection with or in support of its representations and declarations in this regard, respondent compiled and published quotations of what it represented to be scientific comment by medical and chemical authority upon the effect upon human beings of hair dye containing paraphenylene diamine. The general tenor of such quotations is shown by the following excerpts:

Paraphenylene diamine is a spasmodic poison and can kill.

Pyrogallol, silver nitrate, and paraphenylene diamine cause skin eruptions.

Paraphenylene diamine finds application in the use of prepared hair dyes, especially fur dyes. In the dyeing of human hair it is forbidden because of its poisonous properties (Max Scholtz-Grieswald Univ. Textbook of Pharmaceutical Chemistry Vol. 11, p. 275).

Paraphenylene diamine is a strong poison and ought not to be used in hair dyes.

A single application of paraphenylene diamine has been enough for action. Symptoms may be divided into three groups:

1. Toxic skin eruptions, eczema, urticaria, burning and itching;
2. Gastrointestinal troubles, such as nausea;
3. Nervous disorders, dizziness, sleeplessness, weakness of the legs, epileptiform attacks and syncope.

In individuals the manifestations on the skin are numerous: In violently itching red spots, edematous swellings, inflammation of the skin with cracking, pimples and ulcers, blisters, nettle disease (which can be merely local or can spread over a large part of the body), swelling of the face, especially the eyelids, flowing of tears, and swelling of the larynx have often been observed. The eruption of the skin often takes a characteristic stream form of spreading.

Above all, paraphenylene diamine and its analogs are worthy of mention . . . As paraphenylene diamine irritates the skin and is even poisonous, its use in hair dye is forbidden (Hans Truttwin, *Handbook of Cosmetic Chemistry*, Leipzig. Dr. Ewald Fonrobert, Wiesbaden, Chap. XV, Hydrogen in Cosmetics).

A fact of considerable importance is that such a poisonous substance (hair dye) is likely to be given into the hands of the laity, with assurances of complete freedom from harmful effects, and the use of such a substance makes contact with the hair and skin unavoidable. (Com. Ex. 41.)

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(c) That respondent compiled and published in the course of its hair-dye business purported specific instances, from reported authentic sources, of injuries or illnesses as "A few representative cases of paraphenylene diamine poisoning resulting from the use of hair dyes containing that chemical," and involving such difficulties as dermatitis, the undergoing of medical and hospital treatments for varying periods, incapacity, prolonged illness, loss of hair, closing of eyes or impairment of eyesight, lowered resistance, nervousness, irritated and blistered scalp, swelling of the head, infected scalp, infection which has spread to other parts of the body. Respondent also compiled and similarly used in its hair-dye business what it represented to be "A list of American hairdressing shops whose use of coloring containing paraphenylene diamine has brought on suits for damages," and purporting to be a list of over 300 reported specific instances or cases which have arisen of alleged injuries or deleterious effects suffered by patrons or users of hair dye containing such amino compound paraphenylene diamine.

(d) Testimony as to the character of respondent's "Inecto Rapid Notox" brand of hair dye and its ingredients was also adduced through several analytical experts who at different times made chemical analyses of a number of packages or samples of said product and performed tests or experiments therewith. They testified to having found the product upon analyses to be a hair dye with a base of amino compounds identified by them principally as the amino compound paratoluylene diamine from which coloring or tinting properties of said dye are derived; and to the effect that such base of amino compounds is toxic and that the dye is a toxic and a harmful or deleterious product.

Also, in the expert evidence, which was largely adduced through various chemists and physicians, is testimony to the effect that the amino compounds in said hair dye render the same toxic, harmful or deleterious, and that such amino compound dyes are toxic, harmful or deleterious regardless of whether the amino compound may be present or introduced in the product as paratoluylene diamine or paraphenylene diamine; that the diamines or amino compounds paraphenylene diamine and paratoluylene diamine are substantially similar coal tar derivatives and closely related color producing substances which depend upon the oxidation of their amino or NH_2 groups (present in both) for the production of color; that they have long been known to the medical and chemical profession as substances which are inherently toxic and poisonous, and productive of toxic and harmful or deleterious effects; that when used in hair dye such as respondent's are productive of similar toxic conditions and

deleterious or harmful effects upon the scalp and other parts of the body of the users of the dye, such as dermatitis, rash, skin irritation or inflammation of the scalp and subsequent spreading thereof to other parts of the body, blisters, vesiculation or the formation of blebs or vesicles with oozing, erythema, swelling and with possible development of other illnesses through absorption into the blood; that the dye manufactured in accordance with said Evans' patent (Com. Ex. 1) would be toxic and harmful or deleterious principally because of the presence therein of the amino compounds from which tinting or coloring properties of the dye are derived; that no ingredients as specified or found in respondent's said dye have the effect of eliminating or removing, nor is it possible to eliminate or remove the toxic or deleterious properties of the amino compounds in said dye without destroying their coloring properties for which such compounds are used.

While testimony was adduced to the effect that both paraphenylene diamine and paratoluylene diamine as ingredients in such hair dyes are toxic, poisonous and harmful and produce similar harmful effects, some testimony was also adduced to the effect that in comparison paratoluylene diamine is less toxic than paraphenylene diamine. Testimony was given by one of the analytical chemists that upon a determination or test which he made of the relative toxicity of respondent's product in comparison with a known paraphenylene diamine hair dye he found and such test revealed respondent's product to be the more toxic in the proportion of 78 to 57.6, the amino compound in the sample of respondent's dye being 3 per cent paratoluylene diamine and the amino compound of the other dye being 1.92 per cent paraphenylene diamine.

Said Ralph L. Evans, a chemist and respondent's technical director, testified that he had agreed that paraphenylene diamine in a hair dye is poisonous and toxic; that, as an expert in hair dye and in the performance of his duties in respondent's employment, he has gathered some evidence indicating that there is very little difference between the toxicity of paraphenylene diamine and the toxicity of paratoluylene diamine, and other evidence to the contrary effect; that if the materials are ingested their action is probably very similar; that, however, as used in a hair dye certain physical properties of the one substance make it far less liable to be toxic because of the nature of these physical properties than the other; that as inherent substance he does not believe there is a great difference between their toxicity; that in the way they are used there may or may not be; that paratoluylene diamine as well as paraphenylene diamine can cause dermatitis venenata. (Dermatitis venenata is dermatitis caused by a skin irritant.)

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Said witness Morgan, another of respondent's chemists, in testifying as to whether the action of paraphenylene diamine and paratoluylene diamine is identical, depending upon the oxidation of the NH_2 groups (the amino groups) into amids and the subsequent intercombination of the diimid compound in the amino base to the formation of a complex structure, which is the precipitated color, stated he would not say identical, but that their actions are analogous, "that is to say, they follow an approximately parallel course, passing through corresponding intermediate stages, and possibly arriving at corresponding end products". He further testified that, to his understanding, in the oxidation of paraphenylene diamine and of paratoluylene diamine intermediate products are formed, which intermediate products are known as quinone diimids and that he would expect such quinone diimids to be skin irritants; that there are statements in the literature of the opinion of other chemists that they have such an effect and that he has very great confidence in such literature; and also that his views are based upon professional literature pertaining to the profession of chemistry. He also testified that he does not think the toxicity of paraphenylene diamine and of paratoluylene diamine is due to the quinone diimids which are formed when the substances are exposed to the oxidizing agent, but that as to what their toxicity is due to involves "a mechanism for toxicity" which he is incompetent to give or explain.

From other witnesses evidence was also adduced tending to show that upon chemical analyses of certain samples of respondent's hair dye resorcin and pyrogallol (pyrogallic acid) were present in such samples of the product; that said substances are poisons and skin irritants and that their use in said hair dye would have a tendency to increase or augment the toxic or irritating properties of said dye. Respondent's said technical director and employee Ralph L. Evans, as a witness, refused upon advice of respondent's counsel to testify in response to questions as to whether its said dye contains pyrogallic acid or resorcin. Similar refusal to testify as to whether the dye contained paratoluylene diamine was made by said witness Morgan upon advice of respondent's counsel.

(e) Evidence was introduced at hearings held in New York City, Pittsburgh, Pa., Cleveland and Cincinnati, Ohio, in proof of a substantial number of specific cases of injury or deleterious effects sustained by users and consumers of respondent's said hair dye. Such evidence related to about twenty specific instances, embracing instances where the application of the dye in question was made in beauty parlors or hair-dressing establishments and in the home; also two instances where the dye was applied in demonstrations of its

use, one in respondent's place of business and another under the direction of a person employed by respondent. The witnesses embraced such classes as (1) persons sustaining the alleged injuries attendant upon the application of the dye; (2) attending physicians and medical specialists who treated certain of the cases; and (3) beauty shop operators or hairdressers by whom or in whose establishments the dye was applied in certain instances.

In the evidence relating to the principal or clearest of these instances, the injuries or deleterious effects testified to as having been experienced following the use of the dye in question include the following: Dermatitis venenata from external irritant or application of substance which was toxic and poisonous to patient; dermatitis venenata covering scalp, forehead and involving eyelids with oozing from scalp; acute dermatitis of the face, skin inflammation and irritation of the scalp, face and nose, from hair dye; dermatitis of the scalp and adjacent parts, face and eyes, due to toxic substance or external irritant; development of sores on scalp and face; development of redness, inflammation or rash on the scalp and head including the forehead, face and neck; blistered and oozing scalp; inflammation of the skin and infection; inflammation of the skin due to poison or irritant substance in external application with development of pustules and infection spreading to other parts of the body; swelling of eyelids and closing of the eyes for a period; swelling of the head including scalp, neck, and face, and of the hands, fingers, and body; burning or itching of the scalp and face; swollen and edematous forehead; edematous and swollen scalp, forehead and neck; toxic absorption extending downward over the face, back, and arms, followed by acute nephritis, Bright's disease and anemia.

In various instances medical and hospital treatments were given for the difficulties extending over periods of a few days to several weeks. In one case, not included in the above, the user purchased the dye from respondent in New York with which she undertook to dye her own hair at home. She did not make an admixture of the contents of the pair of bottles as per instructions but applied first the solution in the one and then the solution in the other bottle. She testified that beginning within an hour her head began to swell and following this her eyes became closed, rash developed on scalp, head became a mass of sores and her entire body swelled and turned red. Treatments by her own physician were begun the next morning following the application of the dye and were continued over a period of several weeks.

(f) Evidence was also adduced as to cases having been reported to respondent from time to time of alleged injuries or deleterious effects

upon users or consumers of its dye; and also with respect to a number of (some hundred or more) such casualty insurance claims as having arisen subsequent to March 1, 1924, and particularly during the remainder of 1924 and the years 1925, 1926, and 1927, and having been reported by respondent to or handled by the United States Fidelity & Guaranty Co., being the company represented by respondent as carrying the liability insurance which respondent had provided to cover dealers, beauty parlors, and hairdressers against liability for damages, to the extent of \$5,000 and \$10,000 (later \$10,000 and \$20,000), resulting to their patrons or customers in the use of said "Inecto Rapid Notox" brand of dye.

(g) Testimony was also given as to the estimated number of packages or applications of respondent's said dye purchased or used by operators of certain beauty parlors and chains of beauty parlors who had reported complaints or claims of injuries or deleterious effects resulting from said dye to certain named patrons of such beauty parlors. Evidence was also elicited tending to show that there are human beings who may be subject to idiosyncrasies and are more susceptible than others of being poisoned, or of suffering deleterious effects. Such evidence was principally introduced upon cross-examination by counsel for respondent, and in considering the matter this as well as all evidence in the record introduced or developed by respondent has been taken into account.

The Commission finds, upon consideration of the entire record, that respondent's said hair dye, which it designated "Inecto Rapid Notox" and described, represented, and advertised as hereinabove set forth, is a dangerously toxic, deleterious and harmful product containing a toxic dye-base and toxic, poisonous and injurious ingredients or properties; that in its use and application to dyeing or coloring of the human hair it is not safe or harmless; that said product when used for the dyeing of the hair can and is apt to cause toxic, deleterious and harmful physical effects upon the scalp and other parts of the body of the users thereof, and in many instances has produced and caused such toxic, deleterious and harmful physical effects upon users, including irritation and toxic poisoning of the scalp; that instances or cases of such injuries and alleged injuries have from time to time been reported to respondent and to said United States Fidelity & Guaranty Co.

PAR. 6. The representations, statements, and assertions used by respondent in the sale and distribution of its said hair dye to the effect that said product is nontoxic, nonpoisonous, safe and harmless, and when applied produces no harmful or deleterious effects upon the body or scalp, contains no poisonous or injurious ingredients,

will not result in and has not caused or produced any deleterious effects in its use and application, and that no such cases of harmful or deleterious effects have arisen or been reported, all as more particularly described hereinabove, are and have been false, misleading and deceptive and they have and had the capacity and tendency to mislead, deceive and induce the purchasing public into purchasing, using or reselling said product in the erroneous belief that such representations are and were true. Respondent's use of the word "Notox" in connection with its said hair dye as hereinabove described is likewise false, misleading and deceptive in that said dye is not a nontoxic, nonpoisonous or harmless product.

PAR. 7. Respondent in the course and conduct of said business represented that certain well known hair-dressing establishments used its said "Inecto Rapid Notox" dye exclusively, and that "the Marinello Co. which supplies 5,000 beauty parlors," used said product exclusively. Evidence has been introduced that the operators of two chains of beauty parlors in the United States have used respondent's said hair dye exclusively. Evidence was also adduced tending to show that at the time said representation was made with respect to the Marinello Co. such company did not use respondent's hair dye exclusively but also used in its business a competing hair dye. However, upon consideration of all the evidence the Commission finds that respondent's representation to the effect that well known hair-dressing establishments in the United States used its dye exclusively was not untrue in fact.

PAR. 8. In the course and conduct of its business respondent has solicited trade for its said hair dye and promoted the sale and use thereof to the purchasing public upon representations to the effect that the dyeing and coloring content of said product penetrates the hair thereby causing a permanent coloration of the hair, and upon representations of the following tenor:

Notox is penetrating in its action. It deposits the color inside the hair shaft, where the natural pigment originally grew. It does not insulate each hair with a coating of dull paint as other dyes do. It colors hair inside, as nature does, and leaves the outside of the hair with all its healthy, youthful luster, its attractive reflections of light and shade.

Notox is permanent. Dyes that coat the hair fade to queer shades or wear off. Repeated applications of such dyes add sheath after sheath of coloring matter to the hair and therefore coarsen the hair and make it stiff and brittle. But Inecto Rapid Notox deposits the coloring inside the transparent hair shaft, and so has no effect on the texture and supple strength of the hair.

For gray hair (Canities) is caused by the degeneration of the pigment within the hair shaft. Notox replaces this pigment inside—and replaces it safely and permanently, following nature's own method. * * * It is this scientifically correct naturalness—this perfect duplication of nature's own method—that is helping the women of America to add years to their youth.

Science calls gray hair a disease and names it "Canities". Notox furnishes the perfect corrective. It is useless to try to imitate nature by coloring the outside of the hair; this is what the old fashioned restorers did and why they failed. Notox places color in the layer of fibres underneath the outer covering of the hair—right where nature used to put its own color. By following nature it duplicates her effects.

Notox implants color inside the hair fibres, just where nature originally put her pigment.

Notox itself—a genuine miracle of science; a gentle and gloriously rich tint which duplicates the very manner of Nature in coloring hair; which diffuses through the infinitely fine inner fibres of the hair a wholesome and permanent pigment.

We tell women, "Notox colors from the inside—as nature does".

Notox colors hair inside as nature does.

Nature colors—Notox recolors—both work from inside the hair.

It replaces the lost color within the hair where it was originally.

PAR. 9. The product colors hair to the surface of the skin, but not beneath. It does not act through or upon the root end of the hair as nature does. The part of the hair beneath the surface of the skin and that which grows out after application of respondent's product is not colored or tinted as a result of the previous applications, but must be dyed or retouched as successive growths are produced if all exposed parts of the hair are to be kept colored alike. Said product does not color the hair permanently in the sense that successive applications or retouching need not be resorted to as the hair continues to grow from the scalp. In the evidence adduced with respect to this subject is testimony by two physicians, one a chemist, tending to show that amino compound hair dyes such as respondent's do not penetrate to the inside of the hair or replace pigment on the inside at the point where the natural pigment originally existed; that the natural coloring of the hair is largely in pigment cells deep in the inside of the hair; that such hair dyes merely coat or paint the outer part of the hair shaft; and that there is no dye known to the medical or chemical profession which can penetrate to the inside of the hair. Said Ralph L. Evans, of respondent, testified that the natural coloring of the hair enters the hair shaft and grows out with the shaft from the papilla or bulb; that coloring might also enter the hair shaft by direct penetration through the walls of the outer layer of the hair or the cuticle, and enter the shaft in the way that coloring enters in fibre in dyeing process.

PAR. 10. In nature everything that is within the hair, including the natural pigment or coloring, comes into it from or through the root or bulbous end of the hair that lies imbedded beneath the surface of the scalp. Respondent's hair dye does not color the hair in the

way nature originally colored it. Nor does it follow nature's method and color the hair inside as nature does. The coloring matter produced by respondent's dye is deposited upon the hair as a result of the chemical reaction which takes place when the product is applied. As to whether, however, it is a fact that in such process the dye does not penetrate into the surface of the hair at least in some degree, or whether the coloring by said dye is not substantially permanent upon such parts of the hair to which it has been successfully applied, the Commission does not find such to be established fact.

PAR. 11. In soliciting and making sales of its said Inecto Rapid Notox brand of hair dye to the consuming public as hereinabove described, respondent sent to its customers and prospective customers, as part of its aforesaid trade promotional literature, copies of a certain booklet published by it and containing what purports to be the text of some fifty letters or parts thereof praising and commending respondent's hair dye and the results of its application, and also purporting to be and used by respondent as unsolicited testimonials written by customers of respondent to respondent concerning its hair dye. The title page of said booklet reads as follows:

INECTO RAPID NOTOX

Fifty

Thousand

Dollars

will be paid

to anyone proving that any Inecto Rapid testimonial printed in this folder is not only authentic but unsolicited.

Read the letters—they form the strongest and most interesting evidence of merit ever shown for a hair coloring.

INECTO, INC.

Largest Manufacturers of Hair Coloring
in the World

LABORATORIES AND DEMONSTRATION

SALON

33-35 West 46th Street

New York

(Com. Exs. 43, 44b.)

The tenor of the purported testimonials in the booklet is illustrated by the following selected at random:

Your product is wonderful both in the way of application, time consumed and results itself. I shall readily recommend it to my friends.—A. E. P.

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I am greatly pleased with the results. I hope to be able to keep my hair in the natural color from this time on.—Mrs. R. H. I.

I am perfectly satisfied with Inecto. It has worked wonders. The first treatment worked like magic.—Mrs. C. R.

I wish to thank you for sending Inecto Rapid. I have used it and find it most gloriously wonderful. I will continue to use it in the future. So happy I have discovered it.—M. E.

Evidence was introduced tending to show that about forty-eight of said purported testimonials were in existence prior to the time respondent began business and also prior to the time it first placed upon the market its Inecto Rapid Notox brand of hair dye; that a list of forty-eight of said purported testimonials were published, in haec verba, by respondent's predecessor, Inecto, Inc., a New York corporation, prior to respondent's beginning business, as tributes to such predecessor's hair dye and as unsolicited letters on file in its office (Com. Ex. 124); and that such testimonials in respondent's booklet did not relate or pertain to respondent's said brand of hair dye "Inecto Rapid Notox" in promoting the sale of which said booklet was used by respondent. Said predecessor of respondent was a New York corporation having the same name and place of business as respondent, and likewise engaged in the manufacture, sale and distribution of hair dye which it marketed under the name Inecto Rapid. About August, 1923, respondent was organized as a Delaware corporation and succeeded to the business of said New York corporation which thereupon discontinued business and was dissolved.

PAR. 12. Upon consideration of the entire record the Commission finds that practically all of said testimonials published by respondent in said booklet were not unsolicited testimonials written by customers of and concerning respondent's said hair dye Inecto Rapid Notox, or sent to respondent as concerning its said brand of hair dye; and that the use by respondent of said booklet as above described was false, misleading and deceptive and had the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that said testimonials were genuine, unsolicited testimonials received by respondent from users of said dye Inecto Rapid Notox in commendation and praise of said brand of dye, which was the brand then being marketed by respondent.

PAR. 13. Hair dyes which are nontoxic or nonpoisonous, safe or harmless are in demand and preferred by consumers and hairdressers throughout the United States. The said false, misleading, and deceptive representations, statements and assertions as to respondent's hair dye being nontoxic, safe and harmless, and extensively used by respondent as hereinabove set forth, form one of the principal bases

on which it sold its dye and sought the patronage therefor, and upon which the beauty parlors, hairdressers and consumers were solicited to use said dye in preference to or to the exclusion of dyes of competitors. By the use of such misrepresentations respondent took advantage of such public preference for hair dyes which are nontoxic, safe and harmless, and undertook to increase the sales of its dye upon said misrepresentations. It likewise urged beauty shops and hairdressers to use such misrepresentations as "Notox is nontoxic" to increase their sales of said product. In seeking to induce hairdressers and beauty parlors to adopt and use its dye in preference to the dyes of other manufacturers, respondent made announcements through its trade literature that consumers seeing respondent's representations with respect to nontoxicity, safety and harmlessness are thereby induced to have their hair dyed by such beauty parlors or hairdressers as will adopt and use respondent's said product; that such advertisements, which are national in scope, are "the largest in the field", and are effective in increasing patronage for its dye.

In the course of promoting the purchase and use of said dye by the trade and consuming public, respondent has succeeded in increasing the sales thereof, and in its advertisements has also made announcements to the effect that the volume of sales is "one-sixth of all the hair dyes on the market and there are 200 brands besides Notox" (Com. Ex. 83); that said dye has become "the dictator among hair colorings" (Com. Ex. 80), and respondent "The largest manufacturers of hair coloring in the world"; also that the dye occupies a position of "domination in the market of 200 brands" (Com. Ex. 114). With respect to increase in sales respondent reported in its literature that three women out of every seven who use its dye are women who have changed from the use of other brands of dyes to the use of respondent's dye. (Com. Ex. 36.) And respondent further indicated such diversion of patronage to its dye is largely due to said claimed safe and harmless character of the product.

PAR. 14. The aforesaid false, misleading and deceptive representations, statements and assertions, as used by respondent in the course and conduct of its business hereinabove described, are methods of competition in interstate commerce which (a) are unfair and are characterized by deception and fraud; (b) have been pursued by respondent against the interest of the public; (c) have the capacity, tendency and effect of injuring the public and unfairly diverting trade from respondent's said competitors and otherwise injuring and prejudicing said competitors in their business; and (d) operate as an unfair competitive advantage to respondent and a detriment to

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and burden upon the legitimate hair dye manufacturing and marketing industry in this country.

CONCLUSION

Respondent's use in its hair dye business of the false, misleading, and deceptive acts and practices under the circumstances and conditions set forth in the foregoing findings as to the facts are unfair methods of competition contrary to the public interest, are injurious and prejudicial to the public and to the competitors of respondent and constitute a violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, including the complaint of the Commission, the answer of respondent thereto, the oral testimony and other evidence and upon the examiner's report upon the facts, the exceptions of counsel thereto, and the briefs and argument of counsel; and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That, in the course of the sale or distribution in interstate commerce of the hair dye or hair coloring product heretofore sold by respondent under the designation "Inecto Rapid Notox"—also referred to as "Notox", "Inecto", or "Inecto Rapid"—or of any other hair coloring product of substantially the same composition, the respondent Inecto, Inc., its officers, directors, agents, representatives, servants and employees cease and desist:

(a) From directly or indirectly causing to be used or made any representations, statements, or assertions, in advertisements, trade promotional literature or in any other manner, to the effect that the said hair dye or other hair coloring product of substantially the same composition is safe or harmless to use, or is nontoxic or nonpoisonous, or does not contain any toxic, poisonous or deleterious ingredients or properties.

(b) From directly or indirectly using or causing to be used the word "Notox" as, or in, the designation of said hair dye or of said other hair coloring product upon the commercial containers thereof;

and from designating, describing or representing any of the said products with such word "Notox" in advertising matter or trade promotional literature used in promoting the sale or use thereof.

It is also ordered, That respondent, Inecto, Inc., its officers, directors, agents, representatives, servants, and employees cease and desist:

(a) From directly or indirectly causing a hair dye or hair coloring product of any other composition, name or description to be represented, advertised or described—when sold or distributed in interstate commerce—by any word, phrase, statements, representations or assertions, used in the course of such sale or distribution, to the effect that such hair dye or hair coloring product is nontoxic, or nonpoisonous, or safe, or harmless, or contains no toxic, poisonous or deleterious ingredient or properties, if and when such is not true in fact.

(b) From directly or indirectly causing to be advertised or otherwise used, in the course of the sale or distribution in interstate commerce of said so-called Inecto Rapid Notox hair dye or of any other kind of hair dye or hair coloring product, any testimonials or indorsements by users or consumers thereof which imply—in the circumstances of such use—or which have the capacity and tendency to lead the public to believe, that such testimonials or indorsements are genuine or are unsolicited indorsements or testimonials concerning such product, or are letters or indorsements of the same by, or which have been received by respondent from, users or consumers thereof, if or when, however, such is not true in fact.

It is further ordered, That respondent, Inecto, Inc., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the orders to cease and desist hereinabove set forth.

Commissioner Humphrey dissenting in memorandum attached.

Dissenting Opinion By Chairman Humphrey

I dissent to the issuance of an order in this case on the record as it stands. The motion of the respondent to take further evidence should have been granted. The record shows a vast amount of wholly immaterial evidence. The only effect of such evidence is to confuse the issue. There is also a vast amount of incompetent evidence, prejudicial to the respondent.

The conduct of this case before the trial examiner was contrary to all judicial procedure. There was a total disregard of the rules

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of evidence, and, taking it as a whole, the way the trial was conducted was no credit to the Commission.

The respondent made a motion to strike out a large part of the evidence that was incompetent and prejudicial to respondent. On this motion, the respondent was denied a hearing and a ruling until the final argument of the case. All this incompetent evidence was referred to in the brief of the attorney for the Commission and his main argument as to why an order should be issued was based upon such evidence. The motion to strike out such evidence was granted by the Commission, but not until the case was submitted for final decision to the Commission.

Under the circumstances, I do not think that the respondent had a fair opportunity to overcome the prejudice caused by such incompetent testimony.

PRODUCT NOT LEGALLY UNSAFE

After the motion granting the striking out of this irrelevant and prejudicial testimony, the only evidence left in the record, as near as I was able to ascertain, showed that only 1 user in about 6,500 was injuriously affected by the use of respondent's product.

It is a matter of common knowledge that certain persons, because of an idiosyncrasy, are unable to eat eggs. Suppose that a manufacturer of mayonnaise advertises his product as wholesome and pure, and perfectly safe as a food; and suppose that some person, on account of his idiosyncrasy, is made sick by the eggs which the mayonnaise contains? Would the manufacturer be guilty of false and misleading advertising? I do not think that the authorities so hold. When a party advertises a product as absolutely safe, in law it means that it is safe for the ordinary person (and not as regards those few who have a physical idiosyncrasy in connection with such product. If this be not true, then many of the most widely advertised and used medicines, can not be advertised as a safe and harmless remedy.

In such cases, we do not say that the ill effects are caused by a dangerous or harmful drug or article of food. We say that it is the result of an idiosyncrasy of the user. Such drug or article of food is not in a legal sense dangerous or harmful.

Respondent claims that its product is in the class to which I have referred, and is, therefore, in a legal sense safe and harmless. It claims that ill effects, when any there are, come as the result, not of a dangerous ingredient of respondent's product, but of some idiosyncrasy of the particular user.

The fact that the insurance company issues and reissues its blanket policy, available to all users, is persuasive evidence that respondent's contention is sound in law and fact. The fact that but one out of 6,500 users has suffered ill effects lacks little, if any, of being conclusive evidence in respondent's favor.

I doubt that the undisputed facts sustain a finding that respondent's product is, in a legal or popular sense, unsafe or dangerous. If that fact be open to doubt, every available item of evidence should be added to the present record, before the Commission issues an order that may destroy an enterprise of large volume and value. It was shown that there was sufficient evidence easily obtainable to have placed this point beyond question.

NO PUBLIC INJURY

The facts in this case do not appear to me to show "public interest" as set forth in *Federal Trade Commission v. Klesner*, 280 U. S. 19, 28. In speaking of what facts constitute the requisite public interest, the court uses these words:

Sometimes, because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it.

In this case, only one user out of many thousands suffers ill effects from the use of respondent's product. In the few cases of ill effects the injury is sufficiently serious to warrant a private suit. Each user has a plain remedy made easily available by respondent, upon a policy of insurance, making the insurance company severally liable to each user up to a sum of \$5,000 to \$20,000.

The number of users injured is not large. The amount of recovery in each case is large and it is highly improbable that any injured user has failed to recover upon the insurance policy. Settlement is ordinarily made upon mere notice and without litigation.

The facts in this case constitute a negation of the requirements set forth in the *Klesner* case.

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IN THE MATTER OF
ALBERT K. SHELDON COMPANY

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

Docket 1828. Complaint, May 8, 1930—Order, June 21, 1932

Consent order requiring respondent corporation, its agents, etc., in connection with sale in interstate commerce of a certain spirit varnish, to cease and desist from (1) using word "Shelco-Lac" to designate a product not pure shellac gum cut in alcohol; or (2) trade-mark "Shelco" or any coined word or similar phonetic notation or spelling, to designate quick dry spirit varnish composed principally of Manila gum, carnauba wax, and alcohol; as in said order set forth and qualified.

Mr. PGad B. Morehouse for the Commission.

Mr. A. K. Cohen and *Mr. Max E. Bernkopf*, of Boston, Mass., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Albert K. Sheldon Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Albert K. Sheldon Co., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business in the city of Boston in said State. It is and for more than one year last past has been engaged in the business of manufacturing, selling, and distributing to dealers, users, and consumers a certain varnish product named, designated and described by it as "Shelco-Lac", which business is carried on by respondent, in general competition and in commerce between and among various States of the United States, as in paragraph 2 hereinbelow alleged.

PAR. 2. Respondent manufactures said varnish product at its place of business in Boston, Mass., and causes same to be packed for sale and distribution in bottles, jars, tin cans, and other commercial containers of different sizes and capacities from four fluid ounces up-

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ward. On each of said containers respondent causes to be conspicuously displayed the brand "Shelco-Lac" as the name, designation and description of said product by affixing to such containers labels reading substantially as follows:

SHELDON'S
100 per cent Quality
Waterproof
SHELCO-LAC
Orange
Manufactured by
Albert K. Sheldon Co.

Cambridge Station, Boston, Mass., U. S. A.

Respondent offers for sale, sells and distributes said product in said containers and under said labels and brand to wholesale and retail dealers and to users and consumers throughout the United States and in various sections thereof; and in conformity with respondent's plan of marketing said product to the purchasing public, dealers also offer for sale, display and resell said product to the consuming public and to other dealers in said containers branded with said name Shelco-Lac. Respondent furthers, prompts and effects the sale of said product through (a) its officers, salesmen, and agents who, on its behalf, solicit and obtain purchase orders for said product from its customers and prospective customers; (b) through and by means of advertisements of said product which respondent publishes from time to time in newspapers, magazines, trade journals, and other publications circulating among the trade and consuming public throughout the United States and in various sections thereof; and (c) by means of certain trade promotional literature and communications, such as leaflets, circulars, pamphlets, and letters which it causes to be sent and distributed from time to time from its place of business in Boston, Mass., to customers and prospective customers and the trade in various States of the United States.

Throughout the course of said business many sales of said so-called Shelco-Lac have been and are made by respondent to a large or substantial number of dealers, users and consumers in various States of the United States; and in completing and consummating said sales and in distributing said product to its customers, respondent causes the several lots or parcels of said so-called Shelco-Lac purchased or ordered by its customers to be shipped and transported from its place of business in Boston, Mass., through and into other States of the United States to the respective purchasers thereof in

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such other States. Throughout the course of said business respondent has been and still is engaged in the sale and distribution of said so-called Shelco-Lac in commerce between and among various States of the United States, and in direct active competition with many individuals, partnerships, and other corporations also engaged in commerce between, among and within various States of the United States in the sale and distribution of shellac and of varnish products, some of which do and some of which do not contain the gum named lac and commonly referred to as Shellac gum or Shell-lac as hereinafter described.

PAR. 3. In the course and conduct of said business and in promoting and furthering the sale and distribution of its said product in commerce among the several States of the United States, as set forth in paragraph 1 hereof, respondent for more than one year last past has caused and continues to cause said product to be advertised, represented, described, offered for sale, sold and distributed as and for Shelco-Lac, and to be marketed by itself and by dealers to the purchasing and consuming public in aforesaid original containers, labeled and branded with said name Shelco-Lac.

PAR. 4. When formulating and adopting said name Shelco-Lac for use as the name, designation, and description of its product, respondent selected and used, as part of such name, the word lac which is the name of a gum secreted by insects cultivated in India and Tibet and prepared and imported into the United States in the form known as shell-lac, also spelled shellac, and commonly referred to as shellac gum. Said gum or lac is an important ingredient for lacquers, varnishes, and similar products, and when cut or dissolved in alcohol produces a type of varnish product which is and, for many years last past and prior to respondent's aforesaid adoption and use of said name Shelco-Lac, has been marketed and known commercially throughout the United States as shellac (otherwise spelled shell-lac) or as shellac varnish. Said so-called Shelco-Lac is neither shellac as commercially known, nor shellac varnish, and does not contain any of said gum named lac and commonly referred to as shellac gum or shell-lac.

PAR. 5. Said so-called Shelco-Lac is manufactured and marketed by respondent in the three several colors of orange, natural, and white; and as marketed by respondent and the trade is similar in general appearance of color and commercial packing, and also similar in the general methods of its application, or its uses and purposes, to shellac as commercially marketed, or to varnish products containing aforesaid gum named lac and commonly referred to as shell-lac or shellac gum.

PAR. 6. Respondent's brand name Shelco-Lac is a colorable imitation or simulation of said word shellac or, as otherwise spelled, shell-lac in the above alleged commercial usage of said name and words.

PAR. 7. Said brand name Shelco-Lac when applied to respondent's product as aforesaid is false, misleading, and deceptive. Respondent's use thereof as hereinabove set forth was and is calculated, has and had the capacity and tendency to and does mislead and deceive substantial parts of the purchasing and consuming public into, and to cause them to purchase said so-called Shelco-Lac in and because of, the erroneous beliefs that said product is aforesaid shellac as commercially known and/or contains said gum named lac and commonly referred to as shell-lac or shellac gum.

PAR. 8. The aforesaid use by respondent of said brand name Shelco-Lac places in the hands of dealers of said product a means or instrument by which they may commit a fraud upon the purchasing public; and such use of said brand name is calculated, has and had the capacity and tendency to, and does, aid or enable dealers in said product to pass off and sell the same to the consuming public at enhanced prices and as and for said shellac as commercially known, or as and for a varnish product containing said gum named lac and commonly referred to as shell-lac or shellac gum.

PAR. 9. The above alleged false, misleading, and deceptive acts and practices of respondent under the circumstances and conditions hereinabove set forth have and had the capacity, tendency and effect of unfairly diverting trade from and otherwise injuring the business of respondent's competitors, are to the prejudice and injury of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the complaint and answer of respondent, and after testimony had been taken by a duly appointed trial examiner on behalf of both the Commission and respondent, and respondent thereupon having been granted, by the Commission, permission to withdraw its answer heretofore filed on June 13, 1930, and respondent having filed in lieu thereof its answer consenting that the Commission may make, enter and serve upon it an order to cease and

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desist from the method or methods of competition charged in the complaint, and the Commission being fully advised in the premises,

It is now ordered, That the respondent, Albert K. Sheldon Co., a corporation, and its agents, representatives, servants, and employees, in connection with the sale or offering for sale, in interstate commerce, of a certain spirit varnish product named, designated, and described by it as Shelco-Lac, cease and desist from:

(1) Using the word "Shelco-Lac" alone or in connection with any other word or words to designate a product which is not pure shellac gum dissolved or cut in alcohol.

(2) From using the trade-mark "Shelco" or any coined word of similar phonetic notation or spelling alone or in combination with other words, syllables or phrases to designate a quick drying spirit varnish of which the principal ingredients are Manila Gum (copal), carnauba wax and alcohol, unless respondent shall, in equally conspicuous place and type, name and designate said product as "spirit varnish".

It is further ordered, That the respondent shall, within 60 days from the service upon it of a copy of this order, file with the Commission, a report in writing setting forth in detail the manner and form in which it has complied with the order herein set forth.

Complaint

IN THE MATTER OF

ELIAS SHEINKER, TRADING AS W. SHEINKER & SON,
AND W. SHEINKER & SON, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1909. Complaint, Jan. 27, 1932.¹—Order, June 24, 1932*

Consent order requiring respondents, their agents, etc., in connection with sale in interstate commerce of their so-called "German Culinary Bouquet No. 22", and "German Culinary Bouquet No. 42", flavoring extracts, to cease and desist from using words "German" or "Leipzig" on packages, bottles or containers thereof, or in advertisements thereof or otherwise, or any other words, phrases, pictorial design, device, etc., importing such or any other foreign source of origin; as in said order set forth and qualified.

Mr. E. J. Hornibrook for the Commission.

Hirsh, Newman, Reass & Becker, of New York City, for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Elias Sheinker, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Elias Sheinker, is an individual doing business under the trade name, W. Sheinker & Son, with his principal place of business in the City and State of New York. For the last year respondent has been engaged in the manufacture and sale in interstate commerce of flavoring extracts. In the course of said business, respondent has advertised for sale and sold in interstate commerce, liquid flavors in bottles, composed of various ingredients, principally essential oils, fusel oil, solvents, vanilla extract and water. Of these, the essential oil and fusel oil together represent, respectively, approximately 15 per cent and 20 per cent of the respondent's products above described. The flavors so advertised and sold by respondent in interstate commerce carry labels designating

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the contents as German Culinary Bouquet No. 22 and German Culinary Bouquet No. 42. Said labels contain also the following printed matter: Wilhelm Schneider & Co., Leipzig and New York, U. S. A. and a design in the form of a coat of arms with monogram of the letters "W S" on a shield, supported by two lions, with medals on either side, and underneath the shield, "Leipzig" and "Essence Fabrication".

Respondent has caused to be published in Malt Age, a trade journal having a substantial interstate circulation, advertisements of said products headed "Products of Wilhelm Schneider & Co., Leipzig, Germany", and carrying pictures of said products labeled as above described. The products so labeled are manufactured by respondent at his place of business in New York City, in accordance with his own formulae, by mixing, blending, and diluting essential oils so that the finished combination gives the desired flavor.

PAR. 2. In the year 1927, respondent began purchasing flavoring extracts designated as German Culinary Bouquet No. 22 and German Culinary Bouquet No. 42, from Wilhelm Schneider & Co., a manufacturer of flavoring extracts, located in Leipzig, Germany. The first shipments under said purchases were imported completely made up and bottled, ready for the market. The bottling and the labeling were done in Germany and the goods were marketed as received. Later, also in 1927, respondent discontinued the importation of the bottled extracts and imported the basic concentrate from which they were made; that is, the essential oils, which had already been blended, and mixed by Wilhelm Schneider & Co., of Leipzig, Germany. This was imported in bulk and diluted by respondent for market. Respondent secured labels and empty bottles from Wilhelm Schneider & Co., of Leipzig, and used them in putting up the ex-products, so that they were identical, as sold by him, in appearance, with the products which he had previously imported already bottled and labeled. Thereafter respondent ceased importing the concentrate in bulk from Wilhelm Schneider & Co., of Leipzig, as above described, and prepared and put up in bottles flavoring extracts sold by him under the name of German Culinary Bouquet No. 22 and German Culinary Bouquet No. 42, made from ingredients purchased from importers in New York City and from domestic manufacturers, according to his own formulae, and continued to use the labels of Wilhelm Schneider & Co. as above described, except that he caused "New York, U. S. A." to be added to the words "Wilhelm Schneider & Co. Leipzig". On the bottom of the bottles are impressed the words, "Wilhelm Schneider & Co., Leipzig and New York." Respondent has also since he ceased to purchase the products above described

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from W. Sheinker & Son of Leipzig, in circulars and advertising matter, described his business as W. Sheinker & Son, manufacturers and importers, and distributors of Wilhelm Schneider & Co., Leipzig, Germany, New York, U. S. A."

PAR. 3. The advertising and various labels used by respondent, as described in paragraphs 1 and 2 hereof, have each and all the capacity and tendency to mislead, and do mislead, purchasers of flavoring extracts into the belief that the articles manufactured, advertised and sold by respondent, as above described, are made by Wilhelm Schneider & Co., in Leipzig, Germany, and are imported into this country; whereas, in fact, they are manufactured by the respondent in the City of New York, from ingredients purchased by him from domestic manufacturers and importers located in the City of New York, and the imported material in said products constitute approximately, altogether, 35 per cent thereof.

PAR. 4. Respondent, in his business as above described is in competition in interstate commerce with vendors of flavoring extracts manufactured abroad and imported into this country, and with makers and vendors of flavoring extracts in this country who do not represent their products to be imported. The practices of respondent as above described, in the advertising and labeling of his products, tend to unfairly divert trade from vendors of imported and makers and vendors of domestic extracts described above.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

SUPPLEMENTAL COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that W. Sheinker & Son, Inc., hereinafter referred to as one of the respondents, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Reiterates and adopts each and all of the allegations of the original complaint herein and makes and asserts each and all of the charges thereof against both of the above-named

respondents. Attaches hereto a true and perfect copy of said original complaint, marks it Exhibit A, and makes it a part of this supplementary complaint.²

PAR. 2. On February 4, 1931, the Federal Trade Commission issued its said original complaint against respondent Elias Sheinker, trading as W. Sheinker & Son, and caused the same to be duly and legally served upon him on February 6, 1931. On December 8, 1931, the Federal Trade Commission ordered that the taking of testimony under the said original complaint proceed at the City of New York on December 16, 1931. Thereafter respondent, Elias Sheinker, procured a postponement of the taking of such testimony until January 19, 1932. Testimony under said original complaint was received on behalf of the Federal Trade Commission at said City of New York on January 19 and 20, 1932, and the Commission rested its case against respondent Elias Sheinker, and March 1, 1932, at said City of New York, State of New York, was then and there fixed by the trial examiner as the time and place for receiving testimony on behalf of respondent Elias Sheinker.

PAR. 3. Respondent W. Sheinker & Son, Inc., is a corporation organized on January 7, 1932, under the laws of the State of New York, with its principal place of business in the City of New York. It was so organized by respondent Elias Sheinker and now exists for the purpose of carrying on the business formerly conducted by him, which business is described in paragraph 1 of said original complaint, and it is the sole owner and successor of said business, and since the date of its said incorporation it adopted and now uses in the sale and promotion of the sale in interstate commerce of the products "German Culinary Bouquet No. 22" and "German Culinary Bouquet No. 42" the same false and misleading statements and representations and circulated the same in and through the same and similar media and for the same purposes as were used by respondent Elias Sheinker as described in said original complaint.

PAR. 4. Respondent, W. Sheinker & Son, Inc., is a necessary and proper party in this matter.

PAR. 5. The advertising and various labels used by respondents as described in paragraphs 1 and 2 of the original complaint had and have, each and all, the capacity and tendency to mislead, and do mislead purchasers of flavoring extracts into the belief that the articles manufactured, advertised, and sold by respondents, as above described, are made by Wilhelm Schneider & Co. in Leipzig, Germany, and are imported into this country; whereas, in fact, they are

² See *ante*, pp 233 et seq.

now manufactured by the respondent W. Sheinker & Son, Inc., in the City of New York, from ingredients not made by Wilhelm Schneider & Co., but purchased by it from domestic manufacturers and importers, and the imported material in said products constitutes approximately 35 per cent thereof.

PAR. 6. Respondent W. Sheinker & Son, Inc., in its business as above described, is in competition in interstate commerce with vendors of flavoring extracts manufactured abroad and imported into this country and with manufacturers and vendors of flavoring extracts in this country who do not represent their products to be imported. The practices of respondents, as above described, in the advertising and labeling of their products, tend to unfairly divert trade from vendors of imported and makers and vendors of domestic extracts described above.

PAR. 7. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the supplemental complaint of the Commission and answers of the respondents, and after testimony had been taken by a duly appointed trial examiner on behalf of both the Commission and respondents, and respondents thereupon having been granted, by the Commission, permission to withdraw their answers heretofore filed on April 19, 1932, and respondents having filed in lieu thereof their answer consenting that the Commission may make, enter, and serve upon them an order to cease and desist from the method or methods of competition charged in the complaint, and the Commission being fully advised in the premises,

It is now ordered, That respondent Elias Sheinker, his agents and employees, and respondent W. Sheinker & Son, Inc., its officers, agents, and employees, in connection with the sale or offering for sale in interstate commerce of flavoring extracts named, designated and described by them as German Culinary Bouquet No. 22 and German Culinary Bouquet No. 42, cease and desist, from: Using the word "German" or the word "Leipzig" on packages, bottles, or containers of such flavoring extracts or in advertisements of the same or otherwise, or any other word or phrase or any pictorial de-

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sign or any device, importing, implying, or suggesting that such flavoring extracts, so sold or offered for sale, are imported from Leipzig, Germany, or from any other foreign city or country unless such flavoring extracts are in fact manufactured in and imported from said Leipzig or such other indicated foreign city or country; except that if the essential ingredients of such products are imported by respondents and the products manufactured or compounded in the United States the name of such foreign country and city from which such essential ingredients are so imported may be used in the sale and offering for sale thereof upon packages, bottles or containers thereof and in advertisements of the same, provided apt and adequate words or phrases are used in conjunction therewith and in close proximity thereto so as to clearly indicate that such products are manufactured or compounded in the United States.

It is further ordered, That respondents shall within 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.

Complaint

IN THE MATTER OF

JOSEPH ROSENBLUM, AN INDIVIDUAL, TRADING AS
PRINCESS SILK MILLS

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

Docket 1991. Complaint, Jan. 8, 1932—Decision, June 25, 1932

Where an individual engaged in sale of dress goods and garments through numerous house to house solicitors, and doing an annual business of several hundred thousand dollars annually,

- (a) Employed trade terms including words "silk", "satin", "chiffon", "pongee", and "shantung" on his swatch cards, and in his advertising matter and through solicitors in bringing to attention of consumers, customers, and prospective customers dress goods and garments of cotton or rayon, or mixtures thereof, without further terminology or description as to composition thereof, notwithstanding fact aforesaid products and weaves variously designated as "sport silk", "crepe rayon silk", "rayon silk shantung", "rajah shantung", "pongee", "superfine pongee", "silhouette chiffon", etc., were not that long highly esteemed material composed of the product of the cocoon of the silkworm, long implied to trade and public by said terms; with effect of causing customers to purchase said fabrics and merchandise as and for genuine silk, and with capacity and tendency so to do;
- (b) Employed such terms as "linene shantung", "linene prints" and "linene suiting" in swatches, etc., in offering, advertising, and selling its aforesaid products, as above set forth, notwithstanding fact products were not linen as long understood by public, i. e., fabrics woven from flax or garments made thereof; with capacity and tendency to mislead purchasing public as to composition of aforesaid fabrics and garments, and with result of bringing about their purchase as and for genuine linen; and
- (c) Included words "Silk Mills" in its trade name, notwithstanding fact it neither fabricated nor manufactured merchandise dealt in by it; with capacity and tendency to mislead consuming public into believing said individual to be engaged in manufacture of said merchandise and with result of bringing about purchase thereof in such mistaken belief;

With capacity and tendency to mislead and deceive public and purchasers and prospective purchasers of said individual's products, and induce purchase thereof by them in reliance upon erroneous beliefs thus induced and thereby divert trade to said individual from competitors dealing through house to house solicitation or mail order, or engaged in intrastate commerce:

Held, That such practices, under circumstances set forth, constituted unfair methods of competition.

Mr. Eugene W. Burr for the Commission.

Mr. Samuel M. Birnbaum, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission

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charged respondent individual, engaged in the purchase of merchandise consisting chiefly of dress goods and garments and in the sale thereof through house to house solicitation, and with principal place of business in New York City, with misrepresenting composition of product dealt in, using misleading trade name and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, applies designations including the words "silk", "satin", "chiffon", "pongee", and "shantung",¹ to dress goods and garments, about 99 per cent of the fiber content of which consists of cotton and rayon and mixtures thereof, in swatch cards, advertisements, advertising matter and through oral representations of his solicitors, and similarly applies terms including word "linene" to dress goods and garments made from rayon and cotton; with capacity and tendency to mislead and deceive purchasing public into believing that merchandise thus designated and described is composed of genuine silk material, i. e., product of the cocoon of the silk worm,² or is made from fiber composed of flax,³ and with effect of so deceiving the public in numerous instances.

Respondent further, as charged, employs trade name including words "silk mills" on his swatch cards, in his advertisements and advertising matter and through his solicitors, and also on stationery, order blanks, and in other ways, notwithstanding fact he does not fabricate or manufacture any of the merchandise dealt in by him as aforesaid; with capacity and tendency to mislead and deceive public into believing that in buying from him they are dealing directly with a concern manufacturing merchandise purchased, and with effect of so misleading and deceiving.

Said methods of competition, as alleged, "have the capacity and tendency to attract trade to respondent and to divert the same from respondent's competitors, and have actually resulted in attracting trade to respondent and in diverting the same from his competitors,"

¹ The different designations are set forth, *infra*, in the findings at page 242.

² As alleged in the complaint, "the word 'Silk' for several hundred years past has had, and still has, in the minds of the consuming public, a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk fabrics for centuries have held, and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been given to the fabrics resulting from different types of weaving. Among the terms which for a long period have been, and at the present time still are, given to and associated in the public mind as varieties of fabrics made from the cocoon of the silkworm are 'satin,' 'chiffon,' 'pongee,' and 'shantung.'"

³ As alleged in the complaint, "the term 'Linen' has for centuries been applied to fabrics woven from flax, and has long been and still is understood by the public, when applied to fabrics or finished garments, to mean that the merchandise so designated is composed of materials woven from flax."

who include concerns engaged in selling through house to house solicitation, mail order concerns, and concerns engaged in intra-state commerce; to the prejudice and injury of the public and said competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Joseph Rosenblum, an individual, doing business under the trade name and style of Princess Silk Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer herein and having entered into a stipulation as to the facts in which it was agreed that the said facts might be taken in lieu of testimony, thereupon this proceeding came on for final hearing and the Commission having considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, prior to the issuance of complaint herein, was engaged, under the trade name and style of Princess Silk Mills, in buying and selling merchandise, chiefly dress goods and garments, with his principal place of business in New York City. His trade in gross sales, in normal years, has been approximately \$300,000 annually. Respondent has sold and still sells his merchandise through house to house solicitation, and in the conduct of his said business employs about 3,000 women solicitors, most of whom devote to the sale of respondent's merchandise, their spare time only. When sales are made by respondent's said solicitors, the merchandise purchased by respondent is transported, or by respondent caused to be transported, in some instances to the consumer, respondent's customer, C. O. D. In other and the majority of instances, said merchandise is by respondent transported or caused to be transported to respondent's solicitors. The transportation of respondent's said merchandise is from his place of business in the State of New York, through and into other States in various parts of the country, and constitutes interstate commerce.

PAR. 2. The word "silk", for several hundred years past has had, and still has, in the minds of the consuming public, a definite and

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specific meaning, to wit, the product of the cocoon of the silkworm. Silk fabrics for centuries have held and still hold, great public esteem and confidence for their preeminent qualities. Silk thread has long been woven into a variety of fabrics differing as to weave and texture, and a variety of distinctive terms were and are still given to the fabrics resulting from different types of weave. Among other terms which were given to various weaves of silk were "satin", "chiffon", "pongee", and "shantung". These terms became associated with silk material as manufactured in the said various weaves in the mind and usage of the trade and of the public. Subsequently materials other than the product of the cocoon of the silkworm and resembling silk in appearance and in the uses to which they were devoted, came to be manufactured and marketed in competition with silk. These said other materials thus sold, were manufactured and are still manufactured in weaves the same as or similar to those in which silk had been and still is woven, including the weaves of satin, chiffon, pongee, and shantung. These said materials, other than silk thus woven are now being sold to the public under the terms said last named by some traders with an accompanying terminology and/or description showing that the material was and is made from a substance or substances other than silk. Other traders, including respondent, competing with said first described traders, have been and still are selling materials resembling silk as aforesaid under the said trade terms of satin, chiffon, pongee, and shantung, but without the said described terminology or description which, if used, would show that the material was and is of a substance or substances other than silk.

PAR. 3. Among the trade terms which have been used by respondent for merchandise made from cotton, rayon or mixtures of cotton and rayon, have been the following:

"Sport Silk", "New Bettina Satin—A New Silk", "Adorable Crepe Rayon Silk", "Adorable Flat Crepe Rayon Silk", "Rayon Silk", "Beautisilk", "Rayon Silk Pique", "Rayon Silk Shantung", "Rayon Silk Plaids", "Rayon Silk Prints", "Fifth Avenue Crepe Rayon Silk", "Sunrise Shantung", "Rajah Shantung", "Japanese Shantung", or "Jap Silk", "Shantung Hankylin", "Printed Shantung", "Primrose Shantung", "Shantung Crepe", "Pongee", "Superfine Pongee", "Cameo Pongee", "Silhouette Chiffon", "Marvlo Dotty Chiffon", and "Vanity Chiffon".

The foregoing terms, prior to the issuance of complaint herein, were used by respondent on his swatch cards, advertising matter, in all representations by solicitors, and in these and other ways were brought to the attention of the consumers, customers, and prospective customers of respondent, referring to the dress goods and garments sold by respondent as hereinbefore set forth. Many of the

foregoing terms, however, about the time of the issuance of the complaint herein, were by respondent discontinued.

PAR. 4. The use (1) of the term "silk" and/or a combination of this term with other words, for nonsilk fabrics and merchandise, and of (2) the terms "satin", "chiffon", "pongee", and "shantung" and/or a combination of these terms with each other and/or with other words, not accompanied by corrective terminology and/or description as in paragraph 2 hereinabove described for nonsilk fabrics and merchandise, are used competitively by respondent and have the tendency and capacity to cause customers, through the popular meaning of these terms as described in paragraph 2, to buy, and has in some instances resulted in the purchase from respondent of merchandise so named by customers in the belief that the fabrics and merchandise by them so purchased were the products of the cocoon of the silkworm.

PAR. 5. The term "linen" has for centuries been applied to fabrics woven from flax, and has long been and still is understood by the public, when applied to fabrics or finished garments, to mean that the merchandise so designated is composed of materials woven from flax. Respondent, in the conduct of his business as hereinabove described, uses terms for dress goods and garments not made from fiber composed of flax, but from rayon and cotton, including other terms, "linene shantung", "linene prints", and "linene suiting". Said terms are brought to the notice of the public by respondent in the manner described in paragraph 3.

PAR. 6. The terms in the last preceding paragraph described, are used by respondent competitively and have a capacity and tendency to cause the purchasing public to believe that respondent's said merchandise so designated is true linen made from flax, and have at times resulted in the buying of said goods as and for true linen.

PAR. 7. Respondent is engaged in the purchase of all merchandise sold by him as above described, and does not fabricate or manufacture any merchandise so sold. Prior to the issuance of the complaint herein, respondent was using in competition in his trade, as above described, the said name and style of "Princess Silk Mills." About the time of the issuance of said complaint, however, respondent discontinued, in the main, the said trade name and style, and began the substitution therefor of the trade name and style of "Princess Fifth Avenue Fabrics", and is using the latter trade name and style except as respects his present stocks, orders blanks, and envelopes, of which he has a limited supply, which is being consumed as rapidly as the demands of business permit. The use of respondent's said former trade name and style had the capacity and tend-

ency to cause, and in some instances did cause the consuming public to purchase said merchandise in the belief that respondent was engaged in manufacturing the merchandise sold by him.

PAR. 8. Respondent, in the course and conduct of his business hereinabove described, is in competition with numerous persons, partnerships, and corporations engaged in the sale of dress goods, garments, and other merchandise, and in transporting or causing to be transported their merchandise from one State into and through other States in the course and conduct of trade and commerce among the States. Respondent's said described competitors include, among others, concerns engaged in selling through house-to-house solicitation and mail order concerns. Respondent also is engaged in competition with concerns engaged in intrastate commerce.

PAR. 9. The statements and representations hereinbefore set forth are false and misleading as indicated and the use of the said statements and representations by respondent, Joseph Rosenblum, in the manner and form made has the capacity and tendency to mislead and deceive the public and purchasers and prospective purchasers of respondent's products into the erroneous belief that the said statements and representations are true and to induce persons to purchase respondent's products in reliance upon and by reason of their belief in the truth and accuracy of said statements and representations, and thereby to divert trade to respondent from competitors.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, and the stipulation of facts entered into by and between the respondent and the chief counsel of the Commission, the Commission having approved said stipulation and having made its findings as to the facts and conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondent, Joseph Rosenblum, his agents, representatives, and employees, do cease and desist, by oral representations or in advertisements, on swatch cards, in letters, printed circulars and other advertising literature circulated and distributed in connection with the offering for sale or sale in interstate commerce of merchandise, dress goods, and garments:

(1) From using the word "silk" either alone or with any other word or words to describe or refer to merchandise, dress goods, or garments not composed entirely of silk, the product of the cocoon of the silkworm;

(2) From using the words "satin," "chiffon," "pongee," or "shantung" either alone or in combination with any other word or words to describe or refer to merchandise, dress goods, or garments not made wholly from silk, the product of the cocoon of the silkworm, and from the use of the word "linene" either alone or in combination with any other word or words to describe merchandise, dress goods, or garments not made wholly of the fiber of flax, without using in conspicuous lettering at least half as large as the size of said terms "satin," "chiffon," "pongee," "shantung," or "linene," and in immediately following conjunction and context therewith, words clearly showing of what material the said merchandise, dress goods, or garments is composed as the instances may actually and respectively be; and

(3) From using as a trade name the name and style "Princess Silk Mills" or any other word or words containing the word "Mills," unless and until the respondent, Joseph Rosenblum, actually owns or controls a mill or factory in which the merchandise so offered for sale and sold by him is manufactured.

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

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IN THE MATTER OF
HARRY GREENBERG AND LEE JOSEFSBERG, TRADING
AS GREENBERG & JOSEFSBERG

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

Docket 2030. Complaint, Apr. 28, 1932—Decision, June 27, 1932

Where a firm engaged in importation and sale of wooden rulers, offered and sold as "Boxwood" or "Warranted Boxwood" rulers not made of wood of West Indian or Venezuelan boxwood tree, and so branded same; with capacity and tendency to mislead and deceive trade and purchasing public in respect of the composition or nature of said products, and induce their purchase as and for rulers of genuine boxwood, long offered and sold under said trade name and widely esteemed for their utility and excellence, and with result of furnishing dealers with the means of misleading and deceiving said trade and public in aforesaid respects, and of diverting trade to said firm from competitors dealing in genuine boxwood rulers, and those dealing in rulers made of other woods truthfully branded and described, and with capacity and tendency so to do:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Harry Greenberg and Lee Josefsberg, engaged as Greenberg & Josefsberg in importation of merchandise including wooden rulers, and in sale thereof among the various States, and with principal place of business in New York City, with misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondents sell wooden rulers not made of the wood of the boxwood tree, falsely branded as "Boxwood" or "Warranted Boxwood," at prices substantially lower than those prevailing for genuine "Boxwood" rulers; with result of furnishing dealers with the "means to mislead and deceive the purchasing public, including the trade," into believing products in question to be rulers made of West Indian boxwood tree, and with capacity and tendency to mislead and deceive and induce purchase of said rulers in reliance on such erroneous belief, and to divert trade to them from competitors dealing in genuine boxwood rulers, and competitors

dealing in rulers made of other woods, truthfully branded and described, and with effect of so diverting; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint, together with notice of hearing and a copy of the rules of practice adopted by the Commission with respect to failure to answer, against the respondents, Harry Greenberg and Lee Josefsberg, trading under the firm name and style of Greenberg & Josefsberg, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondents having made no appearance herein and the chief counsel of the Federal Trade Commission having moved that the allegations of the complaint be taken by the Commission as admitted, and that the Commission proceed to make its findings of fact and to issue a cease and desist order, and it appearing to the Commission that the said respondents were duly served with the complaint, together with notice of hearing and a copy of the rules of practice adopted by the Commission, and that said respondents have failed to file any answer to the complaint within the time fixed by the rules of the Commission and designated in said notice of hearing, or at all, and have failed to make any appearance whatsoever in this proceeding, and the Commission having duly considered the record and being fully advised in the premises, now makes its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Harry Greenberg and Lee Josefsberg, trading under the firm name and style of Greenberg & Josefsberg with their principal place of business in the City of New York and State of New York, have been for several years last past, and now are engaged in the importation, and the sale in commerce among and between the various States of the United States of merchandise including articles usually known as wooden rulers, and it has been and is the practice of said respondents to transport or cause said products to be transported from its said place of business in the State of New York to purchasers in the various other States of the United States than

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the State of New York. Respondents have been and now are in the course and conduct of such business in competition with individuals, partnerships, and corporations engaged in the sale of wooden and other rulers in like commerce.

PAR. 2. It has been and is the practice of respondents to offer for sale and sell in the course of their business described in paragraph 1 hereof, certain wooden rulers branded as, and under the trade name of "Boxwood" or "Warranted Boxwood." The word "Boxwood," as applied to wooden rulers, has for many years last past signified and meant, and now signifies and means, and is generally understood by the trade and the purchasing public to signify and mean the wood of the Boxwood tree, which is a native of the West Indian Islands and of Venezuela, botanically known as *Casearia Praecox*. Wooden rulers made of the wood of the Boxwood tree or of *Casearia Praecox* from the West Indies have long been offered for sale and sold generally in the United States under the trade name of Boxwood, and have long had and now have a wide reputation for their utility and excellence.

In truth and in fact the wooden rulers offered for sale and sold by respondents in course of the commerce described in paragraph 1 hereof branded as and under the trade name of Boxwood, were not, and have not been, and are not made out of wood of the Boxwood tree, or of the tree botanically known as *Casearia Praecox* and it has been and is the practice of respondents to sell such wooden rulers, falsely branded as "Boxwood" or "Warranted Boxwood," at a price or at prices substantially less than the price or prices at which rulers made out of genuine Boxwood have been and are sold.

PAR. 3. The practice of respondents in offering for sale and selling as and for Boxwood rulers, a product made from and out of other wood than the wood of the Boxwood tree or *Casearia Praecox* has had and has the capacity and tendency to mislead and deceive and has furnished and furnishes dealers with the means to mislead and deceive the purchasing public, including the trade, into the belief that the product of respondent branded and described as Boxwood rulers, have been and are rulers made out of the wood of the West Indian Boxwood tree, and to induce the purchase of such so-called Boxwood rulers in reliance on such erroneous belief.

The aforesaid practice of respondents has had and has the capacity and tendency to divert and does divert trade to respondents both from competitors offering for sale and selling in interstate commerce wooden rulers made from wood of the Boxwood tree, botanically known as *Casearia Praecox*, and from competitors offering for sale and selling in such commerce wooden rulers made out of other woods

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than the woods of the Boxwood tree truthfully branded and described.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and to the competitors of respondents and are unfair methods of competition in commerce in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the record, and the Commission having made its findings as to the facts and the conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, Harry Greenberg and Lee Josefsberg, and each of them, in connection with the sale or offering for sale in commerce between and among the several States of the United States and within the District of Columbia, of wooden rulers, do cease and desist:

From using the word "Boxwood" as descriptive of said rulers, or any of them, unless the rulers so described are made of wood of the Boxwood tree, botanically known as *Casearia Praecox*, grown in the West Indies.

It is further ordered, That the respondents shall within 30 days after the service upon them of a copy 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 hereinbefore set forth.

IN THE MATTER OF
THE FRANKLIN PAINT COMPANY

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

Docket 1567. Complaint, Feb. 20, 1929—Decision, June 28, 1932

Where a corporation engaged in sale to trade and consuming public throughout the United States, of roof coating, and paints consisting largely of outside house paint for use upon houses and other buildings and properties; in offering its product through catalogues, letters, and other trade literature,

- (a) Described its said outside house paint as composed wholly of the best grades of white lead, zinc oxide, and linseed oil, with necessary color pigments, and driers, and as prepared from the finest raw paint pigments and oils, together with the necessary driers and coloring tints, and as composed only of the best and finest paint ingredients obtainable, through such statements in catalogues, color cards, etc., as "We guarantee that every gallon * * * is * * * prepared from the highest grade white lead, zinc oxide, linseed oil, necessary coloring pigments and driers * * *" "Nothing but the purest white lead, zinc oxide, linseed oil, and best materials * * *", "Only those materials that are used by every master paint maker when he wants to produce the finest possible colors, i. e., white lead, zinc, linseed oil, color pigments and driers * * *", "We guarantee that every gallon * * * is * * * prepared from the finest raw paint pigments and oils combined with the necessary driers and coloring tints * * *", "* * * made from the finest materials money can buy * * *".

Facts being said paint contained white lead and zinc oxide only in minor proportions, and formula and composition required and disclosed approximate pigment and vehicle content of 58 per cent and 42 per cent, respectively, and (1) pigment or solid content of 36 per cent titanox, 4 per cent lead sulphate, 20 per cent zinc oxide, 16 per cent barium sulphate and 24 per cent asbestine (with subsequent substitution of 12 per cent white lead for 4 per cent lead sulphate, and 8 per cent barium sulphate for 16 per cent, and (2) vehicle or liquid content of 87 per cent linseed oil, in fact diluted by addition of substantial quantities of soya bean oil;

With capacity and tendency to mislead, deceive, and induce purchasing public to buy said paint as and for the preferred and demanded high-quality product composed of the generally esteemed white lead, zinc oxide, and pure linseed oil, with necessary color pigment and drier, and of the best and finest raw paint materials obtainable, and with no such cheap, inert pigments as barium sulphate and asbestine, or oil other than pure linseed oil;

- (b) Represented itself in its catalogues, etc., as the manufacturer of the aforesaid paint, selling direct from factory to customer under a plan "so heartily welcomed by thousands and thousands * * * that to-day it requires this big million-dollar factory shown below to take care of our customers", and referred to its expert employees, elaborate facilities, plants, warehouses, etc., through such statements as "Fresh from the factory direct to you", "We guarantee that every gallon * * * is made in our own modern factory", "Every gallon * * * made from start to finish in our own big paint factory", "* * * made in one of the

largest paint factories in the world", and " * * * most modern, up-to-date and best-equipped paint institution in this country", "Every gallon * * * made in our own factory by paint experts from reliable tested formulæ", "If you could visit our big factory and see the care and precision that is used * * *", and "Our factory is equipped with the most modern paint making machinery", and set forth depiction of a large factory and warehouse buildings bearing signs with its corporate name thereon, of large factory storage tanks described as "Just one aisle of big tanks in our storage rooms", of factory scenes showing workmen and paint vats, etc.,

Facts being it did no manufacturing and owned no factories, warehouses, vats, etc., but along with some seven other similarly operated corporate selling organizations, procured and shipped all its paints from a separate corporate manufacturer, to which its interests were tied by the fact of common stock owners and general officers, upon a small part of the premises of which corporate manufacturer its own place of business was located, and which manufacturer was the real owner of buildings, etc., depicted as its own, as above set forth, and connection with which it carefully concealed and withheld;

With capacity and tendency to mislead and deceive purchasing and consuming public into buying its paint and paint products in the erroneous belief that it was the manufacturer thereof dealing directly with customers, that it directly owned, operated, and controlled a large factory making said paint, was the largest direct to user paint manufacturer in the world, with a million-dollar plant owning, operating, and controlling a large warehouse, modern paint mills, vats, etc., and that it purchased its raw materials in large quantities, stored, tested, and processed the same in connection with the manufacture thereof, employed a factory superintendent, staff of paint experts and paint makers, and that its factory, warehouse, etc., were as pictorially and otherwise represented, and were operated by it in manufacture of its products, and that entire output thereof was required and used to supply the demand of customers; and

(c) Represented that it distributed its paint "Direct from factory to user", without intervention of middlemen or jobbers, wholesalers or retailers, and that its prices were manufacturers' prices without costs, profits or other charges of jobbers, etc., so that prices for its paint were lower than those for which paint of same quality could be purchased from competitors, and that purchasers thereby saved for themselves aforesaid costs, profits, and other charges of any and all middlemen, through such statements as "Paint fresh from the factory direct to you at money saving prices", "Why pay two or three useless profits on the paint you use when you get Franklin quality paints and varnishes direct from our big factory at prices just about 40 per cent cheaper than you pay for the same grade of goods at the retail stores", "Buy * * * direct from our factory, save \$1 per gallon", "When you buy paint direct from our factory you save every unnecessary cost, there is no jobber, wholesaler or retailer to add his profits to the price he paid, you get * * * the finest quality * * * at factory cost plus one small profit", "The direct from factory to user plan of selling which saves our customers at least 40 per cent on all paint prices has made our business grow by leaps and bounds", "Just think you can purchase superior quality house paint for as low as \$2.84

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per gallon in barrel and half barrel lots * * * because the paint is made right here in our own large factory and is shipped to you direct completely cutting out all excessive profits of middlemen, jobbers, salesmen and representatives", " * * * keep in your own pocket the \$1 to \$2 on the gallon which ordinarily goes to pay the salaries of jobbers", etc.; Facts being that said manufacturer charged it for the paint in question a sum substantially in excess of said manufacturer's cost, its prices were not factory, or factory wholesale prices, but middlemen's prices, and figures at which it resold its said paint represented an increase of approximately 100 per cent over price to it and exceeded those charged purchasing public by retail stores for paint of comparable quality and did not represent the claimed savings to the purchasing public of 40 per cent or \$1 to \$1.50 per gallon over prices charged by competitors or retailers;

With capacity and tendency to mislead and deceive consuming and purchasing public into buying its paint and paint products in the erroneous belief that as a large manufacturer distributing directly to purchasers without intervention of middlemen it was selling same at prices lower than those at which paint of equal quality could be or was sold by competitors or retail stores, or than those at which such paint could be purchased by the public through retailers, and that as a large manufacturer as aforesaid it gave its customers the benefit of the saving of the costs, profits or other charges of middlemen amounting to from \$1 to \$1.50 a gallon or about 40 per cent less than would otherwise have to be paid for paint of equal quality purchased from retail dealers or competitors; and

With effect of injuring the public and unfairly diverting trade from and otherwise injuring and prejudicing competitors in their business, and of operating as an unfair competitive advantage to it and a detriment to and burden upon the legitimate paint manufacturing and marketing industry of the country, and with capacity and tendency so to do:

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

Mr. Henry Miller for the Commission.

Squire, Sanders & Dempsey and *Mr. Samuel Doerfler*, of Cleveland, Ohio, for respondent, and *Mr. Thomas J. McFadden*, of Washington, D. C., for Unfair Competition Bureau of the Paint & Varnish Industry (*Amicus Curiae*).

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Ohio corporation engaged in sale and distribution of paint and paint materials to the trade and consuming public, through advertisements, catalogues, etc., and through salesmen and agents, and with principal office and place of business in Cleveland, with misrepresenting business status or advantages, products and

prices, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, falsely represents itself as a manufacturer, with the largest "Direct-to-User" paint factory in the world, selling at prices which exclude middleman's profits and are lower than competitors, and, by reason of its being a manufacturer, as able to offer its customers paint of a better quality, at lower prices, saving costs and profits of all middlemen; falsely representing, in its sales literature, that its supposed factory and warehouse consist of large buildings bearing signs "The Franklin Paint Co.", and that pictorial representations of said buildings and of storage tanks, paint vats, machinery and office facilities, depicted by it, are true representations of the equipment, etc., owned and used by it in the manufacture and sale of its products, facts being it neither owns nor operates any paint factory, but operates as a middleman or dealer, selling at prices which include costs and profits of itself and others in addition to those of the manufacturer, and afford purchaser no such savings.

Respondent further, as charged, falsely represents its outside house paint as composed of the best grades of white lead, zinc oxide, and linseed oil, with only the necessary amount of color pigment and drier added, and with no barium sulphate, siliceous matter or other inert material, fact being product in question is inferior to that claimed in quality, containing, respectively, 40 per cent, and 10 per cent, of barium sulphate, and siliceous matter, and a substantial proportion of other inert matter, and high-grade ingredients represented only in minor proportions.

Aforesaid representations, statements, and assertions, as alleged, "have and had the capacity and tendency to, and did and do mislead and deceive large and substantial parts of the purchasing public into, and thereby cause them to purchase said paint in and because of, the erroneous beliefs that said false, misleading, and deceptive representations, statements, and assertions" are true, and said false, misleading, and deceptive acts and practices, as alleged, have the further capacity and tendency to and do unfairly divert trade from competitors, many of whom sell and distribute house paint without misrepresenting the same, "or the methods or terms under which it is marketed, or their business standing and facilities"; all to the prejudice and injury of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on February 20, 1929, issued and thereupon served its complaint in this proceeding upon the Franklin Paint Co., a corporation, respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent entered its appearance by counsel and on March 25, 1929, and February 12, 1931, respectively, filed answer and amended and supplemental answer to said complaint. By such answers respondent admitted certain allegations in said complaint, including all of paragraph 1 thereof, and denied others therein. Thereafter, the matter being ready for the taking of testimony and other evidence with respect to the charges in the complaint, hearings therefor were held before an examiner of the Commission thereunto duly appointed, at which hearings oral testimony, documentary evidence, and other exhibits were introduced in evidence by counsel for the Commission in support of said complaint and by counsel for the respondent in opposition thereto. By agreement the hearings were held and the evidence taken in a consolidated proceeding covering not only this case but also the proceedings before the Commission upon complaints issued against the Madison Paint Co., Docket No. 1573, and the Progress Paint Co., Docket No. 1575. Said evidence was duly recorded and filed of record in the office of the Commissioner, and thereafter a stipulation signed by respondent; dated November 6, 1931, and relating to certain matters of fact in issue, was submitted and filed by its counsel.

Thereupon, by agreement and with the opportunity for the filing of briefs by counsel, the proceeding was brought on for final hearing before the Federal Trade Commission, and was heard upon oral argument of counsel for the respondent and counsel for the Commission, the latter having filed brief, while counsel for the respondent elected to submit the case upon oral argument without brief. And the Commission having now duly considered the record, and being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent the Franklin Paint Co. is a corporation organized under the laws of the State of Ohio in the year 1918, and, at all times since, doing business as such Ohio corporation with its office and place of business in the city of Cleveland in said State. The said business of respondent is the sale and distribution of paint and paint materials to the trade and consuming public throughout the United States. The said products are designated and sold by respondent as the Franklin line of paints and besides roof coating consists largely of outside house paint for use upon dwellings and other buildings and property. Respondent advertises, offers for sale, and sells its said merchandise (a) through and by means of advertisements published by it from time to time in newspapers, magazines, and similar periodicals of general circulation among the purchasing public throughout the United States and in various sections thereof; (b) also through and by means of catalogues, color cards, circulars, letters, pamphlets, price lists, and similar trade literature which, in the solicitation of trade for its paints, it causes to be sent from time to time by mail and otherwise from its place of business in Cleveland, Ohio, through and into other States of the United States to numerous customers and prospective customers in such other States; and (c) through and by means of its salesmen and agents who solicit purchase orders for said paint from customers and prospective customers throughout the various States of the United States.

As a result of such advertising, soliciting of trade and offering for sale of said paint, numerous purchasers throughout various States of the United States are thereby induced to purchase said paint and paint materials from respondent, and to transmit their purchase orders for said products and to make their remittances for the purchase price thereof from their respective points of location in the several States to, and which are received by, respondent at its place of business in Cleveland, Ohio. To complete the sale and in making distribution and delivery of its products, pursuant to said purchase orders, respondent causes its paint and paint materials so ordered and sold to be transported and delivered from its place of business in Cleveland, Ohio, through and into many other States of the United States to the respective purchasers thereof in such other States. In so conducting its business respondent has, in the course thereof, continuously maintained a current of commerce between the State of Ohio and other States of the United States,

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and is and has been engaged in interstate commerce in such sale and distribution of its paints and paint materials.

For the two annual periods immediately prior and subsequent to the date of the complaint, its total gross sales were substantially in excess of \$800,000 a year. The paint is distributed by respondent in the usual paint containers of 1-gallon cans, 5 and 10 gallon cans, kegs, half barrels and barrels. The shipments are made in small quantities of a few gallons up to comparatively large quantities depending upon the amount ordered by the customer, and are forwarded by parcel post, express, or freight, as desired. Throughout the territory covered by respondent in its sales there are many competing brands and makes of house paint and similar paint products offered for sale and sold to the purchasing and consuming public through the retail stores and by dealers, distributors, and manufacturers. At all times in the course and conduct of its business respondent has marketed its paint and paint materials and conducted its said business in direct, active competition with many individuals, partnerships, and other corporations similarly engaged in the sale and distribution of paint and paint materials in commerce in, between, and among the several States of the United States.

PAR. 2. Through the medium of said catalogues, circulars, letters, and other trade promotional literature or advertising matter used by respondent in promoting and effecting the sale of its paints and other products and in inducing the public to purchase the same, respondent advertised, offered for sale and sold its paints and other products upon various representations, statements, and assertions of the following-described character:

(1) Representations, statements and assertions to the effect that respondent's said outside house paint is composed wholly of the best grades of white lead, zinc oxide, and linseed oil with the necessary amount of color pigments and drier; and that all the ingredients therein are of the best and finest paint ingredients obtainable.

The following are among the specific representations set forth in this respect by respondent in its catalogues, color cards, and letters or trade promotional literature:

GUARANTY

1st. We guarantee that every gallon of Franklin paint is made in our own modern factory and prepared from the highest grade white lead, zinc oxide, linseed oil, necessary coloring pigments and driers. * * * (Com. Ex. 65.)¹

Nothing but the purest white lead, zinc oxide, linseed oil and best materials go into our paint, assuring you of the highest grade and quality. (Com. Ex. 65, p. 3.)

¹ Exhibits not published.

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That in its manufacture respondent uses "only the very best of ingredients". (Com. Ex. 65.) And that—

Only those materials that are used by every master paint maker when he wants to produce the finest possible colors, i. e., white lead, zinc, linseed oil, color pigments, and driers. These materials lend themselves to a greater variety of shades and tints, and produce the most satisfactory house paints both for outside and inside work. (Com. Ex. 67.)

That "it is made from pure raw materials—white lead, zinc oxide, and linseed oil * * * ." (Com. Ex. 70.)

That—

You take absolutely no risk for every gallon of Franklin House Paint is guaranteed to contain only the finest of white lead, zinc oxide and linseed oil obtainable and if you are not entirely satisfied in every way—your money will be cheerfully refunded. (Com. Ex. 74.)

That in the manufacture of the paint respondent uses "only the finest white lead, zinc oxide and linseed oil * * * ." (Com. Ex. 144-A, Oct. 18, 1923.)

That respondent's outside house paint "is made from the very best white lead, zinc oxide, linseed oil and driers and is guaranteed to render satisfactory service in every respect." (Com. Ex. 144-B, Dec. 8, 1923.)

That said paint is "prepared from the finest raw paint pigments and oils combined with the necessary driers and coloring tints". (Resp. Ex. 26.)

PAR. 3. Respondent's said representations in respect to its house paint being composed of white lead, zinc oxide, and linseed oil with necessary coloring pigments and drier were used continuously without change throughout a period of more than three years prior to the issuance of the complaint and for a period of approximately ten months thereafter. Thereupon and in its trade promotional literature used beginning with the season of 1930, there was incorporated by respondent a change in the text of such representations. Such change consisted in eliminating the specific mention of the terms "white lead", "zinc oxide", and "linseed oil" and substituting therefor expressions to the effect that the paint is composed of "the finest raw paint pigments and oils"; "nothing but the finest raw paint pigments"; "only the very best of ingredients"; "the finest raw paint pigments and oil combined with the necessary driers and coloring tints"; "the very finest raw materials that money can buy"; "only the best paint materials obtainable".

Pursuant to this change the said guaranty as now being used in its large catalogue reads, with respect to ingredients, as follows:

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GUARANTY

1st. We guarantee that every gallon of Franklin paint is made in our own modern factory and prepared from the finest raw paint pigments and oils combined with the necessary driers and coloring tints.

As further example of such change this current large catalogue also contains the representation that—

Nothing but the finest raw paint pigments go into the make up of our paint, which assures you of a durable, lasting and satisfactory paint. (Resp. Ex. 26.)

In the current sales letters which respondent sends to its customers and prospective customers, the ingredients of the paint are described, for example, as follows:

Franklin paints are made from the very finest materials that money can buy. Every gallon is produced right here in our modern factory by experts who have spent their entire lives in the paint industry. We use only the best raw paint materials obtainable. (Resp. Ex. 29.)

While the above-described changes were made in the literature beginning with the season of 1930, the change in the so-called guaranty was not made in respondent's small catalogue, respondent's Exhibit 28, and the use of such catalogue has been continued after the above-mentioned changes and is currently used by respondent as such trade promotional literature and with such guaranty set forth as follows:

GUARANTY

1st. We guarantee that every gallon of Franklin paint is made in our own modern factory and prepared from the highest grade white lead, zinc oxide, linseed oil, necessary coloring pigments and driers. * * *

Respondent's sales manager testified that in their anxiety and carelessness they had overlooked said guaranty and had, therefore, failed to make the change at this point in said catalogue.

Subject to the foregoing changes, the representations, statements, and assertions set forth in paragraph 2 hereof are still being used by respondent in the marketing of its product as above described.

PAR. 4. In truth and in fact said house paint sold by respondent under the representations hereinabove described has not been and is not composed wholly or principally of white lead, zinc oxide, and linseed oil with the necessary color pigments and driers, but contains white lead and zinc oxide only in small or minor proportions, and as hereinafter stated, was made during a period of such representations with the oil ingredient composed of linseed oil to which was added soya bean oil.

(a) It is established by the evidence and by stipulation of respondent that the composition of said paint and the basic master

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formula under which the same has been manufactured, since about January 1, 1931, are as follows:

Master formula covering period since January 1, 1931

Pigment (i. e., the solids, comprising 57.77 per cent of the paint) :

	Per cent
Titanox.....	36
White lead.....	12
Zinc.....	20
Asbestine.....	24
Barium sulphate (also known as Barytes).....	8
Vehicle (i. e., the liquid portion, comprising 42.23 per cent of the paint) :	
Linseed oil.....	87
Mineral spirits and driers (i. e., volatile liquid).....	13

(b) It is also established, by evidence adduced by respondent, that prior to the change to the above formula, and during the period from October 26, 1925, to December 31, 1930, more than three years immediately prior to the issuance of the complaint and for a considerable period of time thereafter, respondent's said paint was manufactured under the following master formula, subject, however, to the exception stated below with respect to the item of linseed oil:

Master formula covering period October 26, 1925, to December 31, 1930

Pigment (i. e., the solids in the paint consisting of 57.77 per cent of the paint) :

	Per cent
Titanox.....	36
Lead sulphate.....	4
Zinc oxide.....	20
Barium sulphate.....	16
Asbestine.....	24
<hr/>	
Total.....	100

Vehicle (i. e., the liquid portion, consisting of 42.23 per cent of the paint) :

	Per cent
Refined linseed oil.....	87
Oil drier and thinner.....	13
<hr/>	
Total.....	100

(c) In the manufacture the paint was processed through the grinders, mixers, and other manufacturing machinery in batches of 83 gallons each. It was the duty of the factory workmen engaged in producing the paint to introduce the ingredients in certain designated quantities which would be sufficient to produce 83-gallon batches and would correspond to the relative proportions named in the above formulæ. In the manufacture of the paint under said master formula covering the period October 26, 1925, to December

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31, 1930, it was not purely linseed oil which was in fact used for the ingredient listed as "refined linseed oil * * * 87 per cent", but besides linseed oil there was actually used soya bean oil in the proportion of 7 gallons to each batch of 83 gallons of paint. Such 7 gallon substitution of soya bean oil was made during the incumbency of a former factory superintendent of the Acorn Refining Co., Mr. Rumberg who served as such for several years and until July, 1929. Testimony of the succeeding factory superintendent of the Acorn Refining Co., H. L. Williams, was introduced by respondent to the effect that beginning in October, 1929, the amount of soya bean oil substituted for linseed oil was 6 gallons in every 83 gallons of the paint; that such substitution of soya bean oil for linseed oil was made because "in our estimation" such soya bean oil "is as good an oil in that quantity as linseed, and as we had an oversupply of soya bean oil at that time, we used it to cut down our inventory, and that only was done until the first of the year 1930"; also that the cost of soya bean oil was higher than the cost of linseed oil (Tr. p. 1171).

(d) In proof of the composition of said paint there is also evidence introduced by counsel for the Commission, as to the ingredients in seven different samples of the paint as determined by chemical analyses made by paint chemists of the United States Bureau of Standards. Five of such samples were 1-gallon cans of the paint procured prior to the issuance of the complaint from shipments to purchasers. The other two were 1-quart cans obtained directly from a distributor of paints in Cleveland, Ohio, after the date of the complaint. All samples were procured prior to said use of the changed formula adopted January 1, 1931, and during the period of the use of said master formula of the period of October 26, 1925, to December 31, 1930. In comparison with such last-named formula the results of said analyses as given in evidence showed some variations or differences in the relative proportions or percentages of the various ingredients in these particular samples or specimens, but were in substantial accord with the specifications in the master formula in the following important respects: Kind or name of ingredients used; the total amount of inert pigments in the paint; total amount of active pigments in the paint and the relative proportions of the pigment and the vehicle or liquid.

(e) Titanox is a paint pigment consisting of 75 per cent barium sulphate, also called barytes, and 25 per cent titanium dioxide. Thus, when expressed by its component parts, the item of 36 per cent titanox in the above-stated master formulæ may be rendered 9 per cent titanium dioxide and 27 per cent barium sulphate. The respective items of 8 per cent and 16 per cent barium sulphate in the above-

mentioned master formulæ used prior and subsequent to January 1, 1931, are barium sulphate ingredients which are in addition to the barium sulphate present in said titanox and is free barium sulphate. The said 8 per cent barium sulphate and 24 per cent asbestine in the currently used master formula above stated, and the 16 per cent barium sulphate and 24 per cent asbestine in said former master formula, are inert paint pigments, while the remaining pigments listed in said formulæ are known as active paint pigments.

(f) Barium sulphate is an inert pigment having little or no opacity, i. e., hiding power, and is a very cheap ingredient in comparison with lead, zinc, or titanox. From figures supplied by respondent covering the year 1927 and since, the cost of the barium sulphate in the paint was less than 1 cent per pound as compared to the average of $6\frac{1}{2}$ cents per pound for zinc oxide and from $6\frac{3}{4}$ cents to 9 cents per pound for lead. Through the same period the cost of titanox ranged from $6\frac{1}{2}$ cents per pound to $11\frac{1}{2}$ cents with an average for the period of a little less than 9 cents per pound. Barium sulphate is a relatively heavy material of approximately the same bulk as titanox, but of about 35 per cent and 60 per cent greater bulk than zinc and lead, respectively. Asbestine is a siliceous material which is likewise inert and has little or no opacity in comparison with lead, zinc, or titanox. It is also a comparatively cheap pigment with an average cost of less than 1 cent per pound for the above-mentioned period. Such asbestine is of much greater bulk than lead or zinc or the other pigments in the paint.

The comparative bulk of these materials may be expressed by the fact that it requires only 23.74 pounds of asbestine to make 1 gallon in volume, whereas it requires respectively 56.74 pounds of lead, 47.15 pounds of zinc, 35.82 pounds of titanox, and 35 pounds of barium sulphate to make 1 gallon in volume in each instance. Said inert pigments, such as barium sulphate and asbestine are paint ingredients of low quality or merit and they do not rank among the finest or best paint pigments which are on the market and in general use. Titanox is a comparatively newly discovered paint ingredient which is classed as an active pigment. As shown by the figures above stated it has about 60 per cent greater bulk than lead and 35 per cent greater than zinc. It is used by some manufactures as one of the pigments for first-quality paint but its properties or qualities as a paint pigment are not so generally or widely known among the purchasing public as are those of white lead and zinc oxide.

(g) White lead and zinc oxide are paint pigments of high quality and have long been known and recognized as such in the paint industry and trade, and by painters and the consuming public generally.

They are generally considered in the industry as the standard of comparison among paint pigments and are extensively used by paint manufacturers as the principal pigment for paint of highest or best quality. Linseed oil is likewise recognized and considered as a product of highly desirable quality and merit for use as the oil ingredient of paint. Outside house paint consisting wholly or principally of white lead, zinc oxide, and linseed oil with necessary color pigments and drier is a paint which is among those of the highest grade or best quality and has been considered and generally recognized as such among paint manufacturers, dealers, users, and consumers. And paints composed wholly or principally of such ingredients are in demand by the purchasing and consuming public and the fact of such composition of white lead, zinc oxide, and linseed oil in a paint is a sales advantage and an important factor which is conducive to the sale of such paint.

(h) Much evidence was introduced with respect to the quality of respondent's paint and the effect of the ingredients therein as compared to high-quality paints and paints manufactured of white lead, zinc oxide, and linseed oil or paints containing only the best or finest paint ingredients. The witnesses called by counsel for the Commission on these points included paint chemists of the United States Bureau of Standards and a number of paint chemists and others having long experience in the manufacture, formulation, testing and sale of paints. The evidence adduced embraces testimony of such witnesses to the effect that respondent's said paint is inferior in quality to paint composed wholly or principally of white lead, zinc oxide, and linseed oil or paints composed of the best paint ingredients; that the said inert pigments in respondent's product, barium sulphate and asbestine, are in excessive proportion to the active pigments; that of the pigment of first or best quality paints a maximum of, or not more than, 15 per cent of inert materials can be used without reducing the quality of the paint below first class or best paints, and that in many of the best-quality paints on the market a much lesser proportion than 15 per cent of inerts is used; that the large proportion of inert materials in respondent's said paint are excessive and that by reason of the use thereof respondent's paint is not only cheapened as to cost of materials, but is also of an inferior or reduced quality; that such inert pigments are fillers and extenders and considered by some in the excessive proportion used in respondent's paint as adulterants.

Respondent's witnesses in this regard—comprising principally the factory superintendents where the paint is made, who formulated the product, and another paint expert of varied experience—testified

to the effect, among others, that respondent's paint is first quality and that said inert pigments therein have various necessary or desirable effects particularly because of the use in the paint of said titanox ingredient; and that said inert pigments notwithstanding their cheapness in price and lack of opacity are not excessive. The term reenforcing pigments is used in respondent's testimony to designate said inert ingredients. (All percentages or relative proportions of paint ingredients in these findings are given on the basis of weight of the product, unless otherwise stated.)

PAR. 5. Upon consideration of the record the Commission finds that some of the purchasing public do not believe paints composed as respondent's in fact is, and has been, are of as high quality as paints composed wholly or principally of white lead, zinc oxide, and linseed oil with necessary color pigment and drier or paints of equally high quality. And the Commission further finds that respondent's said representations to the effect that its paint is composed wholly or principally of white lead, zinc oxide, and linseed oil with necessary color pigments and driers and that all the ingredients thereof are of the best and finest raw paint materials obtainable, as more particularly set forth in paragraph 2 hereof, are and have been false, misleading, and deceptive, and have been calculated, and had the capacity and tendency, to mislead, deceive and induce the purchasing public to purchase said paint in the erroneous beliefs that said representations are and were true in fact and that the paint was in fact so composed; that said paint does not and has not contained other ingredients, nor said barium sulphate and asbestine as above-described or any inert paint pigment other than coloring pigment; that the oil in the paint was in fact purely linseed oil at all times throughout the use of such representations as to linseed oil, and that it did not contain any such soya bean oil as was in fact substituted for linseed oil, to the extent above stated, in the manufacture of the paint under said master formula used prior to January 1, 1931.

PAR. 6. The said false, misleading, and deceptive representations above set forth have been made by respondent with knowledge that the said paint was not in fact composed wholly or principally of lead, zinc, and linseed oil, as represented, but was in truth manufactured with the ingredients as described in paragraph 4 hereof. Respondent's said so-called guaranty and other representations to the effect that the paint is composed of white lead, zinc oxide, and linseed oil with necessary color pigments and driers were repeated throughout the long period above mentioned and perpetuated in revised editions of its catalogues and in letters sent out with said catalogues as well as other letters sent from time to time to customers and

prospective customers. In no instance in the letters sent from time to time to purchasers and prospective customers, whether accompanying said catalogue or otherwise, has respondent, prior or subsequent to the issuance of the complaint, informed purchasers of the fact that said paint is not in truth composed as stated in its so-called guarantee under which it sold the paint and in said other representations, or that it contains inert materials or titanox, or soya bean oil, or that the white lead and zinc oxide therein constitutes only a small or minor part of the pigment. Respondent has not followed the practice used by some paint manufacturers of printing the formula upon the label on the commercial containers of the paint or otherwise disclosing the actual ingredients in the paint. Nor has respondent in any other manner advised or informed the purchasers of said paint of the actual composition thereof.

PAR. 7. In the course and conduct of its business of promoting and effecting the sale and distribution of said paint as hereinabove described, and through and by means of its said trade promotional literature, respondent also offers for sale and sells its said paint upon various representations, statements and assertions to the following effect:

(1) That respondent is the manufacturer of said paint and in its sale and distribution acts as a manufacturer and not as a middleman; that it manufactures said paint and that it directly owns, operates and controls a large, modern paint factory in which it manufactures said paint; that it owns, operates, and controls a large warehouse as part of its facilities used by it in the manufacture, sale, and distribution of its paint; that its paint factory is the largest "Direct-to-User" paint factory in the world; that said paint factory and warehouse consists of large spacious buildings bearing large and conspicuous signs reading "The Franklin Paint Co.", and that said factory and warehouse are as pictorially represented in its aforesaid sales literature, particularly in its business stationery and catalogues; that the pictorial representations in said sales literature of storage tanks, paint vats, paint manufacturing machinery, and office facilities are true representations of factory equipment and business facilities directly owned, operated, controlled, and used by respondent in the manufacture, sale, and distribution of its paint and paint materials.

(2) That because respondent is the manufacturer of said paint and owns, operates, and controls the above-mentioned factory and other business facilities, respondent is able to and does sell to its customers paint of a better quality and at less price than its competitors.

(3) That respondent sells and distributes its paint "Direct-from-factory-to-user", and that its sale and distribution thereof to its

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customers are without the intervention of middlemen or jobbers, wholesaler or retailer; and that purchasers in buying paint from respondent thereby purchase and receive such paint directly from the manufacturer thereof.

(4) That the prices at which respondent sells its paint are manufacturers' prices and do not include costs, profits, or other charges of jobber, wholesaler, retailer, or other middlemen; that because of such supposed fact, the prices at which respondent sells its paint are lower than the prices for which paint of the same quality can be purchased from competitors; and that in purchasing from respondent purchasers thereby save to themselves the costs, profits, and other charges of any and all middlemen.

The following-described specific instances of the foregoing representations, statements, and assertions are among those appearing in the catalogues, color cards, letters, or other trade-promotional literature used by respondent in the solicitation and promotion of trade:

(a) On the outside cover of its large catalogue (Com. Ex. 65; Resp. Ex. 26) respondent depicts factory buildings with the statement—

Paint fresh from the factory

Direct to you

At money-saving prices

The Franklin Paint Co., Cleveland, Ohio

In the catalogue are printed said so-called guaranty of the Franklin Paint Co. and other representations reading in part as follows:

1st. We guarantee that every gallon of Franklin paint is made in our own modern factory * * *

But why pay two or three useless profits on the paint you use when you get Franklin Quality Paints and Varnishes direct from our big factory at prices just about 40 per cent cheaper than you pay for the same grade of goods at the retail stores.

BUY FRANKLIN PAINT DIRECT FROM OUR FACTORY—SAVE \$1 PER GALLON

Every gallon of paint, varnish, or other products which you find listed in this catalogue is made from start to finish in our own big paint factory. When you buy paint direct from our factory you save every unnecessary cost. There is no jobber, wholesaler, or retailer to add his profits to the price you pay. You get Franklin Quality Paint—the finest quality that good materials, honest men and modern machinery can produce—at factory cost plus one small profit.

This Direct-from-factory-to-user plan of selling Franklin Quality Paints at wholesale prices has been so heartily welcomed by thousands and thousands of folks from Maine to Texas that to-day it requires this big million-dollar paint factory shown below to take care of our customers. We are saving

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hundreds of thousands of dollars every year for others—send us your order for paints, varnishes, or enamels and let us save money for you. (Beneath this statement appears a picture of a large factory bearing signs reading The Franklin Paint Co.)

When you buy Franklin Quality Paint, no matter whether it is a quart can or a 50-gallon barrel, you get it *fresh from the factory*—fresh from our grinding and mixing vats and every drop of it is uniform, smoothly ground and full bodied.

YOU CAN'T GET A THOROUGH MIXTURE BY HAND

If you were to sit down with a gallon of lead, zinc oxide, and oil and stir it with a paint paddle night and day without stopping for two full months you could not possibly mix that gallon of paint as thoroughly as our powerful grinding and mixing machinery does in an ordinary 8-hour day's time.

You know what heavy materials lead and zinc oxide are. You know how hard it is to get oil to mix thoroughly with anything. Then it stands to reason that you can not begin to get a thorough mixture of paint by hand when it takes hours of constant grinding, agitating, and revolving in our giant machine mixers to combine these materials into an evenly blended, smooth paint—ready to use.

THE LARGEST "DIRECT-TO-USER" PAINT FACTORY IN THE WORLD

The splendid reputation for saving and satisfaction which Franklin Quality Paints and Varnishes have acquired has become nation-wide. The Direct-from-factory-to-user plan of selling which saves our customers at least 40 per cent on all paint prices has made our business grow by leaps and bounds.

To-day, Franklin Quality Paints are made in one of the largest paint factories of its kind in the world, and we believe that this factory is the most modern, up-to-date and best equipped paint institution in this country.

To-day, this modern, million-dollar paint factory is saving money for hundreds of thousands of satisfied customers.

Every gallon of Franklin paints, varnishes, and paint products is made in our own factory by paint experts from reliable, tested formulas. Nothing but the purest white lead, zinc oxide, linseed oil, and best materials go into our paint, assuring you of the highest grade and quality.

FRANKLIN HOUSE PAINT

The highest grade house paint at wholesale factory prices.

If you could visit our big factory and see the care and precision that is used in the making of Franklin Quality House Paint you would be quick to appreciate just why it has acquired such a good reputation among our thousands of customers all over the country.

In the first place we use only the very best of ingredients in our Quality House Paint. This, though important is not the only sign of good paint. These ingredients must be correctly proportioned and thoroughly mixed by machinery so that the paint will spread well and wear well. Paint making is an art. It requires experts throughout the various stages of manufacture and that is one place where the Franklin Factory excels. Being the largest paint manufacturers in the world selling Direct-to-the-users and being located in Cleveland, the greatest paint-producing center of the universe, we are in a position to secure the most competent and best skilled paint experts to superintend the making of our Quality House Paint and all other paint products. And our

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factory is equipped with the most modern paint-making machinery. It is this unbeatable combination of—

Best Materials

Best Paint Experts

Best Manufacturing Equipment

that makes Franklin Quality House Paint superior in quality—superior in covering capacity—superior in wearing service—superior in appearance even though it is sold to you at Direct-from-factory wholesale prices which are about 40 per cent less than you usually pay.

(b) In connection with the above representations there are also set forth prominently in said catalogues the following, purporting to be pictures of manufacturing facilities of the Franklin Paint Co. (Com. Ex. 65):

(1) Depiction of large factory and warehouse buildings bearing signs reading The Franklin Paint Company, which purport to be permanently attached to and actually upon such buildings. The entire picture is entitled "A Panoramic View of Our Factory and Warehouse".

(2) Depiction of large factory storage tanks with the following description:

Just one aisle of big tanks in our storage rooms. Our factory has over a quarter of a million gallon storage capacity for linseed oil, turpentine, driers, and other raw materials from which we make our Quality Paints.

(3) Depiction of factory scene showing workmen and paint vats from which paint is filled into commercial containers, the depiction being described as follows:

Here's how you get fresh paint, direct from our giant paint vats to you.

(4) Depiction of factory scene of workmen and paint mills with the following description:

One battery of our grinding and mixing mills. There are three batteries of mills like this in our factory.

(c) On its color cards appear, among other things, the following:

FRANKLIN HOUSE PAINTS

Manufactured by

Franklin Paint Company

Cleveland, Ohio

Franklin paints are the right paints because they are made right. In the manufacture of our paint, we use only those materials that are used by every master paint maker when he wants to produce the finest possible colors, i. e., white lead, zinc, linseed oil, color pigments, and driers. These materials lend themselves to a greater variety of shades and tints, and produce the most satisfactory house paints both for outside and inside work. Years of experience in paint making have enabled us to establish formulas that are based on the exact proportions of each ingredient that produces the firmest body and most

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lasting colors. (Com. Ex. 67, Color Card; see also Resp. Ex. 27 for change of text.)

(d) On respondent's letterheads are depicted large factory buildings likewise bearing the sign The Franklin Paint Company and purporting to be the sign of real designation of said buildings. Printed immediately adjacent to said depiction are the words of the letterhead as follows:

THE FRANKLIN PAINT COMPANY
Manufacturers of
House and Barn Paints, Enamels and Varnishes
Saveall
Liquid Asbestos Roofing
Cleveland, Ohio

(e) Respondent's sales letters and other trade promotional letters are sent to customers and prospective customers on the above letterhead, and among the representations used in such letters by respondent are the following:

There is absolutely no middlemen, jobbers, salesmen, or representatives, profits for you to pay—you are dealing direct with the manufacturer when you purchase Franklin Paints. (Com. Ex. 68.)

If you don't happen to have the ready cash, it doesn't mean that you have to leave your buildings go shabby, gloomy, and unprotected. The Franklin Factory to you plan shows you how you can paint and brighten things up now and pay later. Through this plan you not only can get 60 days to pay for what you get but there is no freight to pay and you save at least 40 per cent because the jobber, retailer, and salesman's profits are cut out.

Franklin paints are made from the very finest materials that money can buy. Every gallon is produced right here in our own modern factory by experts who have spent their entire lives in the paint industry. We use only the purest and best white lead, zinc oxide, linseed oil, turpentine, etc., and are free to say that Franklin Paints are equal or better in every way to any other paint on the market regardless of price.

This is a real buy and if you want to save yourself at least 40 per cent on real first quality—Grade A house and barn paints—send your order in now. (Com. Ex. 73.)

Franklin rock bottom prices can't be beat, just think you can purchase Superior Quality House Paint for as low as \$2.84 per gallon in barrel and half-barrel lots.

The reason I am able to quote these low prices is because the paint is made right here in our own large modern factory and is shipped to you direct completely cutting out all excessive profits of middlemen, jobbers, salesmen, and representatives. (Com. Ex. 74.)

You will be well pleased with Franklin Paint, Mr. Moody, because this is pure, fresh paint, manufactured right here in our own factory from the very finest raw materials that money can buy. Our huge grinders assure you of a smooth, perfectly blended paint that will flow freely under your brush, go farther, have greater hiding power and give extraordinary long wear with 100 per cent protection.

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There is no middlemen's profit. You pay us only the cost of manufacturing plus one small profit and keep in your own pocket the \$1 to \$2 on the gallon which ordinarily goes to pay the salaries of jobbers, salesmen, representatives, and dealers. (Com. Ex. 75-A.)

I am writing this letter today because I want you to know that due to a steady advance in linseed oil and other raw materials during the past month paint prices are going up.

I am enclosing a copy of the Bulletin from our factory superintendent which reached my desk this morning. This Bulletin speaks for itself and shows very clearly that if you want to save money on your paint you should place your order at once.

Other large paint companies all over the country have already advanced prices, but due to fortunate June contracts we will still be able to ship your order of Franklin Paints at present prices.

These prices can't last much longer, however, and I urge you as one of my personal friends to get your order in at once so that you can save this advance of 30 cents to 35 cents a gallon.

Remember Franklin Paints are offered you—wholesale—direct from our factory with all profits of jobber, retailer and salesman completely eliminated. (Com. Ex. 76-A.)

(Inclosure to above letter)

BULLETIN

To L. S. SANDERS, *Sales Mgr.*

As you know linseed oil and other raw materials during the past month have taken a sharp advance in price. This of course means increased production costs. Fortunately we have enough stock on hand purchased at June contract prices to run us for the next few weeks. Selling prices on practically our complete line of paints must necessarily advance as soon as our present supply of raw materials is exhausted.

Please advise all customers at once.

THE FRANKLIN PAINT COMPANY

(Signed) H. L. WILLIAMS

Factory Superintendent.

(Com. Ex. 76-B.)

We acknowledge with thanks yours of recent date inclosing remittance and are pleased to advise that your account has been properly credited.

If at any time you are in need of additional products we hope you will write for our factory prices.

Remember we are manufacturers of high-grade house paints, barn paints, roof paints, varnishes, enamels, in fact, a paint for every conceivable purpose.

Respectfully yours,

THE FRANKLIN PAINT COMPANY.

(Com. Ex. 110.)

In considering your paint needs, remember that Franklin products are guaranteed quality A—shipped fresh from our factory and are not to be confused with the many cheap paints that are flooding the market today. Cheap paint always proves the most expensive in the long run—it has less covering capacity—poorer finish—lasts about half as long as good paint and yet costs you just as much to apply.

As paint manufacturers—dealing only direct with the consumer—completely cutting out all middlemen, salesmen and retailer's profits—doesn't it stand

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to reason that we are able to offer you higher grade products at lower prices than concerns jobbing paint and carrying them only as a side line.

No expense is spared in the manufacture of our paints. We use only the finest white lead, zinc oxide, and linseed oil and are always ready to return your money if you are not entirely satisfied in every way. (Com. Ex. 144-A, October 18, 1923.)

If you don't happen to have the ready cash, it doesn't mean that you have to leave your buildings go shabby, gloomy and unprotected. The Franklin factory to you plan shows you how much you can paint and brighten things up now and pay later. Through this plan you not only get 60 days to pay for what you get but there is no freight to pay and you save at least 40 per cent because the jobber, retailer, and salesman's profits are cut out.

(f) In its price lists which are sent to customers the following appears:

FRESH FROM OUR FACTORY DIRECT TO YOU

Buy Franklin paints direct from our mammoth factory and save \$1 to \$1.50 per gallon. You gain by saving the middlemen's profits.

The highest grade at wholesale factory prices. Best materials. Best paint experts. Best manufacturing equipment. (Com. Ex. 69.)

(g) In its small catalogue are the following representations among others:

FRANKLIN HOUSE PAINT

Sold direct from factory to you with 60 days to pay! Here is, without a doubt, the most liberal offer ever made on high quality house paint. Think of it! On this offer you not only get the finest quality of paint that the largest paint factory of its kind in the world can produce—you get the lowest factory prices cutting out all the middlemen's profits—but we also give 60 days to pay for the paint you order. You save the jobber's, retailer's, and salesman's profits. (Com. Ex. 70; Resp. Ex. 28.)

This catalogue also carries the guaranty as above quoted.

(h) In addition to the depiction of factory buildings upon its letter-heads and in its large catalogue as above described, respondent also carries such depiction of factory buildings upon order blanks of which it uses large numbers in sending copies to customers and prospective customers. This depiction of factory buildings likewise showed the sign on such buildings—The Franklin Paint Co.

PAR. 8. The true facts in regard to said representations are and have been as follows:

(a) Respondent corporation, The Franklin Paint Co., is not a manufacturer and does not manufacture any of the paint or other products which it markets, but procures its paint from the Acorn Refining Co. at certain prices charged therefor by such Acorn Co. The Franklin Paint Co., respondent corporation, does not own, control, or operate any such paint factory, factory warehouse, paint vats, grinding, mixing or other paint manufacturing equipment or

facilities as represented or depicted in its catalogues, letters, and other trade promotional literature, or any other paint manufacturing equipment or facilities. The authorized capital stock of such Franklin company is \$100,000, par value, and all its physical property consists of furniture and fixtures such as desks, chairs, adding machines, typewriters, and similar office equipment, which are used in the promotion, sale, and distribution of its products. Its other assets consist of cash and accounts receivable of over \$250,000, being sums due largely from paint customers. Said Franklin corporation has no factory superintendent, nor does it employ any paint manufacturing experts or any other employees engaged in manufacturing. The said H. L. Williams, represented above by respondent as factory superintendent of The Franklin Paint Co., is not so employed by such Franklin corporation, but is employed by and is the factory superintendent of the Acorn Refining Co. Respondent corporation's employees number about 50, besides temporary clerks and others added during busy seasons, and all are engaged under the supervision of a sales manager in the work of promoting and effecting the sale and distribution of its paint and paint products.

Respondent corporation does not purchase, store, test, or otherwise handle or use any raw materials for the manufacture of paint or paint products. Evidence was introduced that the depictions of factory buildings, warehouse, tanks, grinders, and other manufacturing machinery, or facilities, set forth in its catalogues and on its business stationary, are depictions of the factory, warehouse, manufacturing facilities, and equipment owned and operated by the Acorn Refining Co. They are, however, set forth and described in effect in respondent's catalogues, letters, and order blanks as being the Franklin paint factory and manufacturing facilities and owned and operated by it in manufacturing the paint which it sells. The said factory buildings of the Acorn Refining Co. bear the word "Acorn" as a large permanent sign forming an integral part of the front of the main building. Depictions used by respondent have been so altered as to eliminate such sign "Acorn" and in lieu thereof depict the words "The Franklin Paint Co." purporting to be a large permanent sign on the front of said factory building and another on the warehouse.

The depiction of such signs on the building is wholly fiction as in reality no such signs exist on any building in any way connected with The Franklin Paint Co. Respondent eliminated from such depictions the fictitious signs The Franklin Paint Co., but in all other respects it continues the use of such depictions of factory showing them in its catalogues, letters, and order blanks in such an altered

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form as to conceal the sign "Acorn," which in reality exists on the buildings themselves. Such altered depictions are likewise still described in effect as depictions of The Franklin Point Co.'s property and factory. Said change by which such fictitious sign The Franklin Paint Co. was removed from such depictions of factory buildings was made by respondent in its catalogues after the issuance of the complaint. The change in the depictions on letterheads and order blanks was made after the trial of the proceedings had been begun.

(b) Respondent has used the representations described in paragraph 7 above in promoting the sale of its products throughout the period of more than three years prior to the date of the complaint. Such representations have also been so used subsequent thereto, and respondent is continuing their use as heretofore subject, however, to the foregoing change with respect to the removal of said fictitious sign.

(c) The said Acorn Refining Co. is an Ohio corporation engaged since about the year 1914 in the manufacture of a complete line of paints and paint products, which in the course of its business it sells to the purchasing and consuming public including industrial plants and other users and consumers throughout the United States, as well as supplying said paint and paint products at prices hereinafter stated to the respondent and to seven other similarly situated corporations including the Madison Paint Co. and The Progress Paint Co., respondents in Dockets 1573 and 1575, respectively. Said Acorn Refining Co. has, and operates in its business, a paint factory or paint manufacturing plant at Cleveland, Ohio, which paint factory or paint manufacturing plant is of reputable appraisal value of substantially less than \$1,000,000. The average daily production of the plant is 4,000 to 5,000 gallons of paint and 5,000 to 6,000 gallons of roof coating. Such Acorn company has facilities for the purchase and storage of raw materials in carload quantities. It also has a paint laboratory with a staff of four men. The respondent corporation, The Franklin Paint Co., occupies as its place of business rented office space on the premises of the Acorn Refining Co. for which space it pays rent to such Acorn company. And it is from the Acorn Refining Co.'s factory premises that respondent corporation ships its paint to its customers. Besides paint and paint products, respondent also purchases various other supplies and services used in its business from said Acorn company.

(d) Prior to the issuance of the complaint and until about January, 1930, substantially all of the capital stock of the respondent corporation, The Franklin Paint Co., was owned in equal proportion by S. S. Sanders and E. M. Katz, president and secretary-treasurer, respec-

tively, of the respondent, who also own in equal proportion all of the capital stock of the Acorn Refining Co. and are officers of that company. After the issuance of the complaint the capital stock of respondent corporation, owned by said individuals Sanders and Katz, was acquired and is now owned by the Acorn Refining Co.

(e) The Franklin Paint Co., respondent, is one of eight corporations whose stock, ranging from \$10,000 to \$100,000 authorized par value, is similarly owned by the Acorn Refining Co. They are similarly engaged in procuring paint manufactured by the Acorn Refining Co. and selling the same to the public throughout the United States. It is marketed by said companies as paint of their own respective line and manufacture. For instance, it is sold by The Franklin Paint Co. as the Franklin line of paints; by the Progress Paint Co. as the Progress line of paints; by The Madison Paint Co. as the Madison line of paints. To other purchasers it is sold by the Acorn Refining Co. as the Acorn line of paints. The products sold by the respondent corporation comprise from about 20 per cent to 25 per cent of the output of the Acorn Refining Co.

(f) Evidence was introduced on behalf of respondent to the effect that the prices charged by the Acorn Refining Co., to the respondent, The Franklin Paint Co., for said paint are the Acorn Refining Co.'s so-called "blue-book" prices less 15 per cent; and that such prices represented only the Acorn Refining Co.'s cost; that all the profits in the distribution of the paint to the public are allowed to accumulate in the name of The Franklin Paint Co. and are taken out mainly, if not entirely, in the form of salaries to said Katz and Sanders instead of through the declaration of dividends.

(g) Evidence was also introduced through respondent's witnesses tending to show that the business of the Acorn Refining Co. and said other eight corporations, including respondent, which are engaged in selling and distributing paint manufactured by the Acorn company, is considered by the officers of the Acorn company and of respondent as one business. That any such relationship exists between said companies is not disclosed to the purchasing public. Testimony was also given, largely by said S. S. Sanders, president of respondent, substantially to the effect that care is also taken to avoid disclosing any such relationship to the salesmen who sell the paint to the public for the various companies referred to, and that such nondisclosure enables these companies to sell more paint, and makes possible the solicitation and sale of the paint by several of the respective companies in any given locality or community by reason of the nondisclosure in such communities of the existence of such relationship or that in reality it is all the same paint which

is being sold under different company names and labels. As part of such nondisclosure each of said respective companies, although located on the same premises, represents itself as being located at a differently named street address. Testimony was also adduced by respondent to the effect that instead of continuing to conduct respondent's business under its name as an unincorporated trade name, it was incorporated so that, among other things, respondent could receive a listing and rating in the commercial rating publications of R. G. Dun & Co. and of Bradstreet's in such a way as not to disclose or reveal any relationship or connection with the Acorn Refining Co. or other company.

(h) In the sale and distribution of its paint and the conduct of its business, respondent corporation is a middleman instead of a manufacturer. The prices at which it sells its said paint to the public are middleman's prices and not factory prices or factory wholesale prices as represented. The profits which respondent makes in the sale of said paint and its costs therein, which profits and costs are included in its paint price and ultimately borne by the consumer, are in fact middlemen's costs and profits. The relative costs and prices covering the various colors, years and types of containers involved are illustrated by the following (using the color white, 1-gallon cans and the year 1930 as representative): The cost to Acorn Refining Co. of the paint material in 1 gallon of paint was \$1.16. The price which the Acorn Refining Co., the manufacturer, charged respondent for such gallon of paint was \$1.624 for the first four months of 1930 and \$1.573 for the remainder of the year. The Franklin Paint Co.'s price at which it sold such paint to the public was \$3.32 less 5 per cent discount for cash with order, or net within 60 days, and with freight paid on all orders shipped by freight and amounting to more than \$10. The prices per 1-gallon can of the same paint as sold throughout the same States and on similar terms by The Progress Paint Co. was \$3.75, and by the Madison Paint Co., \$3.85 with a 20-cent to 25-cent reduction during the latter part of the year.

(i) In the evidence adduced is testimony tending to show that outside house paint of quality comparable with that of respondent's paint is marketed and available to the purchasing public through retail stores at \$2.75 per 1-gallon can, as testified to by a paint manufacturer of Cincinnati marketing paints throughout various States which are also covered by respondent; that substantially comparable quality paint of the largest paint manufacturer in the industry is marketed through retail stores to users and consumers throughout the United States as retail prices from \$2.50 to \$2.75 per 1-gallon

can, as testified to by an official of such manufacturer. Some of the other testimony on this point included that by a retail dealer who stated he sells house paint of the best or highest quality at a price of \$2.65 per gallon in 100-gallon lots; also testimony by a paint manufacturer, selling largely to industrial plants for maintenance purposes, that in his opinion paints of certain costs, delivered to the carrier, ranging from \$1.17 to \$2.09 per gallon would be sold through dealer channels in 1-gallon cans at certain retail prices to the consumer which ranged from \$2.80 to \$4.70 per gallon. Upon the whole record the Commission finds that the prices at which respondent sells its said paint to the public are not less to the extent of \$1 to \$1.50 per gallon, or by about 40 per cent, than prices at which paints of similar or comparable quality are available to the purchasing public or at which the purchasing public can buy the same from competitors or retail stores.

PAR. 9. The aforesaid representations, statements, and assertions of The Franklin Paint Co., respondent corporation, with respect to the manufacture of its paint and the facilities and organization therefor, its plan or method of distribution without the intervention of middlemen, and its prices and the savings afforded customers, all as more particularly set forth in paragraph 7 hereof, are and have been false, misleading and deceptive, and have and had the capacity and tendency to mislead and deceive the purchasing and consuming public into purchasing respondent's paint and paint products in the beliefs, which are erroneous, that said representations, statements, and assertions are true in fact, and that—

(1) Respondent corporation is the manufacturer of said paint and in its sale and distribution thereof acts as a manufacturer and not a middleman; that respondent's customers in purchasing from respondent thereby deal directly with the manufacturer of said paint; that respondent corporation directly owns, operates, and controls a large modern paint factory in which it manufactures said paint; that it is the largest direct-to-user paint manufacturer in the world and that its manufacturing plant is a million-dollar factory; that it owns, operates and controls a large warehouse, modern paint mills, vats, tanks, and other manufacturing equipment as part of its facilities used by it in the manufacture of its paint; that it purchases raw materials for its paint in large quantity, and stores, tests and processes the same in the manufacture of its paint; that it employs a factory superintendent and a staff of paint experts and paint makers; that its factory, warehouse, tanks, paint mills, vats, and other manufacturing facilities above mentioned are as pictorially and otherwise represented in its said sales literature and are operated by respondent

in the manufacture of its paint and paint materials, and that the entire output of its said factory is required and used to supply the demand of respondent corporation's customers.

(2) That because respondent is the manufacturer of said paint and owns, operates, and controls said large manufacturing facilities and distributes its paint from itself as manufacturer directly to purchaser without the intervention of middlemen, respondent is able to and does sell to its customers paint at lower prices than paint of equal quality can be or is sold by competitors or retail stores or can be purchased by the public through retailers; that its prices are manufacturer's prices or factory prices which by reason of its method of distribution do not include cost, profits, or other charges of any middleman; that by reason of its manufacturing facilities and operations and such method of distribution, respondent gives its customers the benefit of, and its prices afford to purchasers, the savings of all such costs, profits, or other charges of middlemen, and that the extent of such savings afforded by respondent to its customers are from \$1 to \$1.50 per gallon or about 40 per cent as compared to the prices which the purchasing public must otherwise pay in purchasing paint of equal quality from retail dealers or competitors.

PAR. 10. In the evidence respecting the effect upon competitors of the use by a paint distributor or by a paint seller of misrepresentations as to the ingredients and quality of its paint and as to being a manufacturer selling direct to purchasers without the intervention of middlemen, is testimony of four witnesses experienced as directors or managers of sales or otherwise in the promotion of the sale of house paint and paint products of manufacturers or distributors selling in competition throughout the several States in which respondent also sells its paint.

The testimony of these witnesses was given mainly as their views or respective opinions based upon or as a result of their experience in the business, and included testimony to the effect that the use on the part of any paint distributor of representations which are untrue is a detriment to competing concerns or others engaged in the same business; that it destroys confidence on the part of the consumer, the buyer, in his ability to know whether he is getting what he is paying for; that the misrepresentations by a distributor of paint of the quality or ingredients thereof is "extremely harmful to the business of competitors"; that the use of false or misleading representations has a tendency to divert trade from other competitors selling similar paints; that the misrepresentation as to the composition or quality of paint is "a general detriment to the whole trade"; that misleading representations by a paint distributor increases the burden

upon competitors to meet such competition; that representations of being a manufacturer selling direct to consumers to the exclusion of middlemen, whether true or false, would have an effect or tendency to substantially divert trade from competitors; that business has definitely been lost by one witness's company because of such representations by competing concerns not including the respondent; that a seller's misrepresentations of an inferior paint as first quality paint would divert business from competitors if the prices were less than the competitors' price for first quality paint, that such diversion would depend upon the price.

It was stipulated by respondent that certain Commission witnesses about to be sworn and consisting of five other members of paint manufacturing or distributing companies selling in general competition in the same territory in which respondents are selling, if called as witnesses, would testify that untruthful advertising is unethical and that it tends, in their opinion, to divert business or trade from those engaged legitimately in a similar business; and that such stipulation may be used with the same effect as though such witnesses were actually sworn and so testified. It was also conceded of record by respondent that "deliberately false advertising is unethical", and "contrary to good morals".

PAR. 11. Upon the record the Commission finds that the aforesaid false, misleading, and deceptive representations, statements, and assertions, as set forth in the foregoing findings and used by respondent in the course and conduct of its said business, are methods of competition in interstate commerce which (a) are unfair and are characterized by deception; (b) have been pursued by respondent against the interest of the public; (c) have the capacity, tendency and effect of injuring the public and unfairly diverting trade from respondent's competitors and otherwise injuring and prejudicing said competitors in their business; and (d) operate as an unfair competitive advantage to respondent and a detriment to and burden upon the legitimate paint manufacturing and marketing industry in this country.

CONCLUSION

Respondent's use in its said paint marketing and distributing business of the false, misleading, and deceptive acts and practices under the circumstances and conditions hereinabove set forth are unfair methods of competition contrary to the public interest, and are and have been injurious and prejudicial to the public and to the competitors of respondent and constitute a violation of the provisions of section 5 of the act of Congress approved September 26,

1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, including the pleadings, the evidence, stipulations, and upon argument of counsel, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That, in the course of the sale or distribution in interstate commerce of paints or paint products, the respondent corporation, The Franklin Paint Co., its officers, directors, agents, representatives, servants, and employees, cease and desist:

(a) From directly or indirectly making or causing to be made any representation, statement or assertion, in advertisements, trade promotional literature or in any other manner, to the effect that any such paint or paint product is composed wholly or principally of white lead, zinc oxide and linseed oil with necessary color pigments and dryers; or that any such paint or paint product does not contain titanox, barium sulphate, asbestine, silicious material, or any inert material, if and when such representation, statement, or assertion is not true in fact.

(b) From directly or indirectly making or causing to be made any representation, statement, or assertion, in advertisements, trade promotional literature or in any other manner, to the effect that respondent corporation is the manufacturer of any of said paints or paint products; that it owns, operates, or controls a paint factory, or any other paint manufacturing equipment or facilities used in the manufacture of said paints or paint products; or that customers in purchasing from respondent are thereby dealing directly with the manufacturer of said products; or that in the sale and distribution of said products by respondent corporation to its customers the same are sold and distributed by and from the manufacturer directly to such customers to the exclusion and without the intervention of middlemen, unless and until respondent becomes the manufacturer and actually owns and operates, or directly and absolutely controls such paint factory and paint manufacturing equipment or facilities by which any and all such products so represented are manufactured; or unless and until, so long as said paint or paint

products are manufactured by the Acorn Refining Co. and the relationship subsists between that company and the respondent as set forth in the findings as to the facts, a full and true disclosure of the facts of such manufacture by, and relationship of respondent to, said Acorn Refining Co. be prominently made in conjunction with such representations.

(c) From directly or indirectly making or causing to be made any representation, statement or assertion, in advertisements, trade promotional literature or in any other manner, to the effect that the prices at which respondent sells its products are manufacturer's prices; or that by reason of respondent being such manufacturer and selling its products under a plan or method of distribution by which all costs, profits, or other charges of middlemen are eliminated, respondent's said prices are less than the prices at which paints of equal quality are available, or may be purchased from competitors and from retail stores or through other dealer channels; or that the benefit of such savings by reason of the elimination of such middlemen accrues to purchasers from respondent, or that such a saving is a certain definite amount, such as \$1 or \$1.50 per gallon, or 40 per cent, unless and until respondent owns and operates, or directly and absolutely controls a factory or manufacturing facilities in or by which said products are manufactured, and such representations are otherwise true in fact.

It is further ordered, That respondent corporation, The Franklin Paint Co., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Commissioner Ferguson dissenting to issuance of order as to use of the word "manufacturer"; Commissioner Humphrey dissenting in memorandum attached.

Dissenting opinion by Chairman Humphrey

One who is not a manufacturer is guilty of an unfair practice in advertising that he is such, because the public believes that by buying from a manufacturer they save the middleman's profit.

There is no such element in this case. The respondent is in every particular regarding additional profits a manufacturer. He is in fact, while not a sole manufacturer, a part manufacturer. There may be a deception in the technical sense to the public, but there is no injury to the public.

This case involves a method of business conduct that it is admitted increases the sales of the products of the respondent. It therefore increases competition, and is to that extent in the interest of the public.

To cause the respondent to cease calling itself a manufacturer, would do him substantial injury in many ways. It would benefit no one. I believe that the Commission should issue no order that is not clearly in the interest of the public. This proposition is so plain that it calls for neither argument nor citation of authorities.

Syllabus

IN THE MATTER OF
THE MADISON PAINT COMPANY

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

Docket 1573. Complaint, Feb. 25, 1929—Decision, June 28, 1932

Where a corporation engaged in sale and distribution of paints and paint materials to purchasing and consuming public through large numbers of solicitors in their respective home or local communities, and through catalogues, circulars, newspaper and periodical advertisements and other trade literature,

(a) Described said paints in its trade promotional literature as composed wholly or principally of the best grades of white lead, zinc oxide, and linseed oil, and its outside house paint as a white lead and linseed oil paint of the highest grade containing only the best and most costly ingredients, through such statements as "Only the finest raw materials that money can buy", "Only first quality white lead, zinc, and linseed oil and other materials", "The finest exterior house paint that money can buy. Made of the purest ingredients, the result of years of research and experience. Covers easiest, lasts longest", etc., "You can buy elsewhere roofing and paints as good * * * but you would have to pay about twice the * * * low direct factory price", and that "unscrupulous manufacturers often take advantage" of common erroneous belief that weight in paint means quality "by loading their paint with barytes or marble dust, which are both very heavy fillers but which do not wear or cover well", and that its house paint was "exactly the right weight because it contains the finest, purest, and the most durable of ingredients";

Facts being its own paint contained (1) such inert pigments as barium sulphate (barytes) and asbestine in proportions regarded by experts as excessive, and, by some, as amounting to adulterants in proportions used, and (2) white lead and zinc oxide only in minor proportions, and formula and composition required and disclosed approximate pigment and vehicle content of 58 per cent and 42 per cent, respectively, and (a) pigment or solid content of 36 per cent titanox, 4 per cent lead sulphate, 20 per cent zinc oxide, 16 per cent barium sulphate and 24 per cent asbestine (with subsequent substitution of 12 per cent white lead for 4 per cent lead sulphate, and 8 per cent barium sulphate, 20 per cent zinc oxide, 16 per cent barium sulphate, and 24 per cent asbestine (with subsequent substitution of 12 per cent white lead for 4 per cent lead sulphate, and 8 per cent barium sulphate for 16 per cent), and (b) vehicle or liquid content of 87 per cent linseed oil, in fact diluted by addition of substantial quantities of soya bean oil, and weight was less than that claimed;

With capacity and tendency to mislead, deceive, and induce purchasing public to buy said paint as and for the preferred and demanded high quality product composed of the generally esteemed white lead, zinc oxide, and pure linseed oil, with necessary color pigment and dryer, and of the best and finest raw paint materials obtainable, and with no such cheap, inert pigments as barium sulphate and asbestine, or any other inert pigment other than necessary coloring pigment, or oil other than pure linseed oil;

- (b) Represented itself as a manufacturer, owning, operating and controlling a large modern paint factory, purchasing and storing raw materials in large quantities, and as an old, million dollar company with hundreds of employees, paint experts, chemists, laboratory, vats, etc., through depictions of "our giant paint factory", "laboratory for research", "aging and storage tanks", "immense grinders", "shipping platform", etc., and through such statements in catalogues and other trade literature addressed to prospective customers or agents as "World's largest paint factory selling direct", etc., "When you have a concern of this size to do business with—backed by prestige and reputation covering nearly a quarter of a century you can trade with confidence", "You are benefitted * * * by dealing direct with the factory, * * * the greatest stock of paint * * * in the country to select from and you get your paint fresh from the mixing vats * * *", "One of the finest equipped paint factories * * * covers two city blocks", "The mixing * * * is done by the most modern and up to date machinery in our own new plant", "We do a tremendous volume of business, enabling us to attract the highest skilled paint-making experts and employ the most modern equipment", "Our large storage tanks permit us to buy raw materials when prices are lowest and store them until ready for use, saving vast sums of money for our customers", "Our wonderful factory * * * does away with expensive labor and makes production cheaper", and referred to its huge laboratory with a staff of chemists, constantly working out new problems and checking raw materials and to its financial strength of over one million dollars and its Bradstreet rating of G-AA; and
- (c) Represented itself as selling and distributing its product directly from factory to purchaser without intervention of any jobber, wholesaler, retailer, or middleman and that purchasers in dealing with it dealt directly with the factory and saved themselves the costs, profits, and other charges of aforesaid intermediaries and secured their paints at savings of from 25 per cent to 40 per cent or from \$1 to \$2 a gallon less than products of comparable quality could be bought from competitors or retailers, through such statements as "The world's biggest paint factory—selling direct to the user", "You save \$1 to \$2 per gallon when you buy", "Selling direct from the factory is the modern way * * * the middleman who is chiefly responsible for the high cost of living is completely cut out. Factory to user is the economical road because it brings about a real saving without sacrifice of quality", "Before the store-bought paint reaches you, there is included in the price you pay the profits of many middlemen—the wholesaler, the jobber, the retailer. At each step in the journey of the paint to you, these middlemen add their profit", "Every can sold direct to users at the low factory price. You pay for paint only. None of your money goes for middlemen's profits or expensive advertising", "So many thousands of * * * customers the country over have welcomed this money saving paint plan that it takes an immense factory working to capacity to keep up with the demand. Thousands of dollars * * * saved and banked by paint users as a result", "We save you from 25 per cent to 40 per cent on every gallon purchased as we sell direct from the factory to the user eliminating jobber and middleman entirely", "Besides their [middlemen's] profits, you have to pay for their costs of doing business—rent", etc., "* * * over half of what you pay for store bought

paint goods is for cost of distributing", "Up to date people never think of going to a store for roofing or paint products any more. Store paints of comparable quality cost more because of the many middlemen's profits you have to pay", "these are factory prices without one cent added for dealers or jobbers * * * you get lowest factory prices on the finest paint that can be made", and ascribed its pretended ability to sell such alleged high grade products at such a low price to its being "a million dollar concern", purchasing raw materials in such quantities that it got "rock bottom prices", and manufacturing in tremendous quantities, with consequen' very low overhead, etc.;

Facts being it did no manufacturing and neither owned nor operated any factories, laboratories, etc., but, along with seven other similarly operated corporate selling organizations, shipped all its paint from a separate corporate manufacturer (with a reputable appraisal value substantially less than one million dollars), to which its interests were tied by the fact of common stock owners and general officers, upon a small part of the premises of which corporate manufacturer's own place of business was located, and which manufacturer was the real owner of buildings, etc., depicted as its own as above set forth, and connection with which manufacturer it carefully concealed and withheld, it had no paint manufacturing experts, chemists, etc., in its employ but only 22 persons, besides salesmen, engaged under a sales manager in carrying on sale and distribution of its merchandise, rating referred to was a collective figure applying to entire group under directors' resolution to that end, aforesaid corporate manufacturer charged it for paint in question a sum substantially in excess of said manufacturer's cost, its prices were not factory, or factory wholesale prices, but middlemen's prices, and figures at which it resold its said paint represented an increase of approximately 100 per cent over price to it and exceeded those charged purchasing public by retail stores for paint of comparable quality, and did not represent claimed savings to purchasing public of 25 per cent to 40 per cent or \$1 to \$2 a gallon;

With capacity and tendency to mislead and deceive the purchasing and consuming public and induce purchase of its said paint and paint materials by such public in the erroneous belief that said false, misleading, and deceptive representations were true in fact, and with effect of injuring the public and unfairly diverting trade from and otherwise injuring and prejudicing competitors in their business, and of operating as an unfair competitive advantage to it and a detriment to and burden upon the legitimate paint manufacturing and marketing industry of the country, and with capacity and tendency so to do:

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

Mr. Henry Miller for the Commission.

Squire, Sanders & Dempsey and *Mr. Samuel Doerfler*, of Cleveland, Ohio, for respondent, and *Mr. Thomas J. McFadden*, of Washington, D. C., for Unfair Competition Bureau of the Paint & Varnish Industry (*Amicus Curiae*).

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Ohio corporation engaged in the sale and distribution of paints to the trade and consuming public throughout the United States through advertisements in newspapers, magazines, and similar publications, catalogues, circulars, letters, pamphlets, and similar sales literature, and through salesmen and agents, and with principal office and place of business in Cleveland, with misrepresenting the composition and quality of its product, its business status or advantages, and prices, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as aforesaid, represented its outside house paint as composed wholly or principally of white lead, zinc oxide, and linseed oil, as being a white lead and linseed oil product of the highest grade, and as containing no barium sulphate, siliceous matter, calcium carbonate, or other inert material; the fact being that the product in question was not such a paint as claimed, but was inferior thereto, contained white lead and linseed oil in minor proportions only, had a pigment portion containing approximately 23 per cent, 17 per cent, and 9 per cent, of barium sulphate, siliceous matter, and calcium carbonate, respectively, and that 19 per cent of the liquid content was other than linseed oil.

Respondent further, as charged, represented itself as a manufacturer of paints and paint materials, owning and operating a large factory and other manufacturing equipment, and selling directly to the purchaser or consumer without the intervention of middlemen, at manufacturers' prices, and as thereby saving purchasers the costs and profits of jobbers, wholesalers, retailers, and middlemen, and selling its products at prices lower than those at which similar products could be purchased from competitors; the facts being that respondent did not manufacture, directly or indirectly, products in question, or sell same directly, as above claimed, but sold same at dealers' prices, including middlemen's costs and profits, and at prices which were not lower than those of its competitors for similar products.

The use of such representations, statements, and assertions, as alleged, "has been and is calculated to mislead and deceive, and said representations, statements, and assertions had and have the capacity and tendency to, and did, mislead and deceive large or substantial numbers of the purchasing and consuming public into, and thereby

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caused them to purchase said products in and because of, the erroneous beliefs that said false, misleading, and deceptive representations, statements and assertions" were true in fact, and the aforesaid false, misleading, and deceptive acts and practices of respondent "had and have the capacity and tendency to and do unfairly divert trade from said competitors," who sell and distribute their paints, without misrepresenting their business methods, or facilities, or their products or the terms under which marketed; all to the injury and prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on February 25, 1929, issued and thereupon served its complaint in this proceeding upon The Madison Paint Co., a corporation, respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent entered its appearance by counsel and on March 25, 1929, and February 12, 1931, respectively, filed answer, and amended and supplemental answer, to said complaint. By such answers respondent admitted certain allegations in said complaint, including all of paragraph 1 thereof, and denies others therein. Thereafter, the matter being ready for the taking of testimony and other evidence with respect to the charges in the complaint, hearings therefor were held before an examiner of the Commission thereunto duly appointed, at which hearings oral testimony, documentary evidence, and other exhibits were introduced in evidence by counsel for the Commission in support of said complaint and by counsel for the respondent in opposition thereto. By agreement the hearings were held and the evidence taken in a consolidated proceeding covering not only this case but also the proceedings before the Commission upon complaints issued against The Franklin Paint Co., Docket No. 1567, and The Progress Paint Co., Docket No. 1575. Said evidence was duly recorded and filed of record in the office of the Commission, and thereafter a stipulation by respondent, dated November 6, 1931, and relating to certain matters of fact in issue, was submitted and filed by its counsel.

Thereupon, by agreement of and with the opportunity for the filing of briefs by counsel, the proceeding was brought on for final hearing before the Federal Trade Commission, and was heard upon

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oral argument of counsel for the respondent and counsel for the Commission, the latter having filed brief while counsel for the respondent elected to submit the case upon oral argument without brief. And the Commission having now duly considered the record, and being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The Madison Paint Co. is a corporation organized under the laws of the State of Ohio in March, 1921, and, at all times since, doing business as such Ohio corporation with its office and place of business in the city of Cleveland in said State. The said business of respondent is the sale and distribution of paints and paint materials to the purchasing and consuming public throughout the several States of the United States. The said paints are designated and sold by respondent as the Madison line of paints and they consist largely of outside house paint for use upon dwellings and other buildings and property. Respondent advertises, offers for sale, and sells its paints and paint materials (a) through and by means of salesmen and agents who, on behalf of respondent, solicit purchase orders for said products from the purchasing and consuming public throughout the several States of the United States; (b) also through and by means of catalogues, circulars, letters, color cards, pamphlets, and similar sales or trade promotional literature in which it describes, represents, and offers for sale its paints and paint products, and which it causes to be sent and delivered from time to time by mail and by said salesmen and agents, and otherwise, from its place of business in Cleveland, Ohio, through and into many other States of the United States to numerous customers and prospective customers in such other States; (c) and through and by means of advertisements published by it from time to time in newspapers, magazines, and similar publications of general circulation among the purchasing public throughout the United States and in various sections thereof.

Respondents said salesmen and agents who are active, number between 1,500 and 2,000. They are employed by respondent on a commission basis and solicit orders for and sell said products in their respective home or local communities throughout the United States. Respondent's means of contact with many of such salesmen is limited entirely to correspondence and to said sales or trade promotional literature which is supplied to such salesmen and used by them in soliciting trade for respondent. As a result and because of said advertising, soliciting, and offering for sale, many members of the purchasing public throughout the United States are thereby

induced from time to time to purchase said paints and paint materials from respondent. The customers' purchase orders, and their remittances of the purchase price, for the products so purchased, are transmitted from various States to respondent at its place of business in Cleveland, Ohio. To complete the sale and in making distribution and delivery of its products pursuant to said purchase orders, respondent causes its paints and paint materials so ordered and sold to be transported and delivered from Cleveland, Ohio, through and into other States of the United States to the respective purchasers thereof in such other States.

In so conducting its business respondent has, in the course thereof, continuously maintained a current of commerce between the State of Ohio and other States of the United States, and is and has been engaged in interstate commerce in such sale and distribution of its paints and paint materials. Annual gross sales of its products aggregated \$125,502.27 for 1928, \$350,583.09 for 1929, and \$332,854.30 for 1930. Said products are distributed by respondent in the usual commercial containers such as 1-gallon cans, 5 and 10 gallon cans, kegs, half barrels, and barrels. Shipments are made in small quantities of a few gallons up to comparatively large quantities depending upon the amount ordered by the respective customer; and such shipments are forwarded by parcel post, express or freight as desired. Throughout the territory covered by respondent in its sales there are many competing brands and makes of house paint and similar paint materials offered for sale and sold to the purchasing and consuming public through the retail stores and by dealers, distributors, and manufacturers. At all times in the course and conduct of its business respondent has marketed its paints and paint materials and conducted its said business, in direct, active competition with such competing products and with many individuals, partnerships and other corporations engaged in the sale and distribution of paints and paint materials in commerce in, between, and among the several States of the United States.

PAR. 2. In and through the methods and means used by respondent in advertising, offering for sale and selling its paints and paint materials, as hereinabove set forth, and for the purpose and with the effect of thereby inducing the purchasing public to purchase said paints, respondent has made, and has caused its paint to be offered for sale, sold, and distributed to the purchasing and consuming public upon various representations, statements, and assertions to the following effect:

That respondent's outside house paint is composed wholly and principally of the best grades of white lead, zinc oxide, and linseed oil; that its outside house paint is a white lead and linseed oil paint

of the highest grade; that it contains nothing but the highest and best class, grade, or quality of paint ingredients, the highest and costliest ingredients; that said paint is not adulterated with cheap imitations or low-grade substitutes; that in its manufacture respondent's policy is to make paint of the very best grade instead of loading it up with cheap fillers which lessen the durability of the paint; that some people think that weight in paint means quality, but that this is not the case, that unscrupulous manufacturers often take advantage of this belief by loading their paint with barytes (i. e., barium sulphate) or marble dust, which are both very heavy fillers but which do not wear or cover well, that said paint of respondent is exactly the right weight because it contains the finest, purest, and the most durable ingredients.

PAR. 3. The following are among the specific representations of the above-named type as they have been printed by respondent in its said sales or trade promotional literature:

EIGHT POWERFUL REASONS FOR BUYING MADISON NATIONALLY FAMOUS PAINTS

1. Quality Madison Paint is 100 per cent quality. Only the finest raw materials that money can buy enter into its manufacture. (P. 1, Catalogue, Com. Ex. 24; p. 10, Com. Ex. 35.)¹

What goes into Madison Paint—A-1 Ingredients.—The first secret of Madison quality is the use of the highest grade ingredients. Only first quality white lead, zinc, and linseed oil and other materials are used. (P. 5, Catalogue, Com. Ex. 24.)

100 per cent quality paint in every can.—Every can or barrel of Madison Paint comes to you with quality in every can. The Madison label is your assurance that the contents are absolutely 100 per cent quality paint as good as money can buy anywhere. (P. 5, Catalogue, Com. Ex. 24.)

It is an economic fact that the amount of good you can get out of any product—be it paint, foods, or clothes, is governed entirely by the amount of good you put into it. Only the very best grade of zinc oxide, white lead, linseed oil, and color pigments are used in making Madison paint. Its quality can not be surpassed and is only equalled by the best. (Com. Ex. 24, Catalogue, p. 13.)

As further assurance The Madison Paint Co. guarantees that Madison paints are made from the finest, A-1 grade, raw materials obtainable. (Com. Ex. 27, Printed Circular; See also Com. Ex. 35, Catalogue; Resp. Ex. 24, current circular, and current catalogue, Resp. Ex. 23, p. 4.)

Madison house paint made from highest grade materials. (Com. Ex. 29, Color Card.)

Madison house paint.—The finest exterior house paint that money can buy. Made of the purest ingredients, the result of years of research and experience. Covers easiest, lasts longest. The beauty and luster of this paint makes customers proud of their homes. Increases value of property. Beautiful, protective, durable. (Com. Ex. 32, price list.)

Madison best grade paints contain only the purest and finest of ingredients and are made fresh to your order. Cover an average of 300 square feet to

¹ Exhibits not published.

the gallon, two coats, and give you a firm, hard, glossy, surface that will last for years. Try them at our risk. (Com. Ex. 34-C, customer's copy of order blank.)

Madison uses the finest paint materials, mixes them scientifically and employs the best paint-making talent to produce a product it can proudly offer as the best. (Com. Ex. 35, Small Catalogue, p. 3.)

This paint is of the finest quality and will stand up under ordinary conditions for at least five years of excellent service. It has fine covering quality, spreading easily and going a great distance and a very beautiful appearance.

It is our policy to make paint of the very best grade instead of loading paint up with cheap fillers which lessen the durability of the paint.

Madison exterior house paint is constructed of pure linseed oil, white lead and zinc oxide. (Com. Ex. 37, letter to customer.)

Does the weight of paint prove its quality?—Weight has nothing whatever to do with quality in paint. Some people think that weight means quality, but this is not the case. Unscrupulous manufacturers often take advantage of this belief by loading their paint with barytes or marble dust, which are both very heavy fillers but which do not wear or cover well.

Madison house paint is exactly the right weight because it contains the finest, purest, and the most durable of ingredients. Of course, the weight varies slightly, depending on the color purchased, but averages from fifteen to sixteen pounds to the gallon. (Com. Ex. 139, Current Salesmen's Instruction Booklet, p. 25.) (Com. Ex. 140, 1930 Salesmen's Instruction Booklet, p. 15.)

Does anybody sell better paint or roofing than The Madison Paint Company? No. We sell the finest paint and roofing that can be made—regardless of price. That's why our products last for years, keeping their life, luster, and beauty. (Com. Ex. 140, Salesmen's Instruction Booklet, p. 9.)

The quality of all Madison paint products is the very best that is possible to put into paints. A higher price would not and could not buy any higher quality. Madison Paints are not "cheap" paints, which are the most costly in the long run. They are the best paints you can buy, sold at the lowest prices consistent with quality.

Madison uses only the finest quality A-1 grade ingredients. These are scientifically ground and mixed in the most modern machines by highest skilled paint makers. This means that you get 100 per cent quality paint products, as fine as you can buy anywhere no matter what price you would be willing to pay. We use only the best quality materials. Madison products are not adulterated with cheap imitations or low grade substitutes. The mixing is done scientifically in the most up-to-date machinery so there is perfect mixing and most important—perfect blending. Our men have the knowledge, the knack, and the experience and know how to produce in every Madison product a quality that is famed as 100 per cent excellent, every ounce uniform, full body, and smoothly ground. True, you can buy elsewhere roofing and paint as good as Madison sells you—but you would have to pay about twice the Madison low direct factory price.

* * * We pride ourselves on the superfine quality of this superior house paint. We go the limit to make it the best house paint you can buy no matter what price you pay. Of course, we use only the highest grade and costliest ingredients, but the real secret of unsurpassed quality in Madison house paint is the skill with which we proportion, mix, grind and blend these

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ingredients. In our enormous factory at Cleveland where we prepare thousands of gallons daily, we employ the greatest paint-making experts who use the latest and most modern equipment. (Resp. Ex. 23-A, Current Catalogue, pp. 3, 6, 10.)

PAR. 4. The representations with respect to the composition of said outside house paint as set forth in paragraph 2 hereof were used throughout a period of more than two years prior to the issuance of the complaint and for a period of approximately ten months thereafter, without any substantial change. Evidence was introduced by respondent that thereupon and in certain parts of its sales or trade promotional literature used, beginning with the season of 1930, there was incorporated a change in the text of such representations to the extent of eliminating the specific mention of the terms "white lead", "zinc oxide", and "linseed oil" as constituting the ingredient of the paint, and substituting therefor such other expressions to the effect that in the manufacture of the paint respondent uses "only the highest grade and costliest ingredients"; that "Madison uses only the finest quality A-1 grade ingredients", (Resp. Ex. 23-A); "the finest A-1 grade raw materials obtainable" (Resp. Ex. 24); that the paint contains "only the purest and finest of ingredients" (Com. Ex. 34-C). The above described changes did not eliminate the other representations with respect to the composition of its paint as described in paragraph 2 hereof, and respondent continues to use in its sales promotional literature said representations to the effect that the paint contains nothing but the costliest and the highest and best class, grade, or quality of paint ingredients; that said paint is of the very best quality regardless of price, and is not adulterated with cheap imitations or low-grade substitutes; that some people think that weight in paint means quality, but that this is not the case, that unscrupulous manufacturers often take advantage of this belief by loading their paint with barytes (i. e., barium sulphate) or marble dust which are both very heavy fillers but which do not wear or cover well, that said paint of respondent is exactly the right weight because it contains the finest, purest, and most durable ingredients.

PAR. 5. In truth and in fact said house paint as marketed by respondent throughout said period of years under the representations described in paragraphs 2, 3, and 4 hereof, is not and has not been a white lead and linseed oil paint, nor has it been composed wholly or principally of white lead, zinc oxide, and linseed oil, with or without the necessary color pigments, but in fact contained and still contains white lead and zinc oxide only in small or minor proportions with a barium sulphate or barytes content both as a separate ingredient and as a large proportion of a combination ingredient,

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titanox; and, during a period, was made with the oil ingredients containing soya bean oil which was substituted in part for linseed oil as hereinafter described.

(a) It is established by the evidence and by stipulation of respondent that the composition of said paint and the basic master formula under which the same has been manufactured, since about January 1, 1931, are as follows:

MASTER FORMULA COVERING PERIOD SINCE JANUARY 1, 1931

Pigment (i. e., the solids, comprising 57.77 per cent of the paint):

	Per cent
Titanox.....	36
White lead.....	12
Zinc.....	20
Asbestine.....	24
Barium sulphate (also known as barytes).....	8
Total.....	100

Vehicle (i. e., the liquid portion comprising 42.23 per cent of the paint):

	Per cent
Linseed oil.....	87
Mineral spirits and dryers (i. e., volatile liquid).....	13
Total.....	100

(b) It is also established, by evidence adduced by respondent, that prior to the change of the above formula and during the period from October 26, 1925, to December 31, 1930, more than three years immediately prior to the issuance of the complaint and for a considerable period of time thereafter, respondent's said paint was manufactured under the following master formula, subject, however, to the exception stated below with respect to the item of linseed oil:

MASTER FORMULA COVERING PERIOD OCTOBER 26, 1925, TO DECEMBER 31, 1930

Pigment (i. e., the solids in the paint consisting of 57.77 per cent of the paint):

	Per cent
Titanox.....	36
Lead sulphate.....	4
Zinc oxide.....	20
Barium sulphate.....	16
Asbestine.....	24
Total.....	100

Vehicle (i. e., the liquid portion, consisting of 42.23 per cent of the paint):

	Per cent
Refined linseed oil.....	87
Oil dryer and thinner.....	13
Total.....	100

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(c) In manufacture the paint was processed through the grinders, mixers, and other manufacturing machinery in batches of 83 gallons each. It was the duty of the factory workmen engaged in producing the paints to introduce the ingredients in certain designated quantities which would be sufficient to produce 83-gallon batches and would correspond to the relative proportions named in the above formulæ. In the manufacture of the paint under said master formula covering the period October 26, 1925, to December 31, 1930, it was not purely linseed oil which was in fact used for the ingredient listed as "refined linseed oil, 87 per cent," but besides linseed oil there was actually used soyabean oil in the proportion of 7 gallons to each batch of 83 gallons of paint. Such 7-gallon substitution of soyabean oil was made during the incumbency of a former factory superintendent of the Acorn Refining Co., Mr. Rumberg, who served as such for several years and until July, 1929. Testimony of the succeeding factory superintendent of the Acorn Refining Co., H. L. Williams, was introduced by respondent to the effect that beginning October, 1929, the amount of soyabean oil substituted for linseed oil was 6 gallons in every 83 gallons of the paint; that such substitution of soyabean oil for linseed oil was made because "in our estimation" such soyabean oil "is as good an oil in that quantity as linseed, and as we had an oversupply of soyabean oil at that time, we used it to cut down our inventory, and that only was done until the first of the year 1930"; also that the cost of soyabean oil was higher than the cost of linseed oil (Tr. p. 1171).

(d) In proof of the composition of said paint there is also evidence, introduced by counsel for the Commission, as to the ingredients in seven different samples of the paint as determined by chemical analyses made by paint chemists of the United States Bureau of Standards. Five of such samples were 1-gallon cans of the paint procured prior to the issuance of the complaint from shipments to purchasers. The other two were 1-quart cans obtained directly from a distributor of paints in Cleveland, Ohio, after the date of the complaint. All samples were procured prior to said use of the changed formula adopted January 1, 1931, and during the period of the use of said master formula of the period of October 26, 1925, to December 31, 1930. In comparison with such last-named formula the results of said analyses as given in evidence showed some variation or differences in the relative proportions or percentages of the various ingredients in these particular samples or specimens, but were in substantial accord with the specifications in the master formula in the following important respects: Kind or name of ingredients used; the total amount of inert pigments in the paint; total

amount of active pigments in the paint and the relative proportions of the pigment and the vehicle or liquid.

(e) Titanox is a paint pigment consisting of 75 per cent barium sulphate, also called barytes, and 25 per cent titanium dioxide. Thus, when expressed by its component parts, the item of 36 per cent titanox in the above-stated master formulæ may be rendered 9 per cent titanium dioxide and 27 per cent barium sulphate. The respective items of 8 per cent and 16 per cent barium sulphate in the above-mentioned master formulæ used prior and subsequent to January 1, 1931, are barium sulphate ingredients which are in addition to the barium sulphate present in said titanox and is free from barium sulphate. The said 8 per cent barium sulphate and 24 per cent asbestine in the currently used master formula above stated, and the 16 per cent barium sulphate and 24 per cent asbestine in said former master formula, are inert paint pigments, while the remaining pigments listed in said formulæ are known as active paint pigments.

(f) Barium sulphate is an inert pigment having little or no opacity, i. e., hiding power, and is a very cheap ingredient in comparison with lead, zinc, or titanox. From figures supplied by respondent covering the years 1927 and since, the cost of the barium sulphate in the paint was less than 1 cent per pound as compared to the average of 6½ cents per pound for zinc oxide and from 6¾ cents to 9 cents per pound for lead. Through the same period the cost of titanox ranged from 6½ cents per pound to 11½ cents with an average for the period of a little less than 9 cents per pound. Barium sulphate is a relatively heavy material of approximately the same bulk as titanox, but of about 35 per cent to 60 per cent greater bulk than zinc and lead, respectively. Asbestine is a siliceous material which is likewise inert and has little or no opacity in comparison with lead, zinc, or titanox. It is also a comparatively cheap pigment with an average cost of less than 1 cent per pound for the above-mentioned period. Such asbestine is of much greater bulk than lead or zinc or the other pigments in the paint. The comparative bulk of these materials may be expressed by the facts that it requires only 23.74 pounds of asbestine to make 1 gallon in volume, whereas it requires, respectively 56.74 pounds of lead, 47.15 pounds of zinc, 35.82 pounds of titanox, and 35 pounds of barium sulphate to make 1 gallon in volume in each instance. Said inert pigments such as barium sulphate and asbestine are paint ingredients of low class or merit, and they do not rank among the finest or best paint pigments which are on the market and in general use. Titanox is a comparatively newly discovered paint ingredient which is classed as an active pig-

ment. Respondent introduced testimony, however, to the effect that it is chemically inert. It has high hiding power, and as shown by the figures above-stated, it has about 60 per cent greater bulk than lead and 35 per cent greater than zinc. The pigment is used by some manufacturers as one of the pigments for first quality paint, but its properties or qualities as a paint pigment are not so generally or widely known among the purchasing public as are those of white lead and zinc oxide.

(g) White lead and zinc oxide are paint pigments of high quality and have long been known and recognized as such in the paint industry and trade, and by painters and the consuming public generally. They rank high and are extensively used by paint manufacturers as the principal pigments for paint of highest or best quality. Linseed oil is likewise recognized and considered as a product of highly desirable qualities and merit for use as the oil ingredient of paint. Outside house paint consisting wholly or principally of white lead, zinc oxide, and linseed oil with necessary color pigments and dryer, and white lead and linseed oil paint, are paints which are among those of the highest grade or best quality and have been considered and generally recognized as such among paint manufacturers, dealers, users, and consumers. And paints composed wholly or principally of such ingredients, and white lead and linseed oil paint, are in demand by the purchasing and consuming public, and the composition of such paints is a sales advantage and an important factor which is conducive to the sale of such paints. White lead and linseed oil paint has white lead as its pigment, exclusive of coloring pigment, and linseed oil as the oil ingredient. Such paint has long been used by master painters for outside house paint, and is the type of paint which is frequently mixed by hand as used or needed for any particular painting job. The reputation and recognition of such lead and oil product as paint of first or best quality has existed among painters and the public generally for many years.

(h) Much evidence was introduced with respect to the quality of respondent's paint and the effect of the ingredients therein as compared to high quality paints, white lead and linseed oil paints, and paints manufactured of white lead, zinc oxide, and linseed oil or paints containing only the best or highest class paint ingredients. The witnesses called by counsel for the Commission on these points included paint chemists of the United States Bureau of Standards and a number of paint chemists and others having long experience in the manufacture, formulation, testing, and sale of paints. The evidence adduced embraces testimony of such witnesses to the effect that respondent's said paint is inferior in quality to paint composed

wholly or principally of white lead, zinc oxide, and linseed oil, white lead and linseed oil paints, or paints composed of the highest class or best paint ingredients; that the said inert pigments in respondent's product, barium sulphate and asbestine, are in excessive proportion to the active pigments; that of the pigment of first or best quality paints a maximum of, or not more than, 15 per cent of inert materials can be used without reducing the quality of the paint below first class or best paints, and that in many of the best quality paints on the market a much smaller proportion than 15 per cent of inerts is used, that the large proportions of inert materials in respondent's said paint are excessive and that by reason of the use thereof respondent's paint is not only cheapened as to cost of materials, but is also of an inferior or reduced quality; that such inert pigments are fillers and extenders and considered by some in the excessive proportion used in respondent's paint as adulterants.

Respondent's witnesses in this regard—comprising principally the superintendents of the factory where the paint was made, which superintendents formulated the product, and another paint expert of long and varied experience—testified to the effect, among others, that respondent's paint is first quality and that said inert pigments therein have various necessary or desirable effect particularly because of the use in the paint of said titanox ingredient; and that said inert pigments notwithstanding their cheapness in price and lack of opacity are not excessive. The term "reenforcing pigments" is used in respondent's testimony to designate said inert ingredients. In its sales promotional literature described in paragraph 3 hereof, respondent represented in effect that barytes, which is barium sulphate, is a product which is often used to load cheap paint and is a very heavy filler but does not wear or cover well (Com. Ex. 139, p. 25; Com. Ex. 140, p. 15).

(i) Respondent's said house paint as made under said master formulæ used prior to and since January 1, 1931, weighs 14 pounds to the gallon and not 15 to 16 pounds, as represented by respondent on page 25 of Commission's Exhibit 139 and Commission's Exhibit 140, page 15, quoted in paragraph 3 above. (All percentages or relative proportions of paint ingredients in these findings are given on the basis of weight of the product, unless otherwise stated.)

PAR. 6. Upon consideration of the record the Commission finds that some of the purchasing public do not believe paints composed as respondent's in fact is and has been are of as high quality as paints composed wholly or principally of white lead, zinc oxide, and linseed oil, with or without color pigment, or white lead and linseed oil paint, or paints of equally high quality. And the Commission fur-

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ther finds that respondent's said representations with respect to the composition of its paint, and to the effect that its paint is composed wholly or principally of white lead, zinc oxide, and linseed oil, is a white lead and linseed oil paint, and that all the ingredients thereof are of the highest class of raw paint materials obtainable, all as more fully set forth in paragraphs 2, 3, and 4 hereof, are and have been false, misleading, and deceptive, and had the capacity and tendency to mislead, deceive, and induce the purchasing public to purchase said paint in the erroneous beliefs that said representations are and were true in fact and that the paint was in fact so composed; that said paint does not and has not contained other ingredients, nor said barium sulphate and asbestine, as above described, nor any inert paint pigment other than necessary coloring pigment; that the oil in the paint was in fact purely linseed oil at all times throughout the use of such representations as to linseed oil, and that it did not contain any such soya bean oil as was in fact substituted for linseed oil to the extent above stated in the manufacture of the paint under said master formula used prior to January 1, 1931.

PAR. 7. The said false, misleading, and deceptive representations above set forth have been made by respondent with knowledge that the said paint was not in fact composed wholly or principally of lead, zinc, and linseed oil and was not a white lead and linseed oil paint as represented, but was in truth manufactured with the ingredients as described in paragraph 5 hereof, contained said barytes or barium sulphate besides asbestine, titanox, and soya bean oil. Throughout the period in which said false, misleading, and deceptive representations were used, prior or subsequent to the issuance of the complaint, respondent's customers were not advised or informed by respondent through its trade promotional literature that in fact said paint is not in truth composed as stated in its representations above described or that it contained barytes or barium sulphate, or asbestine or any inert materials, or titanox or soya bean oil, or that the white lead and zinc oxide therein constituted only a small or minor part of the pigment. Respondent has not followed the practice used by some paint manufacturers of printing the formula upon the label on the commercial containers of the paint or otherwise disclosing the actual ingredients in the paint.

PAR. 8. Further, in the course and conduct of the business of promoting and effecting the sale and distribution of its paints and paint materials as hereinabove described, respondent has caused, throughout the period of more than two years prior to the issuance of the complaint and thereafter, and still causes its said paints and paint materials to be offered for sale and sold to its customers, the pur-

chasing and consuming public of the several States, upon various representations, statements, and assertions to the following effect:

(1) That respondent is a manufacturer of paints and paint materials, and manufactures said products which it markets; that for such purpose it owns, operates, and controls a large modern paint factory and other paint manufacturing equipment; that respondent's factory is the "million dollar Madison paint factory", and that respondent is "a million-dollar company"; that its factory keeps over 400 people busy producing and preparing the thousands of gallons of paint which are shipped every day to Madison customers everywhere in the United States; that it employs the highest skilled paint-making experts and most modern equipment; that its factory, paint vats, grinding mills, and other manufacturing machinery or facilities are as pictorially represented in its said trade or sales promotional literature; that it has been engaged in said business for a quarter of a century, or for 23 years or more; that it purchases and stores raw materials in large quantities, has a huge laboratory with a staff of chemists, and carefully mixes, grinds, and selects the paint ingredients.

(2) That in the sale and distribution of its paint and paint materials respondent acts as a manufacturer and not as a middleman or dealer; that it sells and distributes its paints and paint materials directly from the factory to the purchaser or consumer without the intervention of any jobber, wholesaler, retailer, or middleman; that the prices at which respondent sells and distributes said products are manufacturer's prices or factory prices and do not include any of the costs, profits, or other charges of any jobber, wholesaler, retailer, or middleman; that in purchasing from respondent, purchasers thereby deal directly with the manufacturer and save to themselves the costs, profits, and other charges of jobbers, wholesalers, retailers, and middlemen; that because respondent is the manufacturer of said products they are of better quality than similar products sold by competing dealers, and that respondent's prices for its products are cheaper and lower than the prices at which similar products of like quality can be purchased from respondent's competitors or from retail stores; that in purchasing said products from respondent the purchasers thereby save to themselves the costs, profits, and other charges of any and all middlemen or dealers; that, by reason of its advantages in being a large manufacturer and selling at factory prices direct to consumer, its prices on paint are from \$1 to \$2, or from 25 per cent to 40 per cent, less than competitors' prices for similar quality paints or the prices at which such similar

quality paints are sold by, or may be purchased by the public from, retail stores, or from competitors.

PAR. 9. The following are specific instances of the foregoing representations, statements, and assertions which are among those respondent has caused to be set forth in its sales or trade promotional literature:

(a) On the outside cover of respondent's catalogue (Com. Ex. 24) large factory buildings are depicted in silhouette with the statement in large red letters—

**WORLD'S LARGEST PAINT FACTORY SELLING DIRECT
THE MADISON PAINT COMPANY
CLEVELAND, OHIO**

On the inside of the catalogue, which is arranged so as to appeal to the purchasing public and is displayed to purchasers and prospective purchasers by respondent's salesmen, appear such representations as follows:

The Madison Paint Co., with its quarter of a century record for square dealing, its immense factory and its enormous financial resources, stands back of this guarantee and stands ready to make good on the provisions without argument. [Inside cover page.]

EIGHT POWERFUL REASONS FOR BUYING MADISON NATIONAL FAMOUS PAINTS

2. Saving—You save \$1 to \$2 per gallon when you buy Madison Paint.

6. Fresh Paint—Madison Paint comes to you fresh from our giant paint vats. It never deteriorates on dealers' shelves (p. 1). (Com. Ex. 35, p. 10.)

You deal with confidence when you buy from the world's biggest paint factory! Selling direct to the user!

The chief purpose of this book, of course, is to tell you how to get the best quality of paint and to save money.

After you have read our direct-from-factory-to-you story, we feel sure that you will be 100 per cent sold on our direct plan.

Before we go into the details and give you the sound reasons why and how you can save money buying paint direct—it is natural that you should want to know who the Madison Paint Co. is.

Below we show a picturization of our giant paint factory—the biggest paint factory in the world selling direct to the user over the heads of the middlemen. This gives you a good idea of the size and magnitude of this great factory. At the sides of this page we show you pictures of scenes from inside the factory. Here you see the immense grinders that grind the ingredients into the most minute fineness. Also are shown the large mixers where the mixing is done by powerful machinery that insures perfect mixing—a quality so necessary in good paint to insure utmost coverage and long life.

When you have a concern of this size to do business with—backed by prestige and reputation covering nearly a quarter of a century, you can trade with confidence and know in advance you will receive a square deal on all your transactions.

You take no risks whatever when you buy Madison Paints. You are absolutely protected by our reputation and 23 years of fair dealing (p. 2).

On the same page and in conjunction with the foregoing statements are set forth the following:

(1) Depiction of a large factory and factory warehouse with the following legend:

THE GREAT MADISON PAINT FACTORY

One of the finest equipped paint factories for the production of high grade paints. Covers two city blocks and keeps over 400 people busy producing and preparing the thousands of gallons of paint which are shipped each day to Madison customers everywhere in the U. S. (p. 2).

(2) Six depictions of factory scenes as being actual pictures of factory equipment and facilities operated by the respondent, the Madison Paint Co., as part of the Madison paint factory, respectively, and described as "Laboratory for research"; "Ageing and storage tanks"; "Battery of grinding mills"; "Filling into containers"; "Labeling and packing"; "Shipping platform."

Further representations in the catalogue appear as follows:

Our factory-to-user plan brings a million dollar paint plant right to your door! Thousands of satisfied customers. Even though we may be miles away from you—all the convenience of trade in your home town is yours.

The Madison local service man is at your beck and call to help and advise you on your painting needs and problems; use him. Let him assist you and show you how the gigantic Madison paint factory, with its great resources, is brought to your very door.

Selling direct from the factory is the modern way of doing business. The middleman, who is chiefly responsible for the high cost of living is completely cut out. Factory-to-user is the economical road because it brings about a real savings without sacrifice of quality.

You are benefited in many ways by dealing direct with the factory. You have the greatest stock of paint, roofing, varnish, enamel in the country to select from and you get your paint fresh from the mixing vats.

The Madison Paint Co. has been in business nearly a quarter of a century—is rated at "one million dollars" by the Bradstreet mercantile agency. If you want to know more about us, we are pleased to refer you to the Cleveland Trust Co. or any other financial institution in Cleveland.

Cleveland, Ohio, is known as the heart of America's paint business. More paint products are made in Cleveland than anywhere else in the world. And Madison—the largest direct selling paint factory in Cleveland—in 23 years has done more than its share to build this wonderful reputation for its city (p. 3).

Save money on paint! Buy from Madison factory—Save \$1 to \$2 per gallon!

BANK THE SAVINGS

Before the store-bought paint reaches you, there is included in the price you pay the profits of many middlemen—the wholesaler, the jobber, the retailer.

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At each step in the journey of the paint to you, these middlemen add their profit. Over half of what you pay for store-bought paint goes for distributing.

WITH MADISON YOU PAY FOR PAINT ONLY

Contrast this expensive round-about way with the Madison direct-from-the-factory way. Every can of Madison paint or varnish is manufactured in our own mammoth factory and sold direct to users at the low factory price. You pay for paint only. None of your money goes for middleman's profits or expensive advertising.

WHOLESALE FACTORY PRICES

When you buy Madison paint in this economical, direct way, you keep the middlemen's profits. Besides you get the finest quality paint made from honest materials by highly skilled workmen in a most modernly equipped paint factory. The low wholesale factory price saves you \$1 to \$2 on every gallon—a worth-while saving.

Madison paint has been sold by this direct-from-factory method for a great number of years. So many thousands of Madison paint customers the country over have welcomed this money-saving paint plan that it takes an immense factory working to capacity constantly to keep up with the demand. Thousands of dollars have been saved and banked by paint users as a result (p. 4).

HIGHER PRICE CAN NOT BUY BETTER PAINT

Just because Madison paint sells for \$1 to \$2 per gallon less than other paint, do not think it is cheap paint. The saving on Madison paint hasn't a thing to do with quality. The saving is made possible by eliminating expensive distribution methods. The quality of Madison paint is such that if you paid the regular high paint store price for our paint, you could not buy better quality than Madison. And the chances are you couldn't buy as good.

MILLIONS OF DOLLARS—THOUSANDS OF BUILDINGS SAVED BY PAINT

Paint for protection is the cry that has made itself heard and felt through the length and breadth of the land. The saving to America's property owners through the use of good paint is beyond compute. There are two major savings possible with paint—saving the surface from deterioration and saving the building from depreciation. And now Madison comes with a third major saving—that is saving on the paint itself because you buy at wholesale factory prices. Use Madison paint and save three ways.

SCIENTIFICALLY MIXED

The mixing of Madison paint is done by the most modern and up-to-date machinery in our own new plant. The blending of the ingredients is always absolutely perfect (p. 5).

We give you the low factory cash price and give you credit (p. 7).

Here is another saving step in buying Madison paint. Not only do you get fresh paint direct from the factory at the wholesale factory price and on 60 days' credit—but we pay the freight besides.

If you order amounts to \$10 or more, this free freight privilege is yours. This removes all uncertainty of what the Madison paint will cost you delivered to your town.

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Madison low factory prices mean no extras! No additional costs!

Buy all your paint needs from this million dollar factory (p. 8).

(In conjunction with the foregoing statement on page 8 of the catalogue appears the depiction of large factory buildings similar to the depiction appearing on page 2 of the catalogue.)

Direct from Madison vats to you.

MADISON PAINT IS ALWAYS FRESH

It comes fresh from our mixing vats to you. Every year we make and sell millions of gallons of paint and roofing and ship it right out to our thousands of customers as fast as we make it. Stale shelf-worn paint can not begin to give you the covering and long life that you can get from Madison fresh paint. You not only save money but you get better paint. Thus the Madison direct-to-you plan is double-barreled economy. Madison paint comes to you fresh—and full strength and whole body which means Madison paint goes farther in covering capacity and stays on better, giving longer wearing quality.

WHY MADISON FACTORY MIXED PAINT IS SUPERIOR

Did you ever try to mix your own paint? If you have, you probably know the big job it is. The lead, zinc oxide, and oil must be constantly paddled by hand—but no matter how long or how hard you stir it, you can not begin to get the perfect blend that we do at the factory with our powerful grinders and giant mixers. It takes hours of grinding and agitating by machinery to secure a thorough mixture so the combined materials are blended into an even, smooth paint. Ready-mixed paint—fresh from the factory—is the only paint you should ever consider using. That's Madison paint (p. 12).

(In conjunction with the above statement on page 12 appears the depiction of a factory scene with battery of paint-mixing machinery.)

EXPERT SKILL IN THE MAKING

But the use of the best ingredients is only half of the battle. Unless these materials are scientifically proportioned, skillfully blended and perfectly mixed, the value in using them is virtually lost. There is a certain art in paint making that required expert skill and modern machinery to the highest degree. In our enormous factory at Cleveland, we do a tremendous volume of business. This enables us to attract the highest skilled paint-making experts and employ the most modern equipment.

WHOLESALE FACTORY PRICES

Madison paints cost you \$1 to \$2 less per gallon, not because of cheapened quality, but because we sell you direct from our factory at wholesale and save you many middlemen's profits by giving you the wholesale factory price. Besides we give a genuine free trial—60 days to pay, and pay the freight (p. 13).

MADISON FACTORY OUTDOOR SERVICE TEST

Up on the roof of the giant Madison paint factory at Cleveland there is probably the most unique test for paint ever used in the entire history of the paint industry.

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We have constructed on our roof penthouses, resembling skylights, which are used for testing not only Madison—but most all well-known paint brands. It is Madison's outdoor laboratory. * * * The Madison Paint Co., Cleveland, Ohio. (Inside back cover.)

(In conjunction with the above statement is shown a sketch or depiction of roof penthouses with paint-testing panels.) (Com. Ex. 24, 1929 Catalogue—Cover pages and pp. 1, 2, 3, 4, 5, 7, 8, 12 and 13.)

(b) In the magazine advertisements, Commission's Exhibits 25 and 26, respondent sets forth a large depiction of factory buildings and manufacturing plants with such statements as follows:

* * * The Madison Paint Co., the largest paint concern in the world selling direct from the factory, invites you to be the local agent and take orders from property owners, farmers, managers of industrial plants and factories. One of the few propositions in direct selling actually good for \$5,000 to \$10,000 a year.

Save users \$1 to \$2 a gallon—60 days credit—Freight allowed. Besides selling 100 per cent quality paint you have the greatest sales argument in the world. Direct from factory saves users \$1 to \$2 per gallon—you give 60 days' credit—and freight is allowed. You can not beat it. The painting business is a sound one—a steady year 'round business. Property owners must use paint for protection as well as decoration. Every year millions are invested in it. With this new direct selling plan and powerful arguments you can get practically all the painting business in your locality. (Com. Ex. 26, also Ex. 25, magazine advertisements.)

(c) On the first page of respondent's printed circular, Commission's Exhibit 27, is shown a depiction of what purports to be factory buildings and in connection with which also appears the following statement:

Average \$18 a day as the local agent for this million dollar paint factory—earn easily \$4,000 to \$10,000 a year.

No investment necessary—No experience required. A gold mine opportunity awaits you in this offer. The Madison Paint Co., steadily increasing its business for nearly a quarter of a century, invites you to join their successful men and be a local agent where a lifetime job and a brilliant future is yours.

You can be your own boss, come and go as you please and become an established success in your community with an income of at least \$100 per week and you don't have to have any experience—we show you how.

On the inside of such circular are depictions of factory scenes such as chemical laboratory, shipping room and batteries of tanks and grinding mills with factory workmen. Among the printed statements accompanying such depictions appear the following:

Showing one of the research rooms of our up-to-date laboratory located on the roof of the Madison factory.

A corner of the labeling and packing department in the Madison shipping room.

Partial view of a battery of grinders in the house and barn paint department of the Madison paint factory.

Be the Madison paint agent in your locality. Easy for you to make over \$100 a week steadily. 12 reasons why you will make good. 1, you represent a million dollar company. * * * 8, you sell direct from the factory. * * *

As soon as you show your customers a saving of \$1 per gallon and when you explain that this million dollar factory ships them fresh paint, absolutely guaranteed, you will be flooded with orders.

On the last page of such circular appears among others the following statement:

You don't have to use high pressure selling methods. Madison selling outfit actually takes the orders for you.

The literature is so plain and the pictures and illustrations are so clear that orders come to you with hardly any work on your part. There is nothing like it in the paint business. In fact there is nothing like it in the entire selling field. (Com. Ex. 27.)

(d) On the color card, Commission's Exhibit 29, respondent sets forth among other things the following:

MADISON HOUSE AND BARN PAINTS PROTECT AND BEAUTIFY
YOUR PROPERTY

The Madison Paint Company
Manufacturers

Cleveland—Ohio. (Com. Ex. 29, Color Card.)

(e) In form letter, Commission's Exhibit 31, the following representation appears among others:

Our local representative, Mr. John Johnson, thought you might enjoy a visit to the Madison Paint Co. factory. At his request I am happy to extend to you a cordial invitation to visit us whenever you are in Cleveland. The writer will consider it a pleasure to show you personally thru our modern million dollar factory and to explain to you how paints and roofings are made.

Meanwhile your name has been placed on the record of our company as one privileged to receive our wholesale prices on all of our products including our exterior house and barn paints, our Masticote asbestos liquid roofing and any interior paint or varnish that you may require.

We save you from 25 per cent to 40 per cent on every gallon purchased as we sell direct from the factory to the user, eliminating the jobber and middleman entirely.

If you can not visit our factory personally, our district service man will gladly bring our factory to you by showing you our catalogue, painted samples and color cards and by offering helpful suggestions for color combinations. (Com. Ex. 31, Sales Promotional Letter.)

(f) Respondent's small catalogue (Com. Ex. 35) contains the depiction of large factory buildings or manufacturing plant with the following statement made in connection therewith:

Here's why you save money buying paint and roofing from the factory. Selling direct from factory is the modern way of doing business. Before the store-bought paint reaches you, there is included in the price the profits of many middlemen—the wholesaler, the jobber, the retailer. Besides their

profits, you have to pay for their costs of doing business—rent, clerk hire, deliveries. Over half of what you pay for store-bought paint goes for cost of distributing.

Get wholesale factory prices. But why should you, the consumer, pay for these high costs of doing business? Contrast this expensive round-about way with the Madison direct-from-the-factory way. Every gallon of Madison paint and roofing is made in our own mammoth factory and sold for middlemen's profits or high costs of selling. All of your money is spent to secure the utmost paint value for your money.

Eliminating the middleman saves you \$1 to \$2 per gallon: When you buy Madison paint in this economical direct way you keep the middleman's profits. The wholesale factory price saves you \$1 to \$2 on every gallon—a worth-while saving. So many thousands of satisfied Madison paint customers have welcomed this money-saving paint plan that it takes an immense factory working to capacity to keep up with the demand (pp. 2, 3).

(g) In respondent's current catalogue, respondent's Exhibit 23A, there is displayed on pages 2 and 3 a depiction of large factory buildings or manufacturing plant and six pictures of factory scenes showing manufacturing machinery and equipment. Accompanying said depictions are such statements as follows:

A MILLION-DOLLAR ROOFING & PAINT FACTORY

Roofing and paint of superb Madison quality could only be produced in a plant like this—an up-to-date building covering two whole city blocks and keeping more than four hundred people employed, using the most up-to-date processes and the finest machinery money can buy. Only the very best methods of doing business could keep this gigantic plant running twenty-four hours a day.

Now you can buy all your roofing and paints direct from this great million-dollar factory and save one half.

We have been selling roofing and paint through direct factory representatives like the salesman who is showing this catalog to you, for a quarter of a century. The gigantic business we have built—its nation-wide reputation—prove that this is the practical and economical way for you to buy your supplies. Up-to-date people never think of going to a store for roofing or paint products any more. Store paints of comparable quality cost more because of the many middlemen's profits you have to pay, and because of the way paint settles and goes bad when it stands for weeks and months on manufacturers', jobbers', and dealers' shelves.

Buy direct from the million-dollar Madison paint factory—assure yourself the finest quality at the lowest prices.

Go through this book carefully. Read all about this great million dollar paint company. Note the factory pictures showing how carefully, scientifically, and thoroughly we mix, grind and select the paint ingredients and how carefully we guard every step in making Madison Roofing and Paints to be certain that you get the very finest quality products which human skill can produce.

Pictured opposite is our immense million-dollar paint factory in Cleveland, Ohio, where Madison Roofing and Paints are manufactured.

On page 6 of said current catalogue is likewise set forth the depiction of large factory buildings or manufacturing plant with such statements as follows:

YOU BUY DIRECT FROM FACTORY—YOU SAVE 25 PER CENT TO 40 PER CENT

We can make this tremendous saving to you on your roofing and paints because of our saving in selling cost. One of the biggest items that adds to the cost of ordinary paint is the high cost of distribution when sold through jobbers and dealers. The manufacturer must make a profit and then the jobber and the wholesaler and the retailer must make a profit. And all these profits are added to the price you pay. But when you buy your roofing and paints from Madison you buy quality products direct from the factory, so there are no dealers or jobbers' profits to add to the price. You get the low direct factory price. That's why you can save 25 percent to 40 percent.

Selling direct to you from the factory brings you another advantage in addition to saving money. Because you eliminate the jobber and dealer, Madison paint comes to you fresh from our mixing vats (p. 6).

Among the further representations in such current catalogue are the following:

You can pay much more for your house paint than we ask, but you can not buy better paint. Remember these are factory prices without one cent added for dealers or jobbers. When you buy Madison paint you buy direct from the factory and you get lowest factory prices on the finest paint that can be made. You can pay less than these Madison low direct factory prices, but to buy cheaper does not protect your buildings (p. 10).

Buy all your paint needs direct from the Madison factory and save money (pp. 20-21).

I have given you every good reason for using Madison paint products.

I have explained fully how all Madison paint products are made right here in our million-dollar paint factory, and how they are sold direct to you from this factory at the lowest wholesale factory prices, saving you big money (p. 22, Resp. Ex. 23-A, Current Catalogue).

(h) Respondent's current printed circular (Resp. Ex. 24) contains the following on the front page over the name Jerry Lowell, general manager, the manager of the Madison Paint Co.:

I am at the head of a great roofing and paint business at Cleveland Ohio, which is the center for all paint making in this country, and I am looking for a man like you to represent this great company in your locality.

My company has been in business for 25 years, selling roofing and paints direct to users at wholesale prices, and as a result has grown into a million-dollar concern. Our sensational plan of selling direct from the factory has enabled us to build up a tremendously successful business, and to employ a wide-awake man in every community to share in the generous profits.

On the inside of such circular is perpetuated said depiction of large factory buildings or manufacturing plant in conjunction with which appear, among others, such statements as follows:

This million-dollar factory backs you. For 25 years supplying roofing and paints direct to users.

When you represent this company, you will be the factory representative for one of the greatest and most complete lines of fine quality roofing and paints made.

The Madison Paint Co., Cleveland, Ohio. (Resp. Ex. 24.)

(i) On respondent's letterhead (Resp. Ex. 25), which was adopted since the issuance of the complaint and is currently used in letters to customers and to salesmen, is set forth a depiction of large factory buildings or manufacturing plant, similar to the depictions in its catalogues and circulars above described, and upon such depiction of factory is superimposed in large print the name—

THE MADISON PAINT COMPANY (Resp. Ex. 25)

(k) In respondent's current book of instructions, Commission's Exhibit 140, for use of its salesmen in their sales promotional work, appear the following:

1. Who is the Madison Paint Co.? You represent one of the largest, oldest, and most reliable paint companies in the country. In business for twenty-four years, we have built up a reputation for making the finest paints, varnishes, liquid roofing, and stains that can be manufactured. We are not jobbers. Every gallon of paint is made up fresh in wonderful modern machinery in our enormous factory. We sell direct to the customer, which means "The best paint at the lowest price." The customer saves money and gets better, fresher material than if he paid retail prices for stale paint or roofing bought from paint or hardware stores (p. 4).

31. If "cheap" paint is so unsatisfactory, why do people sell it? Local stores can not sell first class paint as cheaply as you can. They have too many expenses to meet, such as rent, light, heat, factory, profit, and selling. They also have to make a profit. If they sold paint as good as ours they would have to charge \$1 more per gallon and nobody would buy from them. So they frequently handle inferior paint selling at a few cents per gallon less than ours, thinking that people won't know the difference. Some mail order concerns also sell "cheaper" paints but they are not high grade paints like ours and do not cover as well nor last as long. They also sell cheap tar or low grade asphalt roofings, not high grade asphalt roofing like Mastlco. Mail-order houses do not have neighborhood service men like we do. They have to spend thousands of dollars just on postage, catalogues, and radio. They send out hundreds of these catalogues just to get a single order. Their expenses are therefore so great that they can only afford to give the customer a "cheap" grade of paint or roofing (p. 9).

32. Why can the Madison Paint Co. sell such high grade paint and roofing at such a low price?

Because: 1. We are a million dollar concern and buy raw material in such large quantities that we get rock bottom prices.

2. We discount all our bills which is a still further saving.

3. Our large storage tanks permit us to buy raw materials when prices are lowest and store them until ready for use, saving vast sums of money for our customers.

4. Our wonderful factory with floor to floor method of making paint in modern machinery does away with expensive labor and makes production cheaper.

5. We manufacture such tremendous quantities that our overhead and cost of production is very low (pp. 9-10).

* * * We have a huge laboratory with a staff of chemists constantly working out new problems and making sure that raw materials are up to standard. They have done this for years and will continue to do so (p. 10).

What is the financial strength of the Madison Paint Co.? Over \$1,000,000. See Bradstreet for our rating of G-Aa. Established in 1906, and growing bigger every year. We are not jobbers but manufacture every gallon of paint we sell (p. 20). (Com. Ex. 140; See similar representations in Com. Ex. 139.)

PAR. 10. The true facts in regard to said representations are and have been as follows:

(a) Respondent corporation, the Madison Paint Co., is not a manufacturer and does not manufacture any of the paint, or other products, which it markets, but procures such products from the Acorn Refining Co. at certain prices charged therefor by such Acorn company. The Madison Paint Co., respondent corporation, does not own, control, or operate any such paint factory, factory warehouse, paint vats, grinding, mixing, or other paint manufacturing equipment or facilities as represented and depicted in its sales or trade promotional literature, or any other paint manufacturing equipment or facilities. The authorized capital stock of such Madison company is \$25,000, par value, and all its physical property, listed on its books at \$1,107.94, consists of furniture and fixtures such as office desks, chairs, adding machines, typewriters, files, and other office equipment, which are used in the promotion, sale, and distribution of its products. Its other assets consist of cash, accounts receivable, deferred assets in the form of prepaid salesmen's expense, with all assets totaling between \$15,000 and \$20,000. Said Madison corporation does not employ any paint manufacturing experts, chemists, or any other employees engaged in manufacturing. Besides said salesmen respondent corporation's regular employees number 22, and all are engaged under the supervision of a sales manager in the work of promoting and effecting the sale and distribution of its merchandise. It is not a million dollar company or manufacturer. Respondent corporation does not purchase, store, test, or otherwise handle or use any raw materials for the manufacture of paint or paint materials; nor does respondent have any paint laboratory with a staff of chemists.

(b) The said Acorn Refining Co. is an Ohio corporation engaged since about the year 1914 in the manufacture of a complete line of paints or paint products and roof coating, which, in the course of its business it sells to the purchasing and consuming public, including industrial plants and other users and consumers, throughout the United States, as well as supplying said products, at prices herein-

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after stated, to the respondent and to seven other similarly situated corporations including the Progress Paint Co. and the Franklin Paint Co., respondents in Dockets 1575 and 1567, respectively. Said Acorn Refining Co. has, and operates in its business, a paint factory or paint manufacturing plant at Cleveland, Ohio, which paint factory or paint manufacturing plant is of reputable appraisal value of substantially less than \$1,000,000. The average daily production of the plant is 4,000 to 5,000 gallons of paint and 5,000 to 6,000 gallons of roof coating. Such Acorn company has facilities for the purchase and storage of raw materials in carload quantities. It also has a paint laboratory with a staff of four men. The respondent corporation, the Madison Paint Co., occupies as its place of business rented office space on the premises of the Acorn Refining Co. for which space it pays rent to such Acorn company. And it is from the Acorn Refining Co.'s factory premises that respondent corporation ships its product to its customers. Besides paint and paint materials, respondent also purchases various other supplies and services used in its business from said Acorn company.

(c) Said depiction in silhouette of factory buildings on outside of catalogue, Commission's Exhibit 24, is wholly fanciful or fictitious. Evidence was introduced by respondent that the various other depictions of factory and factory scenes and equipment elsewhere in its trade promotional literature are in fact depictions of the factory and manufacturing facilities of the Acorn Refining Co. The factory of the Acorn Refining Co. has prominently displayed thereon the large sign "Acorn" and is an integral part of the building of such Acorn Refining Co. The depictions of such factory in respondent's literature have been altered or set forth in such a way as not to show said sign "Acorn." Also, such depictions are represented in respondent's trade promotional literature as being depictions of the Madison factory and of factory equipment and facilities owned or operated by respondent corporation, the Madison Paint Co. Such depictions are fictitious in that respondent has no such factory or any factory, and in that they do not reveal said sign Acorn, which is in reality on the front of said Acorn factory and an integral part of the building.

(d) Prior to the issuance of the complaint and until about January, 1930, substantially all of the capital stock of the respondent corporation, the Madison Paint Co., was owned in equal proportion by S. S. Sanders and E. M. Katz, president and secretary-treasurer, respectively, of the respondent, who also own in equal proportion all of the capital stock of the Acorn Refining Co. and are officers of that company. After the issuance of the complaint the capital stock of

respondent corporation, owned by said individuals Sanders and Katz, was acquired and is now owned by the Acorn Refining Co.

(e) The Madison Paint Co., respondent, is one of eight corporations whose stock, ranging from \$10,000 to \$100,000, authorized par value, is similarly owned by the Acorn Refining Co. They are similarly engaged in procuring paint manufactured by the Acorn Refining Co. and selling the same to the public throughout the United States. It is marketed by said companies as paint of their own respective line and manufacture. For example, it is sold by the Progress Paint Co. as the Progress line of paints; by the Franklin Paint Co. as the Franklin line of paints; by the Madison Paint Co. as the Madison line of paints. To other purchasers it is sold by the Acorn Refining Co. as the Acorn line of paints. The products sold by the respondent corporation comprise from about 3 per cent to 9 per cent of the output of the Acorn Refining Co.

(f) Evidence was introduced on behalf of respondent to the effect that the prices charged by the Acorn Refining Co. to the respondent, the Madison Paint Co., for said paint and paint materials are the Acorn Refining Co.'s so-called blue book prices less 15 per cent, and that such net prices represented only the Acorn Refining Co.'s cost; that all the profits in the distribution of the products sold by respondent to the public are allowed to accumulate in the name of the Madison Paint Co. and are taken out mainly, if not entirely, in the form of salaries to said Katz and Sanders rather than through the declaration of dividends.

(g) Evidence was also introduced through respondent's witnesses tending to show that the business of the Acorn Refining Co. and said other eight corporations, including respondent, which are engaged in selling and distributing paint manufactured by the Acorn company, is considered by the officers of the Acorn company and of respondent as one business. That any such relationship exists between said companies is not disclosed to the purchasing public. Testimony was also given, largely by said S. S. Sanders, president of respondent, substantially to the effect that care is also taken to avoid disclosing any such relationship to the salesmen who sell the paint to the public for various companies referred to, and that such nondisclosure enables these companies to sell more paint, and makes possible the solicitation and sale of the paint by several of the respective companies in any given locality or community by reason of the nondisclosure in such communities of the existence of such relationship or that in reality it is all the same paint which is being sold under different company names and labels. As part of such nondisclosure each of said respective companies, although located on the

same premises, represents itself as being located at a differently named street address. Testimony was also adduced by respondent to the effect that instead of conducting respondent's business under its name as an unincorporated trade name, it was incorporated so that, among other things, respondent could receive a listing and rating in the commercial rating publications of R. G. Dun & Co. and of Bradstreets in such a way as not to disclose or reveal any relationship or connection with the Acorn Refining Co. or other company. Until March, 1928, respondent was listed by Bradstreets as follows:

Madison Paint Co. W+HAa

Since then such rating was given as "W÷GAa", excepting during the latter half of 1930, when through an error, it was listed without the division sign, "÷". Such symbol "W" designates the business of the company as wholesale. "HAa" stands for a capital rating of \$750,000 to \$1,000,000 and "GAa" for \$1,000,000 and up in capital rating. Said division sign means that such rating covers two or more corporations and in this particular case it covers jointly the respondent, the Acorn Refining Co. and seven other corporations, and is not a separate rating upon respondent corporation only. In meeting the requirements of Bradstreets for such rating, arrangements were made whereby the Acorn Refining Co. by its board of directors passed a resolution to the effect that it would guarantee payment of the debts or obligations of said other corporations including the respondent. In Dun's commercial rating publication respondent is classified as a dealer, wholesaler, with a rating of "−2" which means good credit with a financial rating from \$35,000 to \$125,000.

(h) In the sale and distribution of its paint and other products, and the conduct of its business, respondent corporation is a middleman instead of a manufacturer. The prices at which it sells its said paint to the public are middleman's prices and not factory prices or factory wholesale prices as represented. The profits which respondent makes in the sale of said paint and its costs therein, which profits and costs are included in its paint price and ultimately borne by the consumer, are in fact middleman's costs and profits. The relative costs and prices of its paint covering the various colors, years and types of containers involved are illustrated by the following (using the color white, 1-gallon cans and the year 1930 as representative): The cost to Acorn Refining Co. of the paint material in 1 gallon of the paint was \$1.16. The price which the Acorn Refining Co., the manufacturer, charged respondent for such gallon of paint was \$1.624 for the first four months of 1930 and \$1.573 for the remainder of the year. The Madison Paint Co.'s price at which it sold such paint to the public was \$3.85 less 5 per cent discount for cash with

order, or net within 60 days, and with freight paid on all orders amounting to more than \$10. During the latter part of 1930 respondent reduced its price 20 cents to 25 cents per gallon. The price per 1-gallon can of the same paint as sold throughout the same States and on similar terms by the Franklin Paint Co. was \$3.32, and the Progress Paint Co., \$3.75.

(i) In the evidence adduced is testimony tending to show that outside house paint of quality comparable with that of respondent's paint is marketed and available to the purchasing public through retail stores at \$2.75 per 1-gallon can, as testified to by a paint manufacturer of Cincinnati marketing paints through various States which are also covered by respondent; that substantially comparable quality paint of the largest paint manufacturer in the industry is marketed through retail stores to users and consumers throughout the United States at retail prices from \$2.50 to \$2.75 per 1-gallon can, as testified to by an official of such manufacturer. Some of the other testimony on this point included that by a retail dealer who stated he sells house paints of the best or highest quality at a price of \$2.65 per gallon in 100-gallon lots; also testimony by a paint manufacturer, selling largely to industrial plants for maintenance purposes, that in his opinion paints of certain costs, delivered to the carrier, ranging from \$1.17 to \$2.09 per gallon would be sold through dealer channels in 1-gallon cans at certain retail prices to the consumer which ranged from \$2.80 to \$4.70 per gallon. Upon the whole record the Commission finds that the prices at which respondent sells its said paint to the public are not less to the extent of \$1 to \$2 per gallon, or from 25 per cent to 40 per cent, than prices at which paints of similar or comparable quality are available to the purchasing public or at which the purchasing public can buy the same from competitors or retail stores.

PAR. 11. The representations, statements, and assertions of the Madison Paint Co., respondent corporation, referred to and described in paragraph 8 hereof and used by respondent as hereinabove set forth, are and have been false, misleading, and deceptive, and have had the capacity and tendency to mislead, deceive, and induce the purchasing and consuming public into purchasing respondent's paint and paint materials in the beliefs, which are erroneous, that said representations, statements, and assertions are and were true in fact.

PAR. 12. In the evidence, respecting the effect upon competitors of the use by a paint distributor or by a paint seller of misrepresentations as to the ingredients and quality of its paint and as to being a manufacturer selling direct to purchasers without the intervention of middlemen, is testimony of four witnesses experienced as direc-

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tors or managers of sales or otherwise in the promotion of the sale of house paint and paint products of manufacturers or distributors selling in competition throughout the several States in which respondent also sells its paint. The testimony of these witnesses was given mainly as their views or respective opinions based upon or as a result of their experience in the business, and included testimony to the effect that the use on the part of any paint distributor of representations which are untrue is a detriment to competing concerns or others engaged in the same business; that it destroys confidence on the part of the consumer, the buyer, in his ability to know whether he is getting what he is paying for; that the misrepresentations by a distributor of paint of the quality or ingredients thereof is "extremely harmful to the business of competitors"; that the use of false or misleading representations has a tendency to divert trade from other competitors selling similar paints; that the misrepresentation as to the composition or quality of paint is "a general detriment to the whole trade"; that misleading representations by a paint distributor increases the burden upon competitors to meet such competition; that representations of being a manufacturer selling direct to consumers to the exclusion of middlemen, whether true or false, would have an effect or tendency to substantially divert trade from competitors; that business has definitely been lost by one witness's company because of such representations by competing concerns not including the respondent; that a seller's misrepresentations of an inferior paint as first quality paint would divert business from competitors if the prices were less than the competitors' price for first quality paint, that such diversion would depend upon the price.

It was stipulated by respondent that certain Commission witnesses about to be sworn and consisting of five other members of paint manufacturing or distributing companies selling in general competition in the same territory in which respondents are selling, if called as witnesses, would testify that untruthful advertising is unethical and that it tends, in their opinion to divert business or trade from those engaged legitimately in a similar business; and that such stipulation may be used with the same effect as though such witnesses were actually sworn and so testified. It was also conceded of record by respondent that "deliberately false advertising is unethical", and "contrary to good morals".

PAR. 13. Upon the record the Commission finds that the aforesaid false, misleading, and deceptive representations, statements, and assertions, as set forth in the foregoing findings and used by respondent in the course and conduct of its said business, are methods of

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competition in interstate commerce which (a) are unfair and are characterized by deception; (b) have been pursued by respondent against the interest of the public; (c) have the capacity, tendency, and effect of injuring the public and unfairly diverting trade from respondent's competitors and otherwise injuring and prejudicing said competitors in their business; and (d) operate as an unfair competitive advantage to respondent and a detriment to and burden upon the legitimate paint manufacturing and marketing industry in this country.

CONCLUSION

Respondent's use of its said paint marketing and distributing business of the false, misleading, and deceptive acts and practices under the circumstances and conditions hereinabove set forth are unfair methods of competition contrary to the public interest, and are and have been injurious and prejudicial to the public and to the competitors of respondent and constitute a violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, including the pleadings, the evidence, stipulations, and upon argument of counsel, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

It is now ordered, That, in the course of the sale or distribution in interstate commerce of paints or paint materials, the respondent corporation, the Madison Paint Co., its officers, directors, agents, representatives, servants, and employees, cease and desist:

(a) From directly or indirectly making or causing to be made any representation, statement, or assertion in advertisement, trade promotional literature, or by any other means, to the effect that any such paint is a white lead and linseed oil paint, or is composed wholly or principally of white lead, zinc oxide, and linseed oil with or without necessary color pigments and dryers; or that any such paint does not contain titanox, barium sulphate, asbestin, silicious material, or any inert material, if and when such representations, statements, or assertions are not true in fact.

(b) From directly or indirectly making or causing to be made any representation, statement, or assertion in advertisements, trade promotional literature, or by any other means, to the effect that respondent corporation is the manufacturer of any of said paints or paint materials; that it owns, operates, or controls a paint factory, or any other paint manufacturing equipment or facilities used in the manufacture of said paints or paint materials; or that customers in purchasing from respondent are thereby dealing directly with the manufacturer of said products; or that in the sale and distribution of said products by respondent corporation to its customers the same are sold and distributed by and from the manufacturer directly to such customers to the exclusion and without the intervention of middlemen, unless and until respondent becomes the manufacturer and actually owns and operates, or directly and absolutely controls such paint factory and paint manufacturing equipment or facilities by which any and all such products so represented are manufactured; or unless and until, so long as said paint or paint products are manufactured by the Acorn Refining Co. and the relationship subsists between that company and the respondent as set forth in the findings as to the facts, a full and true disclosure of the facts of such manufacture by, and relationship of respondent to, said Acorn Refining Co. be prominently made in conjunction with such representations.

(c) From directly or indirectly making or causing to be made any representation, statement, or assertion in advertisements, trade promotional literature, or by any other means, to the effect that the prices at which respondent sells its products are manufacturer's prices; or that by reason of respondent being such manufacturer and selling its products under a plan or method of distribution by which all costs, profits, or other charges of middlemen are eliminated, respondent's said prices are less than the prices at which paint products of equal quality are available, or may be purchased from competitors and from retail stores or through other dealer channels; or that the benefit of such savings by reason of the elimination of such middlemen accrues to purchasers from respondent, or that such saving is a certain definite amount, such as \$1 to \$2 per gallon, or 25 per cent to 40 per cent, unless and until respondent owns and operates, or directly and absolutely controls a factory or manufacturing facilities in or by which said products are manufactured, and such representations are otherwise true in fact.

It is further ordered, That respondent corporation, the Madison Paint Co., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Commissioner Ferguson dissenting to issuance of order as to use of the word "manufacturer"; Commissioner Humphrey dissenting in memorandum attached.

Dissenting opinion by Chairman Humphrey

One who is not a manufacturer is guilty of an unfair practice in advertising that he is such, because the public believes that by buying from a manufacturer they save the middleman's profit.

There is no such element in this case. The respondent is in every particular regarding additional profits a manufacturer. He is in fact, while not a sole manufacturer, a part manufacturer. There may be a deception in the technical sense to the public, but there is no injury to the public.

This case involves a method of business conduct that it is admitted increases the sales of the products of the respondent. It therefore increases competition, and is to that extent in the interest of the public.

To cause the respondent to cease calling itself a manufacturer, would do him substantial injury in many ways. It would benefit no one. I believe that the Commission should issue no order that is not clearly in the interest of the public. This proposition is so plain that it calls for neither argument nor citation of authorities.

IN THE MATTER OF
THE PROGRESS PAINT COMPANY

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

Docket 1575. Complaint, Feb. 26, 1929—Decision, June 28, 1932

Where a corporation engaged in sale and distribution of outside house paint and roof coating to purchasing and consuming public, through large numbers of solicitors in their respective home or local communities, and through catalogues, circulars, newspaper and periodical advertisements, and other trade literature.

(a) Described said outside house paint as a lead and oil paint of highest grade, with pigment content composed wholly of white lead and zinc oxide and vehicle composed wholly of linseed oil and represented said paint as made of the finest raw materials obtainable and its roof coating as containing gilsonite in substantial proportions, through such statements in its trade promotional literature as "the acme of perfection in high grade lead and oil house paint", "Cheap paint is easily loaded with powdered rock or barytes (barium sulphate)", "the only genuine protection * * * Progress House Paint—good old lead, zinc, and oil", "the best paint money can buy * * * You can't afford to use cheap paint. Remember there is a 'joker' in the cheap paint can—it doesn't wear", "Why fool ourselves? We've found nothing yet that can replace the ingredients our forefathers used in making paint and that is lead, zinc, and linseed oil! You can't improve on these products * * *", "When you buy cheap paint something has been put into it that costs less than lead or zinc—some substitute has been added to the linseed oil to cheapen that. Consequently when you buy cheap paint you are getting just what you pay for. You suffer in the cost of application which is the big item and the lack of protection which good paint would give for just a few cents more per gallon. * * *", "We do not sell linseed oil or white lead separately, as we know that a customer cannot make as good a paint by hand as we can through our modern machinery nor as economical", and so worded its instructions to salesmen and trade literature as to directly feature and discuss the asserted and assumed gilsonite composition of its roofing;

Facts being said roof coating did not contain gilsonite in substantial proportions and aforesaid house paint contained (1) such inert pigments as barium sulphate (barytes) and asbestine in proportions regarded by experts as excessive, and, by some, as amounting to adulterants in proportions used, and (2) white lead and zinc oxide only in minor proportions, and formula and composition required and disclosed approximate pigment and vehicle content of 58 percent and 42 percent, respectively, and (1) pigment or solid content of 36 percent titanox, 4 percent lead sulphate, 20 percent zinc oxide, 16 percent barium sulphate, and 24 percent asbestine (with subsequent substitution of 12 percent white lead for 4 percent lead sulphate, and 8 percent barium sulphate for 16 percent), and vehicle or liquid content of 87 percent linseed oil, in fact diluted by addition of substantial quantities of soya bean oil;

With capacity and tendency to mislead, deceive, and induce purchasing public to buy said roof coating as and for one containing gilsonite in substantial proportions, and said house paint as and for the preferred, demanded, and long used high quality product composed wholly or principally of the extensively used and generally esteemed white lead, zinc oxide, and pure linseed oil, with necessary color pigment and dryer, and of the best and finest raw paint materials obtainable, and with no such cheap, inert pigments as barium sulphate and asbestine, or any other inert pigment other than necessary coloring pigment, or oil other than pure linseed oil;

(b) Represented itself as the manufacturer of aforesaid products, directly owning, operating, or controlling a "million dollar" factory, and depicted factory buildings, machinery, equipment, etc., as true illustrations of the buildings, etc., owned, operated, and controlled by it and alleged that its gross annual sales exceeded several million dollars, it had a Bradstreet rating of GAa \$1,000,000, its factory was "the largest in the land selling direct to users" and engaged in manufacture for over 20 years, making such statements as "Roofing and paint from this million-dollar factory to you", "Twenty-five years in the harness, serving constantly increasing thousands of customers", etc., "Twenty-five years which have seen this company grow from a little obscure 2-story building, with a force you could count on your finger tips, to the present modern million-dollar paint plant, with its towering buildings, acres of floor space", etc., "The factory is the place to buy paint and roofing", "Everything * * * made in our modern fireproof factory. Everything * * * guaranteed fresh", "Rating in Dun's or Bradstreets * * * is GAa \$1,000,000 and over, which is the highest rating we could have", "An old established manufacturer. We manufacture every product you sell", "Sell paint direct from this million-dollar factory", etc.; and

(c) Represented itself as selling and distributing its products directly from itself as the manufacturer to the consuming public without the intervention of the middleman, jobber, wholesaler, or retailer, selling products at prices lower than those at which products of like quality could be purchased from competitors or retailers and, as manufacturer's prices, containing no costs, profits, or other charges of middlemen or dealers, saving purchasers said costs, etc., at an advantage of from \$1 to \$1.50 a gallon, or 40 percent over prices charged by competitors or retailers for similar products, making such statements as "Twenty-five years devoted to exclusive selling direct from the factory to user at wholesale prices through thousands of specially trained neighborhood service men", "Lower prices because sold direct from the factory to user", "Eliminating the store with its expenses, rent, clerk hire, salesmen, etc., cutting out jobbers, warehouses, trucking charges, and all the other odds and ends that are also added to the price you pay, * * * you come into contact with lower prices that only such a plan worked out to such an extensive degree makes it possible for you to share in * * *", "When merchants and dealers say buy at home remember they are asking you to pay a price that will include their profit—their expense, rent * * * the profit of jobber who sold to them, the jobber's salesman", etc., that "to buy (comparable) products * * * under such a system" (you pay) "from \$4.50 to \$5 per gallon and take a chance as to whether the paint is fresh" instead of paying the "\$3.45 per gallon in barrels for (our) house paint", "Our direct from factory prices * * * will be found 30 percent to 40 percent less than the store cost for

equal quality", "A gallon of the best paint sells from \$5 to \$6 in a paint store. The factory price is \$3.15 a gallon. The difference goes to pay the travelling salesman's salary and expenses, the wholesaler's profit and expenses, the retailer's profit and expenses", "This million-dollar factory sells paints and roofing direct to the user at the factory price * * *";

Facts being it did no manufacturing and neither owned nor operated any factories, machinery, etc., but along with seven other similarly operated corporate selling organizations, secured all its paint from a separate corporate manufacturer (with a reputable appraisal value substantially less than \$1,000,000), to which its interests were tied by the fact of common stock owners and general officers, upon a small part of the premises of which corporate manufacturer its own place of business was located, and which manufacturer was the real owner of some of the buildings, etc., depicted as its own, as above set forth, and connection with which manufacturer was carefully concealed and withheld, with result of permitting sale of said manufacturer's paint in the same localities under the different company names and labels, depiction of factory buildings, etc., were either those of said manufacturers or fictitious, its gross sales averaged about \$1,000,000, and not \$3,000,000 annually, its 50 or 60 employees exclusive of aforesaid neighborhood solicitors were engaged in promoting and effecting sale and distribution of its merchandise, rating referred to was a collective figure applying to entire group under directors' resolution passed to secure such a rating, aforesaid corporate manufacturer charged it for paint in question a sum substantially in excess of said manufacturer's cost, its prices were not factory or factory-wholesale prices, but middleman's prices, and figures at which it resold its said paint represented an increase of 100 percent, or more over price to it and exceeded those charged purchasing public by retail stores for paint of comparable quality, and did not represent claimed savings to purchasing public of \$1 to \$1.50 per gallon or from 20 percent to 40 percent over prices for comparable paints purchased of competitors or retailers;

With capacity and tendency to mislead and deceive the purchasing and consuming public and induce purchase of its said paint and roof coating by such public in the erroneous belief that said false, misleading, and deceptive representations were true in fact, and with effect of injuring the public and unfairly diverting trade from and otherwise injuring and prejudicing competitors in their business, and of operating as an unfair competitive advantage to it and detriment to and burden upon the legitimate paint manufacturing and marketing industry of the country, and with capacity and tendency so to do;

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

Mr. Henry Miller for the Commission.

Squire, Sanders & Dempsey, and Mr. Samuel Doerfler, of Cleveland, Ohio, for respondent, and *Mr. Thomas J. McFadden*, of Washington, D.C., for Unfair Competition Bureau of the Paint & Varnish industry (*Amicus Curiae*).

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Ohio corporation engaged in the sale and distribution of paints and roof coating to the purchasing and consuming public throughout the several States, through salesmen and agents, catalogues, circulars, letters, color cards, pamphlets and similar sales literature, and advertisements in newspapers, magazines and similar publications of general circulation, and with office and place of business in Cleveland, with misrepresenting business status, advantages and size and composition and quality of product, and advertising falsely or misleadingly in regard thereto, in violation of the provisions of such section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, represents itself as a manufacturer of the products dealt in by it, engaged in business for 22 years or more, operating a "million-dollar" factory and selling directly to manufacturer to consuming public without the intervention of middlemen, or costs, profits or charges thereof, and with the largest paint factory in the land selling direct to users, with gross annual sales exceeding several million dollars, and, by reason of its being the manufacturer of the products dealt in, selling, as above set forth, as able to offer products of better quality and at lower prices than competitors are able to do; respondent further displaying in its advertising and sales literature illustrations purporting to represent its factory buildings, machinery and equipment; the facts being that respondent has been engaged in business for about six years only, neither owns nor operates any factory manufacturing the products dealt in by it, does not market the same at manufacturers' prices, but at dealers' prices, including costs and profits of itself and other middlemen, does not save purchasers from such costs and profits, does not have any such investments as alleged of \$1,000,000, or to any substantial extent, in manufacturing or other facilities, or any such buildings etc., as purportedly shown in aforesaid illustrations, and does not have any such gross annual sales as above claimed, but sales substantially less than \$1,000,000.

Respondent further, as charged, represents its outside house paint coating (a) through and by means of salesmen and agents who, on zinc and linseed oil, and with a pigment composed wholly or principally of white lead and zinc oxide and a vehicle composed wholly of linseed oil, and containing neither barytes, barium sulphate, siliceous matter, calcium carbonate or any inert ingredients, and repre-

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sents a roof coating dealt in by it under the name "Asbesto-Ruf" as containing gilsonite in substantial proportions and as containing no coal tar or other tar, and as a product which, when applied to roofs, will endure and cause the same to become and remain waterproof for 10 years; facts being that aforesaid paint is not composed as represented, but contains large proportions of barium sulphate, or barytes, siliceous matter and calcium carbonate, to wit, approximately 22 percent, 17 percent, and 9 percent, respectively, consists principally of inert ingredients, and is inferior in quality to a paint composed wholly or principally of white lead, zinc, and linseed oil, and that aforesaid "Asbesto-Ruf" does not contain gilsonite in any substantial proportion, but does contain coal tar or other tar and will not cause roofs to which it is applied to remain waterproof for more than five years.

The use by respondent, as alleged, of the aforesaid representations, statements, and assertions "is calculated to mislead and deceive, and said representations, statements, and assertions have and had the capacity and tendency to, and did and do, mislead and deceive large and substantial parts of the purchasing public into, and thereby cause them to purchase said paint in and because of, the erroneous beliefs that said false, misleading, and deceptive representations, statements, and assertions made by respondent" are true in fact, and respondent's "false, misleading, and deceptive acts and practices have the capacity and tendency to and do unfairly divert trade from competitors, many of whom deal in similar products, without misrepresenting the same or the character of their business and methods of marketing their products"; to the prejudice and injury of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1924, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purpose", the Federal Trade Commission on February 26, 1929, issued and thereupon served its complaint in this proceeding upon The Progress Paint Co., a corporation, respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent entered its appearance by counsel and on March 25, 1929, and February 12, 1931, respectively, filed answer, and amended and supplemental answer to said complaint. By such answers

respondent admitted certain allegations in said complaint, including all of paragraph 1 thereof, and denied others therein. Thereafter, the matter being ready for the taking of testimony and other evidence with respect to the charges in the complaint, hearings therefor were held before an examiner of the Commission thereunto duly appointed, at which hearings oral testimony, documentary evidence, and other exhibits were introduced in evidence by counsel for the Commission in support of said complaint and by counsel for the respondent in opposition thereto. By agreement the hearings were held and the evidence taken in a consolidated proceeding covering not only this case but also the proceedings before the Commission upon complaints issued against The Franklin Paint Co., Docket No. 1567, and The Madison Paint Co., Docket No. 1573. Said evidence was duly recorded and filed of record in the office of the Commission, and thereafter a stipulation by respondent, dated November 6, 1931, and relating to certain matters of fact in issue, was submitted and filed by its counsel.

Thereupon, by agreement of and with the opportunity for the filing of briefs by counsel, the proceeding was brought on for final hearing before the Federal Trade Commission, and was heard upon oral argument of counsel for the respondent and counsel for the Commission, the latter having filed brief, while counsel for the respondent elected to submit the case upon oral argument without brief. And Commission having now duly considered the record, and being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The Progress Paint Co. is a corporation organized under the laws of the State of Ohio in February, 1924, and, at all times since, doing business as such Ohio corporation with its office and place of business in the city of Cleveland in said State. The said business of respondent is the sale and distribution of paints and roof coating to the purchasing and consuming public throughout the several States of the United States. The said paints are designated and sold by respondent as the Progress line of paints and they consist largely of outside house paint for use upon dwellings and other buildings and property.

Respondent advertises, offers for sale and sells its paints and roof coating (a) through and by means of salesmen and agents who, on behalf of respondent, solicit purchase orders for said paints and roof

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coating from the purchasing and consuming public throughout the several States of the United States; (b) also through and by means of catalogues, circulars, letters, color cards, pamphlets, and similar sales or trade promotional literature in which it describes, represents, and offers for sale its paints and roof coating, and which it causes to be sent and delivered from time to time by mail and by said salesmen and agents, and otherwise, from its place of business in Cleveland, Ohio, through and into many other States of the United States to numerous customers and prospective customers in such other States; (c) and through and by means of advertisements published by it from time to time in newspapers, magazines, and similar publications of general circulation among the purchasing public throughout the United States and in various sections thereof. Respondent's said salesmen and agents who are active, number about 3,500. They are employed by respondent on a commission basis and solicit orders for and sell said products in their respective home or local communities throughout the United States. Respondent's means of contact with the great majority of such salesmen is entirely through correspondence and through said sales or trade promotional literature which is supplied to such salesmen and used by them in soliciting trade for respondent.

As a result and because of said advertising, soliciting and offering for sale, many members of the purchasing public throughout the United States are thereby induced from time to time to purchase said paints and roof coating from respondent, which purchase orders and such customer's remittances for the purchase price of the products ordered are transmitted from various States to respondent at its place of business in Cleveland, Ohio. To complete the sale in making distribution and delivery of its products, pursuant to said purchase orders, respondent causes its paints and roof coating so ordered and sold to be transported and delivered from its place of business in Cleveland, Ohio, through and into other States of the United States to the respective purchasers thereof in such other States.

In so conducting its business respondent has, in the course thereof, continuously maintained a current of commerce between the State of Ohio and other States of the United States, and is and has been engaged in interstate commerce in such sale and distribution of its paints and roof coating. For the years 1928, 1929, and 1930, respondent's total gross sales averaged approximately \$900,000 per annum. Said products are distributed by respondent in the usual commercial containers, such as 1-gallon cans, 5 and 10 gallon cans, kegs, half barrels and barrels. Shipments are made in small quantities of a few gallons up to comparatively large quantities, depending

upon the amount ordered by the respective customer; and such shipments are forwarded by parcel post, express or freight, as desired.

Throughout the territory covered by respondent in its sales there are many competing brands and makes of roof coating, house paint, and similar paints offered for sale and sold to the purchasing and consuming public through the retail stores and by dealers, distributors, and manufacturers. At all times in the course and conduct of its business respondent has marketed its paints and roof coating and conducted its said business in direct, active competition with such competing products and with many individuals, partnerships, and other corporations engaged in the sale and distribution of paints and roof coating in commerce in, between, and among the several States of the United States.

PAR. 2. In and through the methods and means used by respondent in advertising, offering for sale and selling its paints and roof coating as hereinabove set forth, and for the purpose and with the effect of thereby inducing the purchasing public to purchase said paints and roof coating, respondent has made, and has caused its paint to be offered for sale, sold, and distributed to the purchasing and consuming public upon various statements, representations, and assertions to the following effect:

(1) That respondent's outside house paint is a lead and oil paint of highest grade; that said paint is composed wholly of lead, zinc, and linseed oil; that the pigment of said paint is composed wholly of white lead and zinc oxide and that the vehicle of said paint is composed wholly of linseed oil; that said paint is the highest grade lead and oil paint, but that cheap paint is easily loaded with powdered rock or barytes (i.e., barium sulphate), the presence of which in a paint can not be detected by the purchaser unless he be a chemist; that people have the misguided impression that because white lead is the principal ingredient of good house paint, that it should be heavy, but that they overlook the fact that there are other substitutes for lead which weigh more than lead but surely do not cover or wear; that such a product is said barytes or barium sulphate which requires a chemist to detect its presence in paint but which makes the paint feel heavy; that, however, respondent's said paint weighs from 15 to 16 pounds to the gallon and is a strictly lead, zinc, and raw linseed oil product.

PAR. 3. The following are among the specific representations of the above-mentioned type as they have been printed by respondent in its said sales or trade promotional literature:

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PROGRESS READY MIXED, HIGH-GRADE HOUSE PAINT

This paint represents the acme of perfection in high-grade lead and oil house paint. * * * (Com. Ex. 42, Color Card.)¹

How are you going to tell good paint from bad? Not by weight. Cheap paint is easily loaded with powdered rock or barytes. You can't analyze it. You can't weather test it. True, the cheap paint won't cover as much as Progress—but how can you determine how long paint or roofing will stand up? Read our answer to these important questions. (Com. Ex. 43-A, p. 6, Catalogue.)

The invisible fire. That is what we Paint Makers call deterioration. Because, whether the sun is shining or not—deterioration is at work—slowly, invisibly burning up your property, and the only genuine protection against it is—Progress house paint—good old lead, zinc, and oil.

To prove Progress house paint will give the satisfaction that only lead and oil can give—remember—the first 3 gallons of your order can be tested by you with the understanding that if you are not satisfied it costs you nothing and we are to dispose of the balance. (Com. Ex. 43-A, pp. 6, 18, 19, Catalogue.)

PROGRESS HOUSE PAINT

The highest grade lead and oil paint fresh from the factory at wholesale prices.

A strictly first-class lead and oil paint—fast colors—spreads easy under the brush—comes ready for use—requires no thinning—weighs from 16 to 18 pounds to the gallon—covers 300 square feet to the gallon two coats. (Com. Ex. 43-B, Price List.)

Progress house paints are strictly fresh—good old lead—zinc and linseed oil. The best paint money can buy. You have our word and reputation for that. You can't afford to use cheap paint. Remember there is a "joker" in the cheap paint can—it doesn't cover and it doesn't wear. (Com. Ex. 43-C, Customer's Copy of Order Blank.)

DO YOU KNOW THAT— * * *

1. That a local county man is neighborhood service man for the Progress Paint Co.? * * *

7. That they sell you lead and oil paint—fresh from the factory at wholesale prices—cheaper than you could make it up yourself?

No factory can make better paint cheaper than Progress. With storage capacity and tankage that enables us to contract for enormous quantities of raw materials and buying in large quantity prices, turning out lead and oil paint with a minimum of labor in a modern factory with up-to-date machinery. Progress offers you a house paint that will cover better, look nicer, last longer than any other paint that sells for \$4 or \$5 per gallon and after wearing as long as good paint should wear, leaves a perfect surface for repainting. (Com. Ex. 45, Leaflet or handbill.)

40. What has weight got to do with quality of house paint? Absolutely nothing. People have the misguided impression that because white lead is the principal ingredient of good house paint that it should be heavy—but they overlook the fact that there are other substitutes for lead that weigh more than lead but surely don't cover or wear. Such a product is barytes. You can't

¹ Exhibits not published.

tell when that is in paint unless you are a chemist—but it sure does make it feel heavy. Progress paint weighs about 15 to 16 pounds to the gallon and is a strictly lead—zinc and raw linseed oil product.

41. How about when a fellow says he can buy lead and oil paint at lower prices? Get a pencil and paper and tell him that this is what it takes to make 7½ gallons of lead and oil paint and figure it out for him. One hundred pounds of lead—five gallons of oil and one half gallon of turpentine. Figure up what it costs from the prices you could buy that material from your local dealer—divide that by 7½ and you will have the cost of real lead and oil paint. Then point out that you figured nothing for labor and that this other fellow who claims his paint is lead and oil can still sell it for less than your prospect can buy the raw products and mix it himself. Ask him how he can do it when the prospect can't. Ask him how he can furnish lead and oil paint at such a price—make a profit—pay his rent and buy it from a factory that has to make a profit—traveling salesmen and pay high advertising bills and I think you will have him whipped.

42. How can my company make lead and oil paint to sell so cheap? Enormous production and output makes it possible to sell a lot of paint at a small profit—much like the Ford Motor Co., makes lots of cars and a little profit on each. Because of this tremendous sales outlet—we can buy the finest raw materials in such enormous quantities as to command the lowest possible cost price. Then with facilities for storage that includes 500,000 gallon tankage storage for oils, etc., is the reason why we can sell a quality product at from 75 cents to \$1.25 lower than any other manufacturer could market it thru dealers.

52. Why is zinc used with lead in making paint? Zinc is used in paint for the same purpose that copper alloy is used with gold. To make it more firm and to wear properly. Pure gold would be too soft to use alone and so would lead. However, only a factory that knows how to make paint is capable of using zinc as it should be used and paint without zinc is too soft to last. (Com. Ex. 46, pp. 12, 13, 15; also Com. Ex. 136.)

COVERING CAPACITY OF PROGRESS PRODUCTS

House paint (lead and oil), 300 square feet per gallon, 2 coats. (Com. Ex. 46.)

Paint Superintendent Rumberg shows Batchelder, Miller, and aides—Giant grinding mills grinding whitelead, zinc, and linseed oil into Progress house paint. (Here appears depiction of factory scene showing battery of paint grinding mills.)

Here we see our division sales managers learning from actual observation why Progress house paint is so superior to any other house paint on the market—even to lead and oil as mixed by hand. These mills are worked on the same order as a flour mill, only the lead, zinc, and coloring pigments pass between the stones and the oil is permanently ground into the pigment. Where they entered this mill as distinct products, they come out as one finished paint and the oils and pigments will never separate, but combine effectively to give the greatest possible satisfaction wherever used. (Com. Ex. 47, Progress Torch, House organ.)

Don't gamble with cheap paint—you lose every time! Paint is one thing that can't be cheap and at the same time inexpensive. There is only one way you can get paint that is really inexpensive to you and that is to get a paint

with great covering power (at least 300 to 325 square feet to the gallon), a tough wearing paint film that only rough hard wearing white lead, zinc, and linseed oil can produce and third colors ground in oil by powerful paint mills like Progress uses. Such a paint can't be made and sold for \$2.75 per gallon, etc., as the ingredients are too costly. Remember this and use this argument when you are up against cheap paint competition if you want to call it competition—this month. (Com. Ex. 49, Progress Torch, p. 3.)

Group of Progress salesmen learn why Progress house paint is different from the others. (Here appears the depiction of a factory scene showing a battery of paint grinding mills and a group of visiting individuals.)

Here are a group of Progress salesmen being conducted through our factory and having explained to them—Why Progress ready mixed lead and oil house paint is different and better than lead and oil hand mixed on the job. Here is a series of our powerful grinding mills—where the lead and zinc are ground into the oil in such a manner that there can be no more complete separation.

Contrast to this what a painter attempts to do by stirring with a stick and you will see why hand mixed paint chinks and rubs off a surface even if it is pure lead and oil. There is no blending—and the oil soaks into the wood leaving the dry lead to wash off the surface. With the Progress method—the lead and zinc is so thoroughly a part of the oil that when the oil soaks into the wood—it takes the lead and zinc with it—giving 100 percent protection and wearing power. Progress house paint will not brush off—wears evenly with a protective gloss finish and gives years of service. (Com. Ex. 53, Progress Torch, p. 2.)

You've probably read in magazines and periodicals how one of the nationally known paint manufacturers is exposing this creature in their advertisements—"You can't paint a house with applesauce", and about the joker that's to be found in the cheap paint can! No truer word was ever uttered. Why fool ourselves? We've found nothing yet that can replace the ingredients our forefathers used in making paint and that is lead, zinc, and linseed oil! You can't improve on these products, although modern paint machinery has improved the quality of the finished paint by grinding the lead and zinc into the oil instead of mixing it together with a stick.

When you buy cheap paint something has been put into it that costs less than lead or zinc—some substitute has been added to the linseed oil to cheapen that. Consequently when you buy cheap paint you are getting just what you pay for. You suffer in the cost of application which is the big item and the lack of protection which good paint would give for just a few cents more per gallon. * * * (Com. Ex. 57, Progress Torch, p. 2.)

PAR. 4. The representations with respect to said house paint being a lead and oil paint of highest grade and as having a composition, as more fully set forth hereinabove, of lead, zinc, and linseed oil and as not being a cheap paint or of the inferior class of paints which are loaded with barytes or barium sulphate, were used continuously throughout a period of more than three years prior to the issuance of the complaint and for a period of approximately 10 months thereafter. Thereupon, and in its trade promotional literature used beginning with the season of 1930, there was incorporated

by respondent a change in the text of such representations. Such change consisted in eliminating from its direct statements as to the ingredients of the paint, the specific mention of the terms "white lead" or "lead", "zinc oxide" or "zinc" and "linseed oil" or "oil" as constituting the composition thereof, and substituting therefor, or printing in such places, expressions to the effect that—

This paint represents the acme of perfection in high-grade ready-mixed house paints. It is made from selected raw materials—thoroughly tested in our laboratories—and scientifically blended to produce—protection—durability—attractiveness and general service (Resp. Ex. 15); that it is the highest grade of paint made fresh from the factory at wholesale prices; a strictly first class paint (Resp. Ex. 17); that it is the very highest grade of house paint you ever dipped a brush into * * * (Resp. Ex. 16); that it is the best paint money can buy (Resp. Ex. 18); that respondent's paints are made the best way our skilled chemists know how out of the highest class of raw materials obtainable (Resp. Ex. 19, p. 19).

The foregoing changed representations are currently used by respondent. In addition thereto the current sales literature of respondent perpetuates the following representations of the type hereinabove referred to and from which the specific mention of such terms "white lead" or "lead", "linseed oil" or "oil" or the reference to said inferior paint ingredient barium sulphate have not been eliminated:

40. What has weight got to do with quality of House Paint? Absolutely nothing. People have the misguided impression that paint must be heavy to be of good quality—but they overlook the fact that there are many ingredients that can be added to paint to make it heavy—but still will not cover or wear well. Such a product is known as barium sulphate. You can't tell when that is in paint unless you are a chemist—but it sure does make it feel heavy. Progress paint weighs about 15 or 16 pounds to a gallon.

41. How about when a fellow says he can buy lead and oil paint at lower prices? Get a pencil and paper and tell him that this is what it takes to make 7½ gallons of lead and oil paint and figure it out for him. One hundred pounds of lead—five gallons of oil and one half gallon of turpentine. Figure up what it costs from the prices you could buy that material from your local dealer—divide that by 7½ and you will have the cost of real lead and oil paint. Then point out that you figured nothing for labor and that this other fellow who claims his paint is lead and oil can still sell it for less than your prospect can buy the raw products and mix it himself. Ask him how he can do it when the prospect can't. Ask him how he can furnish lead and oil paint at such a price—make a profit—pay his rent and buy it from a factory that has to make a profit—traveling salesmen and pay high advertising bills and I think you will have him whipped.

78. Do you sell linseed oil and white lead separately? We do not sell linseed oil or white lead separately, as we know that a customer can not make as good a paint by hand as we can through our modern machinery nor as economical, (Resp. Ex. 19, pp. 12, 21.)

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The evidence, which was introduced by respondent, shows that respondent has discontinued, some 10 months after the date of the complaint, the practice of issuing the handbill Commission's Exhibit 45 as part of its trade promotional literature; and that in January, 1931, it discontinued publishing said house organ, *The Progress Torch*.

PAR. 5. In truth and in fact said house paint as marketed by respondent throughout said period of years under the representations described in paragraphs 2, 3, and 4 hereof, is not and has not been a lead and oil paint; nor is, nor has it been composed wholly or principally of white lead, zinc oxide and linseed oil with or without the necessary color pigments and dryers, but in fact contained and still contains white lead and zinc oxide only in small or minor proportions with a barium sulphate or barytes content both as a separate ingredient and as a large proportion of a combination ingredient; titanox; and, during a period was made with the oil ingredient containing soya bean oil which was substituted in part for linseed oil as herein-after described.

(a) It is established by the evidence and by stipulation of respondent that the composition of said paint and the basic master formula under which the same has been manufactured, since about January 1, 1931, are as follows:

MASTER FORMULA COVERING PERIOD SINCE JANUARY 1, 1931

Pigment (i.e., the solids, comprising 57.77 percent of the paint):

	Percent
Titanox	36
White lead	12
Zinc	20
Asbestine	24
Barium sulphate (also known as barytes)	8

Vehicle (i.e., the liquid portion comprising 42.23 percent of the paint):

	Percent
Linseed oil	87
Mineral spirits and dryers (i.e., volatile liquid)	13

(b) It is also established, by evidence adduced by respondent, that prior to the change to the above formula, and during the period from October 26, 1925, to December 31, 1930, more than three years immediately prior to the issuance of the complaint and for a considerable period of time hereafter, respondent's said paint was manufactured under the following master formula, subject, however, to the exception stated below with respect to the item of linseed oil:

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MASTER FORMULA COVERING PERIOD OCTOBER 26, 1925, TO DECEMBER 31, 1930

Pigment (i.e., the solids in the paint consisting of 57.77 percent of the paint) :

	Percent
Titanox	38
Lead sulphate.....	4
Zinc oxide.....	20
Barium sulphate	16
Asbestine.....	24
Total	100

Vehicle (i.e., the liquid portion, consisting of 42.23 percent of the paint) :

	Percent
Refined linseed oil.....	87
Oil dryer and thinner.....	13
Total	100

(c) In manufacture the paint was processed through the grinders, mixers, and other manufacturing machinery in batches of 83 gallons each. It was the duty of the factory workmen engaged in producing the paint to introduce the ingredients in certain designated quantities which would be sufficient to produce 83-gallon batches and would correspond to the relative proportions named in the above formulae. In the manufacture of the paint under said master formula covering the period October 26, 1925, to December 31, 1930, it was not purely linseed oil which was in fact used for the ingredient listed as "refined linseed oil, 87 percent," but besides linseed oil there was actually used soya bean oil in the proportion of 7 gallons to each batch of 83 gallons of paint. Such 7-gallon substitution of soya bean oil was made during the incumbency of a former factory superintendent of the Acorn Refining Co., Mr. Rumberg, who served as such for several years and until July, 1929. Testimony of the succeeding factory superintendent of the Acorn Refining Co., H. L. Williams, was introduced by respondent to the effect that beginning in October, 1929, the amount of soya bean oil substituted for linseed oil was 6 gallons in every 83 gallons of the paint; that such substitution of soya bean oil for linseed oil was made because "in our estimation" such soya bean oil "is as good an oil in that quantity as linseed, and as we had an oversupply of soya bean oil at that time, we used it to cut down our inventory, and that only was done until the first of the year 1930"; also that the cost of soya bean oil was higher than the cost of linseed oil (Tr. p. 1171).

(d) In proof of the composition of said paint there is also evidence, introduced by counsel for the Commission, as to the ingredients in seven different samples of the paint as determined by chemical analyses made by paint chemists of the United States Bureau of

Standards. Five of such samples were 1-gallon cans of the paint procured prior to the issuance of the complaint from shipments to purchasers. The other two were 1-quart cans obtained directly from a distributor of paints in Cleveland, Ohio, after the date of the complaint. All samples were procured prior to said use of the changed formula adopted January 1, 1931, and during the period of the use of said master formula of the period of October 26, 1925, to December 31, 1930. In comparison with such last-named formula the results of said analyses as given in evidence showed some variation or differences in the relative proportions or percentages of the various ingredients in these particular samples or specimens, but were in substantial accord with the specifications in the master formula in the following important respects; kind or name of ingredients used; the total amount of inert pigments in the paint; total amount of active pigments in the paint and the relative proportions of the pigment and the vehicle or liquid.

(e) Titanox is a paint pigment consisting of 75 percent barium sulphate, also called barytes, and 25 percent titanium dioxide. Thus, when expressed by its component parts, the item of 36 per cent titanox in the above-stated master formulae may be rendered 9 percent titanium dioxide and 27 percent barium sulphate. The respective items of 8 percent and 16 percent barium sulphate in the above-mentioned master formulae used prior and subsequent to January 1, 1931, are barium sulphate ingredients which are in addition to the barium sulphate present in said titanox and is free barium sulphate. The said 8 percent barium sulphate and 24 percent asbestine in the currently used master formula above stated, and the 16 percent barium sulphate and 24 percent asbestine in said former master formula, are inert paint pigments, while the remaining pigments listed in said formulae are known as active paint pigments.

(f) Barium sulphate is an inert pigment having little or no opacity, i.e., hiding power, and is a very cheap ingredient in comparison with lead, zinc, or titanox. From figures supplied by respondent covering the years 1927 and since, the cost of the barium sulphate in the paint was less than 1 cent per pound as compared to the average of $6\frac{1}{2}$ cents per pound for zinc oxide and from $6\frac{3}{4}$ cents to 9 cents per pound for lead. Through the same period the cost of titanox ranged from $6\frac{1}{2}$ cents per pound to $11\frac{1}{2}$ cents with an average for the period of a little less than 9 cents per pound. Barium sulphate is a relatively heavy material of approximately the same bulk as titanox, but of about 35 percent and 60 percent greater bulk than zinc and lead, respectively. Asbestine is a siliceous material which is likewise inert and has little or no opacity in com-

parison with lead, zinc, or titanox. It is also a comparatively cheap pigment with an average cost of less than 1 cent per pound for the above-mentioned period. Such asbestine is of much greater bulk than lead or zinc or the other pigments in the paint. The comparative bulk of these materials may be expressed by the facts that it requires only 23.74 pounds of asbestine to make 1 gallon in volume, whereas it requires, respectively, 56.74 pounds of lead, 47.15 pounds of zinc, 35.82 pounds of titanox, and 35 pounds of barium sulphate to make 1 gallon in volume in each instance. Said inert pigments such as barium sulphate and asbestine are paint ingredients of low class or merit, and they do not rank among the finest or best paint pigments which are on the market and in general use. Titanox is a comparatively newly discovered paint ingredient which is classed as an active pigment. Respondent introduced testimony, however, to the effect that it is chemically inert. It has high hiding power, and as shown by the figures above stated, it has about 60 percent greater bulk than lead and 35 percent greater than zinc. The pigment is used by some manufacturers as one of the pigments for first quality paint, but its properties or qualities as a paint pigment are not so generally or widely known among the purchasing public as are those of white lead and zinc oxide.

(g) White lead and zinc oxide are paint pigments of high quality and have long been known and recognized as such in the paint industry and trade, and by painters and the consuming public generally. They rank high and are extensively used by paint manufacturers as the principal pigments for paint of highest or best quality. Linseed oil is likewise recognized and considered as a product of highly desirable qualities and merit for use as the oil ingredient of paint. Outside house paint consisting wholly or principally of white lead, zinc oxide, and linseed oil with necessary color pigments and dryer, and so-called lead and oil paint, are paints which are among those of the highest grade or best quality and have been considered and generally recognized as such among paint manufacturers, dealers, users, and consumers. And paints composed wholly or principally of such ingredients, and so-called lead and oil paint, are in demand by the purchasing and consuming public, and the composition of such paints is a sales advantage and an important factor which is conducive to the sale of such paints. Lead and oil paint has white lead as its pigment, exclusive of coloring pigment, and linseed oil as the oil ingredient. Such paint has long been used by master painters for outside house paint, and is the type of paint which is frequently mixed by hand as used or needed for any par-

ticular painting job. The reputation and recognition of such lead and oil product as paint of first or best quality has existed among painters and the public generally for many years.

(h) Much evidence was introduced with respect to the quality of respondent's paint and the effect of the ingredients therein as compared to high quality paints, lead and oil paints, and paints manufactured of white lead, zinc oxide, and linseed oil or paints containing only the best or highest paint ingredients. The witnesses called by counsel for the Commission on these points included paint chemists of the United States Bureau of Standards and a number of paint chemists and others having long experience in the manufacture, formulation, testing, and sale of paints. The evidence adduced embraces testimony of such witnesses to the effect that respondent's said paint is inferior in quality to paint composed wholly or principally of white lead, zinc oxide, and linseed oil, lead and oil paints, or paints composed of the highest class or best paint ingredients; that the said inert pigments in respondent's product, barium sulphate and asbestine, are in excessive proportion to the active pigments; that of the pigment of first or best quality paints a maximum of, or not more than, 15 percent of inert materials can be used without reducing the quality of the paint below first class or best paints, and that in many of the best quality paints on the market a much lesser proportion than 15 percent of inerts is used; that the large proportion of inert materials in respondent's said paint are excessive and that by reason of the use thereof respondent's paint is not only cheapened as to cost of materials, but is also of an inferior or reduced quality; that such inert pigments are fillers and extenders and considered by some in the excessive proportion used in respondent's paint as adulterants.

Respondent's witnesses in this regard—comprising principally the superintendents of the factory where the paint was made, which superintendents formulated the product, and another paint expert of varied experience—testified to the effect, among others, that respondent's paint is first quality and that said inert pigments therein have various necessary or desirable effects particularly because of the use in the paint of said titanox ingredient; and that said inert pigments notwithstanding their cheapness in price and lack of opacity are not excessive. The term reenforcing pigments is used in respondent's testimony to designate said inert ingredients. In representing its paint as composed wholly of lead, zinc and linseed oil as set forth in paragraph 3 hereof, respondent also represented in effect that barytes or barium sulphate is a substitute for lead,

is used to load cheap paint, and as a paint ingredient makes the paint feel heavy, but does not cover or wear.

(i) Respondent's said house paint as made under said master formulae used prior to and since January 1, 1931, weighs 14 pounds to the gallon and not 15 or 16 pounds, or 15 to 18 pounds (as represented by respondent on page 12 of Com. Ex. 46 and Resp. Ex. 19) and in price list (Com. Ex. 43-B) quoted in paragraphs 3 and 4 above. (All percentages or relative proportions of paint ingredients in these findings are given on the basis of weight of the product, unless otherwise stated.)

PAR. 6. Upon consideration of the record the Commission finds that some of the purchasing public do not believe paints composed as respondent's in fact is and has been are of as high quality as paints composed wholly or principally of white lead, zinc oxide, and linseed oil exclusive of necessary color pigment and dryer, or lead and oil paint, or paints of equally high quality. And the Commission further finds that respondent's said representations to the effect that its paint is composed wholly or principally of white lead, zinc oxide, and linseed oil, and that all the ingredients thereof are of the highest class raw paint materials obtainable, as more particularly set forth in paragraphs 2, 3, and 4 hereof, are and have been false, misleading, and deceptive, and have been calculated, and had the capacity and tendency, to mislead, deceive and induce the purchasing public to purchase said paint in the erroneous beliefs that said representations are and were true in fact and that the paint was in fact so composed; that said paint does not and has not contained other ingredients, nor said barium sulphate and asbestine as above described, nor any inert paint pigment other than coloring pigment; that the oil in the paint was in fact purely linseed oil at all times throughout the use of such representations as to linseed oil, and that it did not contain any such soya bean oil as was in fact substituted for linseed oil to the extent above stated in the manufacture of the paint under said master formula used prior to January 1, 1931.

PAR. 7. The said false, misleading, and deceptive representations above set forth have been made by respondent with knowledge that the said paint was not in fact composed wholly or principally of lead, zinc, and linseed oil and was not a lead and oil paint as represented, but was in truth manufactured with the ingredients as described in paragraph 5 hereof, contained said barytes or barium sulphate besides asbestine, titanox, and soya bean oil. Throughout the period of years in which said false, misleading, and deceptive representations were used, either prior or subsequent to the issuance

of the complaint, respondent's customers were not advised or informed by respondent through its trade promotional literature or otherwise that in fact said paint is not in truth composed as stated in its representations above described or that it contained barytes or barium sulphate, or asbestine or any inert materials, or titanox or soya bean oil, or that the white lead and zinc oxide therein constitutes only a small or minor part of the pigment. Respondent has not followed the practice used by some paint manufacturers of printing the formula upon the label on the commercial containers of the paint or otherwise disclosing the actual ingredients in the paint. Nor has respondent in any other manner advised or informed the purchasers of said paint of the actual composition thereof.

PAR. 8. Further, in the course and conduct of the business of promoting and effecting the sale and distribution of its paint and roof coating as hereinabove described, respondent has caused throughout the period of more than 3 years prior to the issuance of the complaint and thereafter, and still causes, its said paints and roof coating to be offered for sale and sold to its customers, the purchasing and consuming public of the several States, upon various representations, statements, and assertions to the following effect:

That respondent is the manufacturer of said products and that it directly owns, operates, or controls a "million-dollar" factory in which it manufactures said products; that in the sale and distribution of said products it acts as a manufacturer and not as middleman or dealer; that it sells and distributes said products directly from itself, as the manufacturer, to the consuming public without the intervention of any middleman, jobber, wholesaler or retailer; that its gross annual sales of its products exceed several million dollars; that its paint factory is "the largest in the land selling direct to users" and that it has investments in said paint factory and other business facilities to the extent of \$1,000,000; that it is a million dollar company, has a million dollar rating; that its rating in Bradstreets is "GAa \$1,000,000.00"; that it "is rated in Bradstreet's Mercantile Book as HAa, or better than one million dollars credit rating"; that respondent is the oldest manufacturer of liquid roofing in the world; that the illustrations or pictorial representations of factory buildings and manufacturing machinery and equipment shown in its aforesaid advertising and sales or trade promotional literature are true illustrations and pictorial representations of factory buildings, manufacturing machinery and equipment which it directly owns, operates, controls, or uses in manufacturing its said product; that it has been engaged in its business and in manufacturing said products for 22 years or more; that because it is the manufacturer thereof said prod-

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ucts are of better quality than similar products sold by competing dealers, and that respondent's prices for its products are cheaper and lower than the prices at which similar products of like quality can be purchased from respondent's competitors; that the prices at which respondent sells its products are manufacturer's prices and not dealer's or middleman's prices, and that respondent's prices do not contain any costs, profits, or other charges of middlemen or dealers; that in purchasing said products from respondent the purchasers thereby save to themselves the costs, profits, and other charges of any and all middlemen or dealers; that, by reason of its advantages in being such a large manufacturer and selling at factory prices direct to consumer, its prices on paint are from \$1 to \$1.50, or 40 percent less than competitors' prices for similar quality paints and the prices at which such similar quality paints are sold by or may be purchased by the public from retail stores or other competitors.

PAR. 9. The following described specific instances of the foregoing representations, statements, and assertions are among those which respondent has caused to be set forth in its sales or trade promotional literature:

(a) On the outside cover of its catalogue (Com. Ex. 43-A and Resp. Ex. 16) respondent depicts large factory buildings or factory with the following prominent statement:

Roofing and paint
from this million-dollar factory
to you
on credit

On the inside of the catalogue, which is arranged so as to appeal to the purchasing public and is displayed to purchasers and prospective purchasers by respondent's salesmen, appear such representations as follows:

The Progress Paint Co. has become the largest in the land selling direct to the user.

George E. Spencer, general manager, pledges you superior quality and better service.

Twenty-five years in the harness, serving constantly increasing thousands of customers—over and over again—selling their friends and neighbors thru the good name established by our products in the strongest testimonial I can offer as to the reputation and quality of Progress products.

Twenty-five years which have seen this company grow from a little obscure two-story building, with a force you could count on your finger tips, to the present modern million dollar paint plant, with its towering buildings, acres of floor space, tanks with storage capacity of better than 250,000 gallons of liquids and its hundreds of loyal, efficient employees!

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Twenty-five years devoted to exclusive selling direct from the factory to user at wholesale prices thru thousands of specially trained neighborhood service men who are proud of their house, its reputation, and its merchandise!

LOWER PRICES

Because sold direct from the factory to user

The Progress plan is like a gigantic chain extending across the entire United States—eliminating the store—with its expenses, rent, clerk hire, salesmen, etc.—cutting out the jobbers' warehouse—trucking charges, and all the other odds and ends that are always added to the price you pay! There is but one connection—the direct line that leads from the factory where Progress products are made—to you! Thus again you come into contact with lower prices that only such a plan, worked out to such an extensive degree, makes it possible for you to share in such an effective money-saving manner.

When merchants and dealers say, "buy at home," remember, they are asking you to pay a price that will include their profit—their expense, rent, heat, light, clerk hire—the profit of the jobber who sold to them—the jobber's salesman, and from that to the factory who sold the jobber—plus their profit—their salesman's expense and salary in this business. In back of it all, the paints they offer you—they bought out of town and nine times out of ten, from the same city Progress products come from!

To buy products equal to Progress products under such a system, you would have to pay from \$4.50 to \$5 per gallon and take a chance as to whether the paint was fresh or last year's stock! In comparison, Progress paints—the best that can be made, sells for \$3.45 per gallon in barrels for house paint! Remember, too—it isn't "How much you pay for paint," but it is, "How often you pay!" No matter how well off you are—you can't afford to use cheap paint—for in the end it's too expensive. There is always a joker in the cheap paint can! Play safe! Buy from the factory through the Progress plan and from our local neighborhood service man who is your neighbor!

Our direct from Factory prices on house and barn paint will be found 30% to 40% LESS than the store-price for EQUAL QUALITIES. Where mail-order houses quote a price close to ours, WE GUARANTEE 50% BETTER QUALITY, OR MONEY REFUNDED. It stands to reason, a million dollar factory can sell paint for less money than DEALERS.

The FACTORY is the place to buy PAINT and ROOFING (Com. Ex. 43-A; Resp. Ex. 16.)

When you need paint—Varnish or Roofing—Write us to
send our neighborhood service man.

He can save you from 20% to 40% by DIRECT FROM FACTORY TO CONSUMER wholesale prices—fresh paints—full of life—maximum covering capacity, and greatest durability. (Com. Ex. 43-C.)

(b) On the leaflet (Com. Ex. 43-D) appears a depiction of what purports to be a large factory which depiction is referred to as follows:

Go partners with this million-dollar paint factory.

A gallon of the best paint sells for \$5 to \$6 in a paint store. The factory price is \$3.15 a gallon. The difference goes to pay the traveling salesman's salary and expenses, the wholesaler's profit and expenses, the retailer's profit

and expenses. None of these things add to the quality of the paint, they only increase the price to the user.

This million-dollar factory sells paints and roofing direct to the user at the factory price. Thru our own factory representatives in every county.

Direct-selling from factory to user is here to stay. Developed out of the necessity to eliminate waste in distributing necessities. This huge factory sells several millions of dollars worth of paints and roofing—direct to users. Not a dollar's worth is sold thru dealers.

Here's that opportunity—the kind of a chance you have been waiting for and hoping for. An opportunity to hook up with one of the leading paint and roofing manufacturers in the country. A concern rated at one million dollars in Bradstreet's.

FACTORY WHOLESALE PRICES!

DIRECT TO USERS

Progress salesmen find our prices are lower than those of retail stores or mail-order houses—this proves—the factory is the place to buy paint and roofing—but low prices by itself mean nothing—quality must be considered when you talk price. It is the superior quality of our paints and roofing combined with our extremely low factory wholesale prices that produces the sales made to several thousand satisfied progress customers in every state in the union.

The foregoing circular (Com. Ex. 43-D) was used by respondent until March, 1931.

(c) Respondent's letterheads, appearing on all its trade promotional letters and communications to salesmen and to customers, are as follows:

The Progress Paint Company
Manufacturers of
Asbestoruf
House & barn paints—enamels
Technical paints—varnishes & stains
Cleveland, Ohio, U.S.A.

Such letters also contain the printed slogan:

The factory is the place to buy paint and roofing. (Com. Ex. 43-E.)

(d) Respondent's color card, illustrating the various colors of its paints for the customer's selection, carries the following:

Progress
Paint & varnish
Products
For outside and inside use
The factory is the place to buy paint
Manufactured by
The Progress Paint Co.
Cleveland, Ohio
Facts worth knowing of Progress products

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Everything in the Progress line is made in our modern fireproof factory. Everything is guaranteed fresh as we carry no great stock on hand made up. It comes direct from the mills to you and at wholesale prices. Our aim is not to give you the cheapest paint in price but the lowest price paint in quality that can be purchased. One must consider today, with the high cost of application, that a few cents saved here or there in the cost of material used may mean dollars wasted in the cost of application where it fails to stand up. The best paint is the cheapest as any practical property owner will tell you and the best paint made is the paint you buy direct from this factory as the factory is the place to purchase paint. (Com. Ex. 43-F; Resp. Ex. 15.)

(e) In letters sent to salesmen respondent represents that its paints are sold at a "factory wholesale price" (Com. Ex. 44); that respondent is a "million dollar company" (Com. Ex. 5); that "you're with a twenty-two year old million dollar house * * *" (Com. Ex. 51-A); that the rating in Dun's or Bradstreet's of the Progress Paint Co. is "GAa \$1,000,000 and over, which is the highest rating we could have." (Com. Ex. 132); that the customer "takes no chances for at all times he is fully protected by our money back guarantee—our free trial offer and our million dollar rating. He is not fooling with a new comer—but a company 25 years old and he is getting his paint through the Progress plant at factory prices." (Resp. Ex. 22.)

(f) The handbill, distributed by respondent to the purchasing public for a period ending about 10 months after the date of the complaint, contains the following:

DO YOU KNOW THAT—

2. That this company is rated in Bradstreet's with \$1,000,000 rating and has been manufacturing paint for 22 years?

4. That they can save you from 25 to 50 percent on your paint and roofing bills?

5. That they are the oldest manufacturers of roofing in the world?

Progress paints save you money because they are sold to you direct from the factory at wholesale prices. You buy your paint from Progress at the same price your local dealer buys from the people he deals with. You save the difference. (Com. Ex. 45.)

(g) Printed instructions for salesmen's use in promoting sale of respondent's products, contain the following:

CONFIDENTIAL INFORMATION FOR
PROGRESS NEIGHBORHOOD
SERVICE MEN

1. Who is the Progress Paint Co.? Your company is a manufacturer of the complete line of paints, varnishes, stains, and liquid roofing. Been in business 25 years and is rated in Bradstreet's Mercantile Book as HAa or better than \$1,000,000 credit rating. Your company sells all products direct from factory to consumer at wholesale prices. Your products are never sold through dealers or jobbers or anyone for resale purposes.

49. How can I save people money on paint? By selling them the best paint made at the factory wholesale price. If they were to go to a paint dealer and bring a sample of Progress paint and ask that dealer to have his factory duplicate that sample—such a paint would cost him anywhere from 25 percent to 40 per cent more when bought through the dealer. By dealing with you—he can get that paint at the same price the dealer would buy from his factory. Your paint is fresh—full of life—good covering capacity—you use less paint.

61. Are you manufacturers or just jobbers? Your company is an old established manufacturer. We manufacture every product you sell—we even make our own steel barrels and other containers and employ several hundred men and women. (Com. Ex. 46; Current book, Resp. Ex. 19.)

(h) Among the depictions and other representations of factory scenes and factory equipment are the following published by respondent in its house organ, *The Progress Torch*, distributed as trade promotional literature:

FROM START TO FINISH THIS BUNCH SAW EVERYTHING. HERE THEY ARE
WATCHING THEIR ORDERS BEING FILLED.

[Here appears a depiction of a factory scene showing factory workmen being observed by a company of visitors]

The men you see in this picture won this opportunity to visit the great Progress factory by their constant efforts to get ahead—by their sales and ability to do their share. To-day they are all out on their territories with many salesmen under their control pushing Progress to the utmost to keep up with orders. You, too, may be in such a group some day if you do as they have done. If you work as these men have worked. We aim to have as many men in to inspect our big plant as possible when their business warrants it and when you read the letters of appreciation from these men that will appear in next month's *Torch*, I am sure you will work tooth and nail to be among the next group invited in at our expense. (Com. Ex. 47, p. 3, *The Progress Torch*, April, 1928.)

Every man who has ever owned a Progress selling kit can go out to-day and though he never sold a gallon of paint in his life—will be able to do so now and clean up the big money that has been the lot of every man who has ever pushed this great line.

With the Progress factory keyed up to maximum capacity—a night shift in operation now—several weeks before it was necessary last year—a modern conveyor system to facilitate rapid handling of orders—we are now ready to handle the greatest volume of business any single paint factory ever handled in a season. There will be no delayed orders—or complaining customers if Mr. Tatje, our general superintendent has anything to do with it and consequently—every man is urged now to go out after orders like he has never done before. No matter what has happened—let not a single thing stop you from getting into the field and staying there every day from now on until Christmas! There is great work for Progress salesmen to do. Much ground to cover and we must realize that property owners won't wait—once they make up their minds to order.

In keeping with our policy of doing everything possible to make Progress salesmen the highest paid representatives in the direct selling field—Progress has added to its staff Mr. Carl Rumberg, who, after concluding a scientific

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education dealing with paint subjects has also put in considerable time right in the Progress factory—in order that he might know from the ground up—everything about Progress products and thus be able to render you first-hand information on any problem that you may need assistance that you may grow and thrive and increase your earning powers with this line.

HOW TO USE YOUR CATALOGUE

Your catalogue my friend is your “pick and shovel” in the most remunerative trade you ever tackled. It has been prepared so that handled rightly—it will of itself be able to sell the prospect! It contains the best features and ideas of the cream of Progress salesmen but the only thing it lacks is “legs.” You’ve got to provide them and if you do and take it around to property owners it will do the rest. When you bring it in to a property owner—begin at the first page of the book and take him through it—page by page—calling his attention to each feature—step by step—and it will bring him back to you on the last page as the neighborhood service man ready to take his order and render him the service that will make your presence felt in that community—quality merchandise and at price-saving possibilities. (Com. Ex. 53.)

(i) In magazine advertisement (Com. Ex. 137), published by respondent after the date of the complaint, and setting forth matters as the basis on which salesmen sell its products, appears the following:

Sell paint

Direct from this million-dollar factory
on easy credit terms
at factory wholesale prices
The Progress Paint Co.
Cleveland, Ohio

(In conjunction with the above statement appears a depiction of large factory buildings which depiction is fictitious to the extent that in reality no such factory of the respondent exists or is in operation, and further, in that it is not a true depiction of the factory in which respondent’s paint is manufactured or the factory of the Acorn Refining Co. hereinafter referred to. A similar depiction of factory was displayed in the magazine advertisement. (Com. Ex. 41.)

PAR. 10. The true facts in regard to said representations are and have been as follows:

(a) Respondent corporation, The Progress Paint Co., is not a manufacturer and does not manufacture any of the paint, roof coating, or other products which it markets, but procures such products from the Acorn Refining Co. at certain prices charged therefor by such Acorn company. The Progress Paint Co., respondent corporation, does not own, control, or operate any such paint factory, factory warehouse, paint vats, grinding, mixing, or other paint manufacturing equipment or facilities as represented or depicted in its sales or trade promotional literature, or any other paint manufac-

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turing equipment or facilities. The authorized capital stock of such Progress company is \$25,000, par value, and all its physical property, listed on its books at \$2,474.66, consists of furniture and fixtures such as office desks, chairs, dictaphones, typewriters, files, and other office equipment, which are used in the promotion, sale, and distribution of its products. Its other assets consist of cash, accounts receivable, deferred expenses and money advanced to salesmen, with all assets totaling a little less than \$100,000. Said Progress corporation has no factory superintendent, nor does it employ any paint manufacturing experts, chemists or any other employees engaged in manufacturing. Besides said salesmen respondent corporation's employees number between 50 and 60, and all are engaged under the supervision of a sales manager in the work of promoting and effecting the sale and distribution of its merchandise. It is not a million dollar company or manufacturer as represented, nor does it have gross annual sales of several million dollars, but as stated in paragraph 1 hereof, such gross annual sales averaged about \$1,000,000. Respondent corporation does not purchase, store, test or otherwise handle or use any raw materials for the manufacture of paint or roof coating.

(b) The said Acorn Refining Co. is an Ohio corporation engaged since about the year 1914 in the manufacture of a complete line of paints or paint products and roof coating, which, in the course of its business it sells to the purchasing and consuming public, including industrial plants and other users and consumers, throughout the United States, as well as supplying said products, at prices hereinafter stated, to the respondent and to seven other similarly situated corporations including the Madison Paint Co. and the Franklin Paint Co., respondents in Dockets 1573 and 1567, respectively. Said Acorn Refining Co. has, and operates in its business, a paint factory or paint manufacturing plant at Cleveland, Ohio, which paint factory or paint manufacturing plant is of reputable appraisal value of substantially less than \$1,000,000. The average daily production of the plant is 4,000 to 5,000 gallons of paint and 5,000 to 6,000 gallons of roof coating. Such Acorn company has facilities for the purchase and storage of raw materials in carload quantities. It also has a paint laboratory with a staff of four men. The respondent corporation, the Progress Paint Co., occupies as its place of business rented office space on the premises of the Acorn Refining Co. for which space it pays rent to such Acorn company. And it is from the Acorn Refining Co.'s factory premises that respondent corporation ships its products to its customers. Besides paint and roof coating, respondent also purchases various other supplies and services used in its business from said Acorn company.

(c) Respondent's sales manager testified that the picture of the large paint factory appearing on the outside of respondent's catalogue (Com. Ex. 43-A and Resp. Ex. 16) originated in the mind of the artist employed to prepare the same for publication and that the artist was in Chicago and was not familiar with the factory of the Acorn Refining Co. Such depiction of a paint factory, in connection with which also appears the statement "Roofing and paint from this million-dollar factory to you on credit", is wholly fictitious. The depictions of a paint factory elsewhere in said trade promotional literature are also fictitious in that respondent has no such factory or any factory, and such depictions are not accurate depictions of the factory of the Acorn Refining Co. and do not show the sign "Acorn" which is in reality on the front of said Acorn factory and an integral part of said building of the Acorn Refining Co. Said other depictions of factory equipment and manufacturing scenes are in fact depictions of equipment and scenes in the Acorn Refining Co. factory. Such depictions, however, are represented in respondent's literature as being depictions of the Progress factory and of factory equipment and facilities owned or operated by respondent corporation, The Progress Paint Co.

(d) Prior to the issuance of the complaint and until about January, 1930, substantially all of the capital stock of the respondent corporation, The Progress Paint Co., was owned in equal proportions by E. M. Katz and S. S. Sanders, president and secretary-treasurer, respectively, of the respondent, who also own in equal proportion all of the capital stock of the Acorn Refining Co. and are officers of that company. After the issuance of the complaint the capital stock of respondent corporation, owned by said individuals Sanders and Katz, was acquired and is now owned by the Acorn Refining Co.

(e) The Progress Paint Co., respondent, is one of eight corporations whose stock, ranging from \$10,000 to \$100,000 authorized par value, is similarly owned by the Acorn Refining Co. They are similarly engaged in procuring paint manufactured by the Acorn Refining Co. and selling the same to the public throughout the United States. It is marketed by said companies as paint of their own respective line and manufacture. For example, it is sold by The Progress Paint Co. as the Progress line of paints; by the Franklin Paint Co. as the Franklin line of paints; by the Madison Paint Co. as the Madison line of paints. To other purchasers it is sold by the Acorn Refining Co. as the Acorn line of paints. The products sold by the respondent corporation comprise from about 20 percent to 23 percent of the output of the Acorn Refining Co.

(f) Evidence was introduced on behalf of respondent to the effect that the prices charged by the Acorn Refining Co. to the respondent, The Progress Paint Co., for said paint, and roof coating are the Acorn Refining Co.'s so-called "blue book" prices less 15 percent, and that such prices represented only the Acorn Refining Co.'s cost; that all the profits in the distribution of the products sold by respondent to the public are allowed to accumulate in the name of The Progress Paint Co. and are taken out mainly, if not entirely, in the form of salaries to said Katz and Sanders rather than through the declaration of dividends.

(g) Evidence was also introduced through respondent's witnesses tending to show that the business of the Acorn Refining Co. and said other eight corporations, including respondent, which are engaged in selling and distributing paint manufactured by the Acorn company, is considered by the officers of the Acorn company and of respondent as one business. That any such relationship exists between said companies is not disclosed to the purchasing public. Testimony was also given, largely by said S. S. Sanders, secretary-treasurer of respondent, substantially to the effect that care is also taken to avoid disclosing any such relationship to the salesmen who sell the paint to the public for the various companies referred to, and that such nondisclosure enables these companies to sell more paint, and makes possible the solicitation and sale of the paint by several of the respective companies in any given locality or community by reason of the nondisclosure in such communities of the existence of such relationship or that in reality it is all the same paint which is being sold under different company names and labels. As part of such nondisclosure each of said respective companies, although located on the same premises, represents itself as being located at a differently named street address. Testimony was also adduced by respondent to the effect that instead of continuing to conduct respondent's business under its name as an unincorporated trade name, it was incorporated so that, among other things, respondent could receive a listing and rating in the commercial rating publications of R. G. Dun & Co. and of Bradstreet's in such a way as not to disclose or reveal any relationship or connection with the Acorn Refining Co. or other company. Until March, 1928, respondent was listed by Bradstreet's as follows:

Progress (The) Paint Co. W+HAa

Since then such rating was given as W+GAa

Such symbol W designates the business of the company as wholesale. HAa stands for a capital rating of \$750,000 to \$1,000,000 and GAa for \$1,000,000 and up in capital rating. Said division sign means that such rating covers two or more corporations and in this

of the complaint, respondent's customers were not advised or informed by respondent through its trade promotional literature or otherwise that in fact said paint is not in truth composed as stated in its representations above described or that it contained barytes or barium sulphate, or asbestine or any inert materials, or titanox or soya bean oil, or that the white lead and zinc oxide therein constitutes only a small or minor part of the pigment. Respondent has not followed the practice used by some paint manufacturers of printing the formula upon the label on the commercial containers of the paint or otherwise disclosing the actual ingredients in the paint. Nor has respondent in any other manner advised or informed the purchasers of said paint of the actual composition thereof.

PAR. 8. Further, in the course and conduct of the business of promoting and effecting the sale and distribution of its paint and roof coating as hereinabove described, respondent has caused throughout the period of more than 3 years prior to the issuance of the complaint and thereafter, and still causes, its said paints and roof coating to be offered for sale and sold to its customers, the purchasing and consuming public of the several States, upon various representations, statements, and assertions to the following effect:

That respondent is the manufacturer of said products and that it directly owns, operates, or controls a "million-dollar" factory in which it manufactures said products; that in the sale and distribution of said products it acts as a manufacturer and not as middleman or dealer; that it sells and distributes said products directly from itself, as the manufacturer, to the consuming public without the intervention of any middleman, jobber, wholesaler or retailer; that its gross annual sales of its products exceed several million dollars; that its paint factory is "the largest in the land selling direct to users" and that it has investments in said paint factory and other business facilities to the extent of \$1,000,000; that it is a million dollar company, has a million dollar rating; that its rating in Bradstreets is "GAa \$1,000,000.00"; that it "is rated in Bradstreet's Mercantile Book as HAa, or better than one million dollars credit rating"; that respondent is the oldest manufacturer of liquid roofing in the world; that the illustrations or pictorial representations of factory buildings and manufacturing machinery and equipment shown in its aforesaid advertising and sales or trade promotional literature are true illustrations and pictorial representations of factory buildings, manufacturing machinery and equipment which it directly owns, operates, controls, or uses in manufacturing its said product; that it has been engaged in its business and in manufacturing said products for 22 years or more; that because it is the manufacturer thereof said prod-

ucts are of better quality than similar products sold by competing dealers, and that respondent's prices for its products are cheaper and lower than the prices at which similar products of like quality can be purchased from respondent's competitors; that the prices at which respondent sells its products are manufacturer's prices and not dealer's or middleman's prices, and that respondent's prices do not contain any costs, profits, or other charges of middlemen or dealers; that in purchasing said products from respondent the purchasers thereby save to themselves the costs, profits, and other charges of any and all middlemen or dealers; that, by reason of its advantages in being such a large manufacturer and selling at factory prices direct to consumer, its prices on paint are from \$1 to \$1.50, or 40 percent less than competitors' prices for similar quality paints and the prices at which such similar quality paints are sold by or may be purchased by the public from retail stores or other competitors.

PAR. 9. The following described specific instances of the foregoing representations, statements, and assertions are among those which respondent has caused to be set forth in its sales or trade promotional literature:

(a) On the outside cover of its catalogue (Com. Ex. 43-A and Resp. Ex. 16) respondent depicts large factory buildings or factory with the following prominent statement:

Roofing and paint
from this million-dollar factory
to you
on credit

On the inside of the catalogue, which is arranged so as to appeal to the purchasing public and is displayed to purchasers and prospective purchasers by respondent's salesmen, appear such representations as follows:

The Progress Paint Co. has become the largest in the land selling direct to the user.

George E. Spencer, general manager, pledges you superior quality and better service.

Twenty-five years in the harness, serving constantly increasing thousands of customers—over and over again—selling their friends and neighbors thru the good name established by our products in the strongest testimonial I can offer as to the reputation and quality of Progress products.

Twenty-five years which have seen this company grow from a little obscure two-story building, with a force you could count on your finger tips, to the present modern million dollar paint plant, with its towering buildings, acres of floor space, tanks with storage capacity of better than 250,000 gallons of liquids and its hundreds of loyal, efficient employees!

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Twenty-five years devoted to exclusive selling direct from the factory to user at wholesale prices thru thousands of specially trained neighborhood service men who are proud of their house, its reputation, and its merchandise!

LOWER PRICES

Because sold direct from the factory to user

The Progress plan is like a gigantic chain extending across the entire United States—eliminating the store—with its expenses, rent, clerk hire, salesmen, etc.—cutting out the jobbers' warehouse—trucking charges, and all the other odds and ends that are always added to the price you pay! There is but one connection—the direct line that leads from the factory where Progress products are made—to you! Thus again you come into contact with lower prices that only such a plan, worked out to such an extensive degree, makes it possible for you to share in such an effective money-saving manner.

When merchants and dealers say, "buy at home," remember, they are asking you to pay a price that will include their profit—their expense, rent, heat, light, clerk hire—the profit of the jobber who sold to them—the jobber's salesman, and from that to the factory who sold the jobber—plus their profit—their salesman's expense and salary in this business. In back of it all, the paints they offer you—they bought out of town and nine times out of ten, from the same city Progress products come from!

To buy products equal to Progress products under such a system, you would have to pay from \$4.50 to \$5 per gallon and take a chance as to whether the paint was fresh or last year's stock! In comparison, Progress paints—the best that can be made, sells for \$3.45 per gallon in barrels for house paint! Remember, too—it isn't "How much you pay for paint," but it is, "How often you pay!" No matter how well off you are—you can't afford to use cheap paint—for in the end it's too expensive. There is always a joker in the cheap paint can! Play safe! Buy from the factory through the Progress plan and from our local neighborhood service man who is your neighbor!

Our direct from Factory prices on house and barn paint will be found 30% to 40% LESS than the store-price for EQUAL QUALITIES. Where mail-order houses quote a price close to ours, WE GUARANTEE 50% BETTER QUALITY, OR MONEY REFUNDED. It stands to reason, a million dollar factory can sell paint for less money than DEALERS.

The FACTORY is the place to buy PAINT and ROOFING (Com. Ex. 43-A; Resp. Ex. 16.)

When you need paint—Varnish or Roofing—Write us to
send our neighborhood service man.

He can save you from 20% to 40% by DIRECT FROM FACTORY TO CONSUMER wholesale prices—fresh paints—full of life—maximum covering capacity, and greatest durability. (Com. Ex. 43-C.)

(b) On the leaflet (Com. Ex. 43-D) appears a depiction of what purports to be a large factory which depiction is referred to as follows:

Go partners with this million-dollar paint factory.

A gallon of the best paint sells for \$5 to \$6 in a paint store. The factory price is \$3.15 a gallon. The difference goes to pay the traveling salesman's salary and expenses, the wholesaler's profit and expenses, the retailer's profit

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and expenses. None of these things add to the quality of the paint, they only increase the price to the user.

This million-dollar factory sells paints and roofing direct to the user at the factory price. Thru our own factory representatives in every county.

Direct-selling from factory to user is here to stay. Developed out of the necessity to eliminate waste in distributing necessities. This huge factory sells several millions of dollars worth of paints and roofing—direct to users. Not a dollar's worth is sold thru dealers.

Here's that opportunity—the kind of a chance you have been waiting for and hoping for. An opportunity to hook up with one of the leading paint and roofing manufacturers in the country. A concern rated at one million dollars in Bradstreet's.

FACTORY WHOLESALE PRICES!

DIRECT TO USERS

Progress salesmen find our prices are lower than those of retail stores or mail-order houses—this proves—the factory is the place to buy paint and roofing—but low prices by itself mean nothing—quality must be considered when you talk price. It is the superior quality of our paints and roofing combined with our extremely low factory wholesale prices that produces the sales made to several thousand satisfied progress customers in every state in the union.

The foregoing circular (Com. Ex. 43-D) was used by respondent until March, 1931.

(c) Respondent's letterheads, appearing on all its trade promotional letters and communications to salesmen and to customers, are as follows:

The Progress Paint Company
Manufacturers of
Asbestoruf
House & barn paints—enamels
Technical paints—varnishes & stains
Cleveland, Ohio, U.S.A.

Such letters also contain the printed slogan:

The factory is the place to buy paint and roofing. (Com. Ex. 43-E.)

(d) Respondent's color card, illustrating the various colors of its paints for the customer's selection, carries the following:

Progress
Paint & varnish
Products
For outside and inside use
The factory is the place to buy paint
Manufactured by
The Progress Paint Co.
Cleveland, Ohio
Facts worth knowing of Progress products

Everything in the Progress line is made in our modern fireproof factory. Everything is guaranteed fresh as we carry no great stock on hand made up. It comes direct from the mills to you and at wholesale prices. Our aim is not to give you the cheapest paint in price but the lowest price paint in quality that can be purchased. One must consider today, with the high cost of application, that a few cents saved here or there in the cost of material used may mean dollars wasted in the cost of application where it fails to stand up. The best paint is the cheapest as any practical property owner will tell you and the best paint made is the paint you buy direct from this factory as the factory is the place to purchase paint. (Com. Ex. 43-F; Resp. Ex. 15.)

(e) In letters sent to salesmen respondent represents that its paints are sold at a "factory wholesale price" (Com. Ex. 44); that respondent is a "million dollar company" (Com. Ex. 5); that "you're with a twenty-two year old million dollar house * * *" (Com. Ex. 51-A); that the rating in Dun's or Bradstreet's of the Progress Paint Co. is "GAa \$1,000,000 and over, which is the highest rating we could have." (Com. Ex. 132); that the customer "takes no chances for at all times he is fully protected by our money back guarantee—our free trial offer and our million dollar rating. He is not fooling with a new comer—but a company 25 years old and he is getting his paint through the Progress plant at factory prices." (Resp. Ex. 22.)

(f) The handbill, distributed by respondent to the purchasing public for a period ending about 10 months after the date of the complaint, contains the following:

DO YOU KNOW THAT—

2. That this company is rated in Bradstreet's with \$1,000,000 rating and has been manufacturing paint for 22 years?

4. That they can save you from 25 to 50 percent on your paint and roofing bills?

5. That they are the oldest manufacturers of roofing in the world?

Progress paints save you money because they are sold to you direct from the factory at wholesale prices. You buy your paint from Progress at the same price your local dealer buys from the people he deals with. You save the difference. (Com. Ex. 45.)

(g) Printed instructions for salesmen's use in promoting sale of respondent's products, contain the following:

**CONFIDENTIAL INFORMATION FOR
PROGRESS NEIGHBORHOOD
SERVICE MEN**

1. Who is the Progress Paint Co.? Your company is a manufacturer of the complete line of paints, varnishes, stains, and liquid roofing. Been in business 25 years and is rated in Bradstreet's Mercantile Book as HAA or better than \$1,000,000 credit rating. Your company sells all products direct from factory to consumer at wholesale prices. Your products are never sold through dealers or jobbers or anyone for resale purposes.

49. How can I save people money on paint? By selling them the best paint made at the factory wholesale price. If they were to go to a paint dealer and bring a sample of Progress paint and ask that dealer to have his factory duplicate that sample—such a paint would cost him anywhere from 25 percent to 40 per cent more when bought through the dealer. By dealing with you—he can get that paint at the same price the dealer would buy from his factory. Your paint is fresh—full of life—good covering capacity—you use less paint.

61. Are you manufacturers or just jobbers? Your company is an old established manufacturer. We manufacture every product you sell—we even make our own steel barrels and other containers and employ several hundred men and women. (Com. Ex. 46; Current book, Resp. Ex. 19.)

(h) Among the depictions and other representations of factory scenes and factory equipment are the following published by respondent in its house organ, *The Progress Torch*, distributed as trade promotional literature:

FROM START TO FINISH THIS BUNCH SAW EVERYTHING. HERE THEY ARE
WATCHING THEIR ORDERS BEING FILLED.

[Here appears a depiction of a factory scene showing factory workmen being observed by a company of visitors]

The men you see in this picture won this opportunity to visit the great Progress factory by their constant efforts to get ahead—by their sales and ability to do their share. To-day they are all out on their territories with many salesmen under their control pushing Progress to the utmost to keep up with orders. You, too, may be in such a group some day if you do as they have done. If you work as these men have worked. We aim to have as many men in to inspect our big plant as possible when their business warrants it and when you read the letters of appreciation from these men that will appear in next month's *Torch*, I am sure you will work tooth and nail to be among the next group invited in at our expense. (Com. Ex. 47, p. 3, *The Progress Torch*, April, 1928.)

Every man who has ever owned a Progress selling kit can go out to-day and though he never sold a gallon of paint in his life—will be able to do so now and clean up the big money that has been the lot of every man who has ever pushed this great line.

With the Progress factory keyed up to maximum capacity—a night shift in operation now—several weeks before it was necessary last year—a modern conveyor system to facilitate rapid handling of orders—we are now ready to handle the greatest volume of business any single paint factory ever handled in a season. There will be no delayed orders—or complaining customers if Mr. Tatje, our general superintendent has anything to do with it and consequently—every man is urged now to go out after orders like he has never done before. No matter what has happened—let not a single thing stop you from getting into the field and staying there every day from now on until Christmas! There is great work for Progress salesmen to do. Much ground to cover and we must realize that property owners won't wait—once they make up their minds to order.

In keeping with our policy of doing everything possible to make Progress salesmen the highest paid representatives in the direct selling field—Progress has added to its staff Mr. Carl Rumberg, who, after concluding a scientific

education dealing with paint subjects has also put in considerable time right in the Progress factory—in order that he might know from the ground up—everything about Progress products and thus be able to render you first-hand information on any problem that you may need assistance that you may grow and thrive and increase your earning powers with this line.

HOW TO USE YOUR CATALOGUE

Your catalogue my friend is your "pick and shovel" in the most remunerative trade you ever tackled. It has been prepared so that handled rightly—it will of itself be able to sell the prospect! It contains the best features and ideas of the cream of Progress salesmen but the only thing it lacks is "legs." You've got to provide them and if you do and take it around to property owners it will do the rest. When you bring it in to a property owner—begin at the first page of the book and take him through it—page by page—calling his attention to each feature—step by step—and it will bring him back to you on the last page as the neighborhood service man ready to take his order and render him the service that will make your presence felt in that community—quality merchandise and at price-saving possibilities. (Com. Ex. 53.)

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Sell paint

Direct from this million-dollar factory
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(In conjunction with the above statement appears a depiction of large factory buildings which depiction is fictitious to the extent that in reality no such factory of the respondent exists or is in operation, and further, in that it is not a true depiction of the factory in which respondent's paint is manufactured or the factory of the Acorn Refining Co. hereinafter referred to. A similar depiction of factory was displayed in the magazine advertisement. (Com. Ex. 41.)

PAR. 10. The true facts in regard to said representations are and have been as follows:

(a) Respondent corporation, The Progress Paint Co., is not a manufacturer and does not manufacture any of the paint, roof coating, or other products which it markets, but procures such products from the Acorn Refining Co. at certain prices charged therefor by such Acorn company. The Progress Paint Co., respondent corporation, does not own, control, or operate any such paint factory, factory warehouse, paint vats, grinding, mixing, or other paint manufacturing equipment or facilities as represented or depicted in its sales or trade promotional literature, or any other paint manufac-

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turing equipment or facilities. The authorized capital stock of such Progress company is \$25,000, par value, and all its physical property, listed on its books at \$2,474.66, consists of furniture and fixtures such as office desks, chairs, dictaphones, typewriters, files, and other office equipment, which are used in the promotion, sale, and distribution of its products. Its other assets consist of cash, accounts receivable, deferred expenses and money advanced to salesmen, with all assets totaling a little less than \$100,000. Said Progress corporation has no factory superintendent, nor does it employ any paint manufacturing experts, chemists or any other employees engaged in manufacturing. Besides said salesmen respondent corporation's employees number between 50 and 60, and all are engaged under the supervision of a sales manager in the work of promoting and effecting the sale and distribution of its merchandise. It is not a million dollar company or manufacturer as represented, nor does it have gross annual sales of several million dollars, but as stated in paragraph 1 hereof, such gross annual sales averaged about \$1,000,000. Respondent corporation does not purchase, store, test or otherwise handle or use any raw materials for the manufacture of paint or roof coating.

(b) The said Acorn Refining Co. is an Ohio corporation engaged since about the year 1914 in the manufacture of a complete line of paints or paint products and roof coating, which, in the course of its business it sells to the purchasing and consuming public, including industrial plants and other users and consumers, throughout the United States, as well as supplying said products, at prices hereinafter stated, to the respondent and to seven other similarly situated corporations including the Madison Paint Co. and the Franklin Paint Co., respondents in Dockets 1573 and 1567, respectively. Said Acorn Refining Co. has, and operates in its business, a paint factory or paint manufacturing plant at Cleveland, Ohio, which paint factory or paint manufacturing plant is of reputable appraisal value of substantially less than \$1,000,000. The average daily production of the plant is 4,000 to 5,000 gallons of paint and 5,000 to 6,000 gallons of roof coating. Such Acorn company has facilities for the purchase and storage of raw materials in carload quantities. It also has a paint laboratory with a staff of four men. The respondent corporation, the Progress Paint Co., occupies as its place of business rented office space on the premises of the Acorn Refining Co. for which space it pays rent to such Acorn company. And it is from the Acorn Refining Co.'s factory premises that respondent corporation ships its products to its customers. Besides paint and roof coating, respondent also purchases various other supplies and services used in its business from said Acorn company.

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(c) Respondent's sales manager testified that the picture of the large paint factory appearing on the outside of respondent's catalogue (Com. Ex. 43-A and Resp. Ex. 16) originated in the mind of the artist employed to prepare the same for publication and that the artist was in Chicago and was not familiar with the factory of the Acorn Refining Co. Such depiction of a paint factory, in connection with which also appears the statement "Roofing and paint from this million-dollar factory to you on credit", is wholly fictitious. The depictions of a paint factory elsewhere in said trade promotional literature are also fictitious in that respondent has no such factory or any factory, and such depictions are not accurate depictions of the factory of the Acorn Refining Co. and do not show the sign "Acorn" which is in reality on the front of said Acorn factory and an integral part of said building of the Acorn Refining Co. Said other depictions of factory equipment and manufacturing scenes are in fact depictions of equipment and scenes in the Acorn Refining Co. factory. Such depictions, however, are represented in respondent's literature as being depictions of the Progress factory and of factory equipment and facilities owned or operated by respondent corporation, The Progress Paint Co.

(d) Prior to the issuance of the complaint and until about January, 1930, substantially all of the capital stock of the respondent corporation, The Progress Paint Co., was owned in equal proportions by E. M. Katz and S. S. Sanders, president and secretary-treasurer, respectively, of the respondent, who also own in equal proportion all of the capital stock of the Acorn Refining Co. and are officers of that company. After the issuance of the complaint the capital stock of respondent corporation, owned by said individuals Sanders and Katz, was acquired and is now owned by the Acorn Refining Co.

(e) The Progress Paint Co., respondent, is one of eight corporations whose stock, ranging from \$10,000 to \$100,000 authorized par value, is similarly owned by the Acorn Refining Co. They are similarly engaged in procuring paint manufactured by the Acorn Refining Co. and selling the same to the public throughout the United States. It is marketed by said companies as paint of their own respective line and manufacture. For example, it is sold by The Progress Paint Co. as the Progress line of paints; by the Franklin Paint Co. as the Franklin line of paints; by the Madison Paint Co. as the Madison line of paints. To other purchasers it is sold by the Acorn Refining Co. as the Acorn line of paints. The products sold by the respondent corporation comprise from about 20 percent to 23 percent of the output of the Acorn Refining Co.

(f) Evidence was introduced on behalf of respondent to the effect that the prices charged by the Acorn Refining Co. to the respondent, The Progress Paint Co., for said paint, and roof coating are the Acorn Refining Co.'s so-called "blue book" prices less 15 percent, and that such prices represented only the Acorn Refining Co.'s cost; that all the profits in the distribution of the products sold by respondent to the public are allowed to accumulate in the name of The Progress Paint Co. and are taken out mainly, if not entirely, in the form of salaries to said Katz and Sanders rather than through the declaration of dividends.

(g) Evidence was also introduced through respondent's witnesses tending to show that the business of the Acorn Refining Co. and said other eight corporations, including respondent, which are engaged in selling and distributing paint manufactured by the Acorn company, is considered by the officers of the Acorn company and of respondent as one business. That any such relationship exists between said companies is not disclosed to the purchasing public. Testimony was also given, largely by said S. S. Sanders, secretary-treasurer of respondent, substantially to the effect that care is also taken to avoid disclosing any such relationship to the salesmen who sell the paint to the public for the various companies referred to, and that such nondisclosure enables these companies to sell more paint, and makes possible the solicitation and sale of the paint by several of the respective companies in any given locality or community by reason of the nondisclosure in such communities of the existence of such relationship or that in reality it is all the same paint which is being sold under different company names and labels. As part of such nondisclosure each of said respective companies, although located on the same premises, represents itself as being located at a differently named street address. Testimony was also adduced by respondent to the effect that instead of continuing to conduct respondent's business under its name as an unincorporated trade name, it was incorporated so that, among other things, respondent could receive a listing and rating in the commercial rating publications of R. G. Dun & Co. and of Bradstreet's in such a way as not to disclose or reveal any relationship or connection with the Acorn Refining Co. or other company. Until March, 1928, respondent was listed by Bradstreet's as follows:

Progress (The) Paint Co. W+HAa

Since then such rating was given as W+GAa

Such symbol W designates the business of the company as wholesale. HAa stands for a capital rating of \$750,000 to \$1,000,000 and GAa for \$1,000,000 and up in capital rating. Said division sign means that such rating covers two or more corporations and in this

particular case it covers jointly the respondent, the Acorn Refining Co. and seven other corporations, and is not a separate rating upon respondent corporation only. In meeting the requirements of Bradstreet's for such rating, arrangements were made whereby the Acorn Refining Co. by its board of directors passed a resolution to the effect that it would guarantee payment of the debts or obligations of said other corporations including the respondent. In Dun's commercial rating publication respondent is classified as a dealer with a rating of B-2, which means a rating of financial responsibility from \$20,000 to \$35,000 and first class credit.

(h) As a part of its plan of distribution of its product to the consuming public, respondent used, during a period from two to three years, its so-called "Neighborhood distributive service plan," by which plan its salesmen were to purchase and carry a stock of respondent's paint and resell the same in their immediate neighborhoods. The difference between the net price charged by respondent to such salesmen and the price at which such salesmen resold the paint represented the latter's gross profit. Under such plan certain of the salesmen purchased a stock of said paint from respondent and resold the same at such prices as they saw fit. To the extent that such salesmen operated under said plan they became and acted as dealers or middlemen in the channels of distribution between respondent and the consumer. In promoting the plan respondent referred to its use by certain of its salesmen as follows:

Do you know that fellows like Batchelder—Miller—Carter—Cox and hundreds of others—men who are making big money, carry a stock of paint like this that runs into hundreds of dollars? Of course, I wouldn't advocate you doing anything like that right now—but it would be a good idea for you to lay in a few dollars worth of paint and especially Asbestoruf for just these purposes and this little folder tells you a way in which you can turn this into a mighty profitable venture. Read it over and make up your mind today that what is good for the prosperous men in my outfit must be good for you and write out a little stock order for yourself. (Com. Ex. 58-A.)

Respondent's sales manager testified, however, that such "Neighborhood distributive service plan" was not successful enough and so it was abandoned by respondent. He also testified that, as an estimate, there was less than 500 gallons of paint sold under the plan.

(i) In the sale and distribution of its paint and other products, and the conduct of its business, respondent corporation is a middleman instead of a manufacturer. The prices at which it sells its said paint to the public are middleman's prices and not factory prices or factory wholesale prices as represented. The profits which respondent makes in the sale of said paint and its costs therein, which profits and costs are included in its paint price and ultimately borne by the consumer, are in fact middleman's costs and profits. The

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Findings

relative costs and prices of its paint covering the various colors, years and types of containers involved are illustrated by the following (using the color white, 1-gallon cans and the year 1930 as representative): The cost to Acorn Refining Co. of the paint material in 1 gallon of paint was \$1.16. The price which the Acorn Refining Co., the manufacturer, charged respondent for such gallon of paint was \$1.624 for the first four months of 1930 and \$1.573 for the remainder of the year. The Progress Paint Co.'s price at which it sold such paint to the public was \$3.75 less 5 percent discount for cash with order or net within 60 days, and with freight paid on all orders amounting to more than \$10. The price per 1-gallon can of the same paint as sold throughout the same States and on similar terms by the Franklin Paint Co. was \$3.32, and by the Madison Paint Co., \$3.85 with a 20 cent to 25 cent reduction during the latter part of the year.

(j) In the evidence adduced is testimony tending to show that outside house paint of quality comparable with that of respondent's paint is marketed and available to the purchasing public through retail stores at \$2.75 per 1-gallon can, as testified to by a paint manufacturer of Cincinnati marketing paints throughout various States which are also covered by respondent; that substantially comparable quality paint of the largest paint manufacturer in the industry is marketed through retail stores to users and consumers throughout the United States at retail prices from \$2.50 to \$2.75 per 1-gallon can, as testified to by an official of such manufacturer. Some of the other testimony on this point included that by a retail dealer who stated he sells house paints of the best or highest quality at a price of \$2.65 per gallon in 100-gallon lots; also testimony by a paint manufacturer, selling largely to industrial plants for maintenance purposes, that in his opinion paints of certain costs, delivered to the carrier, ranging from \$1.17 to \$2.09 per gallon would be sold through dealer channels in 1-gallon cans at certain retail prices to the consumer which ranged from \$2.80 to \$4.70 per gallon. Upon the whole record the Commission finds that the prices at which respondent sells its said paint to the public are not less to the extent of \$1 to \$1.50 per gallon, or from 20 percent to 40 percent, than prices at which paints of similar or comparable quality are available to the purchasing public or at which the purchasing public can buy the same from competitors or retail stores.

PAR. 11. The representations, statements, and assertions of The Progress Paint Co., respondent corporation, referred to and described in paragraph 8 hereof and used by respondent as hereinabove set forth, are and have been false, misleading, and deceptive, and have and had the capacity and tendency to mislead, deceive, and induce the purchasing and consuming public into purchasing re-

spondent's paint and roof coating in the beliefs, which are erroneous, that said representations, statements, and assertions are and were true in fact.

PAR. 12. Also, in the course and conduct of its said business of promoting and effecting the sale and distribution of its roof coating, which is designated "Asbesto-Ruf", respondent caused said roof coating to be offered for sale, sold and distributed to its customers, the purchasing and consuming public throughout the several States, upon various representations, statements, and assertions to the effect that said roof coating Asbesto-Ruf contains gilsonite in substantial proportions; that said roof coating does not contain any coal tar; and that such product when applied to roofs will endure and cause the roofs to become and remain waterproof for a period of 10 years.

(a) Respondent's said Asbesto-Ruf product is a roof coating of the class of material generally known as liquid asbestos roof coating. Testimony was introduced by counsel for the Commission tending to show that the effective life of liquid asbestos roof coating is four or five years. Testimony was also given by an investigator of the Commission that, in the course of his investigation of the matter prior to the issuance of the complaint, respondent's sales manager informed him said Asbesto-Ruf was primarily a coal tar product. Respondent introduced testimony by the superintendent of the factory of the Acorn Refining Co. where the product is made to the effect that it contains no coal tar, but that in some cases respondent does sell a tar roof coating, not, however, under said name Asbesto-Ruf. Upon consideration of the record the Commission does not deem the evidence sufficient to sustain the charges that said representations with respect to such Asbesto-Ruf containing no coal tar and enduring or waterproofing roofs for a period of 10 years are false, misleading or deceptive, and therefore finds that such allegations are not sustained.

(b) Respondent admits that said Asbesto-Ruf does not contain gilsonite in substantial proportion, and alleged that gilsonite is a solid asphalt and that Asbesto-Ruf is made chiefly from liquid asphalt. Gilsonite is an asphalt which is mined in the west principally in the States of Utah and Colorado. It is a standard material on the market and is used as an ingredient in roof coating products. Typical representations which were printed by respondent in its sales or trade promotional literature with respect to said Asbesto-Ruf containing gilsonite are as follows:

Asbesto-Ruf contains costly asbestos, gilsonite gums, asphaltum, and other materials which, when blended in our secret formula and process, yields, on the average 12 to 15 years of waterproof, fire-resisting protection to roofs. It does not contain any coal tar.

Asbesto-Ruf positively does not contain one drop of coal tar. It is composed of genuine Canadian asbestos fiber—gilsonite, an exceptionally elastic gum—Lake Trinidad asphalt—as durable as the earth itself, and our secret formula—nonevaporating oil. We create a gum by fusing gilsonite, asphalt and this nonevaporating oil, and later reduced by heat to a liquid where the addition of other solvents and dryers keeps it in the liquid form and the asbestos fiber is added. * * * (Com. Ex. 43-A, Catalogue, pp. 7, 15.)

Asbesto-Ruf is composed of materials especially selected for their fire retardent as well as weather and waterproof qualities. The base of Asbesto-Ruf being a special gum derived by treating gilsonite the highest form of asphalt with a special nonevaporating oil, a product of our own composition of which the formula is secret. * * * (Com. Ex. 43-L, Leaflet, p. 2.)

37. *What if they say the other fellow's circular guarantees for 10 years?* Ask him to let you see the circular and then ask him to show you anywhere on the circular where it says that the product is made from asphalt—gilsonite—nonevaporating oil and genuine Canadian asbestos fiber. You will find he can not. They hide the construction of their product by telling you it is made from waterproofing oils and gums which gets around the coal tar description. They use silica or fine powdered sand and wood-pulp fiber to imitate asbestos fiber and when mixed up with the black coal tar can not be detected. Genuine Canadian asbestos costs money—you have to pay a tariff tax on it to get it into the country—Canada is the only place you can buy real asbestos fiber. Asphalt comes from Lake Trinidad and gilsonite from Utah. You can not buy these raw materials even in the enormous quantities we purchase, and be able to turn out a product that will sell as low as the mail orders offer to sell at. The only thing they can do is imitate with coal tar. (Com. Ex. 46, p. 11; instructions to salesmen.)

(c) Respondent continued its said representations to the effect that said product contains gilsonite in substantial proportions throughout a period of more than three years prior to the issuance of the complaint and for a period of about 10 months subsequent thereto. Thereupon it changed said representation by eliminating therefrom the specific mention of "gilsonite" as a constituent of the product, and substituted or printed in such places representations to the effect that said product contains "Asbestos fiber, asphalt, waterproofing oils and gums blended in our secret formula and process * * *" (Resp. Ex. 16, p. 7, catalogue); that "It is a combination of asphalt, waterproofing oils and gums, together with asbestos rock fiber, blended together in a process that keeps it in liquid form until exposed to the air and spread over the old roofing surface. (Resp. Ex. 16, p. 15, catalogue.)

(d) The use by respondent of the said representations to the effect that said Asbesto-Ruf contains gilsonite in substantial proportions was false, misleading, and deceptive, and was calculated, and had the capacity and tendency, to mislead and deceive the purchasing and consuming public into buying said product in the erroneous belief that the product in fact contained such gilsonite.

The said false, misleading, and deceptive representations were continued by respondent throughout said period of more than three years prior to the issuance of the complaint and for approximately 10 months thereafter, without respondent disclosing to its customers, through its trade promotional literature or otherwise, that such representations were not true in fact or that said product did not in fact contain such gilsonite as represented.

PAR. 13. In the evidence, respecting the effect upon competitors of the use by a paint distributor or by a paint seller of misrepresentations as to the ingredients and quality of its paint and as to being a manufacturer selling direct to purchasers without the intervention of middlemen, is testimony of four witnesses experienced as directors or managers of sales or otherwise in the promotion of the sale of house paint and paint products of manufacturers or distributors selling in competition throughout the several States in which respondent also sells its paint. The testimony of these witnesses was given mainly as their views or respective opinions based upon or as a result of their experience in the business, and included testimony to the effect that the use on the part of any paint distributor of representations which are untrue is a detriment to competing concerns or others engaged in the same business; that it destroys confidence on the part of the consumer, the buyer, in his ability to know whether he is getting what he is paying for; that the misrepresentations by a distributor of paint of the quality or ingredients thereof is "extremely harmful to the business of competitors"; that the use of false or misleading representations has a tendency to divert trade from other competitors selling similar paints; that the misrepresentation as to the composition or quality of paint is "a general detriment to the whole trade"; that misleading representations by a paint distributor increases the burden upon competitors to meet such competition; that representations of being a manufacturer selling direct to consumers to the exclusion of middlemen, whether true or false, would have an effect or tendency to substantially divert trade from competitors; that business has definitely been lost by one witness's company because of such representations by competing concerns not including the respondent; that a seller's misrepresentations of an inferior paint as first quality paint would divert business from competitors if the prices were less than the competitors' price for first quality paint, that such diversion would depend upon the price.

It was stipulated by respondent that certain Commission witnesses about to be sworn and consisting of five other members of paint manufacturing or distributing companies selling in general competi-

tion in the same territory in which respondents are selling, if called as witnesses, would testify that untruthful advertising is unethical and that it tends, in their opinion, to divert business or trade from those engaged legitimately in a similar business; and that such stipulation may be used with the same effect as though such witnesses were actually sworn and so testified. It was also conceded of record by respondent that "deliberately false advertising is unethical", and "contrary to good morals."

PAR. 14. Upon the record the Commission finds that the aforesaid false, misleading, and deceptive representations, statements, and assertions, as set forth in the foregoing findings and used by respondent in the course and conduct of its said business, are methods of competition in interstate commerce which (a) are unfair and are characterized by deception; (b) have been pursued by respondent against the interest of the public; (c) have the capacity, tendency, and effect of injuring the public and unfairly diverting trade from respondent's competitors and otherwise injuring and prejudicing said competitors in their business; and (d) operate as an unfair competitive advantage to respondent and a detriment to and burden upon the legitimate paint manufacturing and marketing industry in this country.

CONCLUSION

Respondent's use in its said paint marketing and distributing business of the false, misleading, and deceptive acts and practices under the circumstances and conditions hereinabove set forth are unfair methods of competition contrary to the public interest, and are and have been injurious and prejudicial to the public and to the competitors of respondent and constitute a violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, including the pleadings, the evidence, stipulations, and upon argument of counsel, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That, in the course of the sale or distribution in interstate commerce of paints or roof coating, the respondent corporation, The Progress Paint Co., its officers, directors, agents, representatives, servants, and employees, cease and desist:

(a) From directly or indirectly making or causing to be made any representation, statement, or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that any such paint is a lead and oil paint, or is composed wholly or principally of white lead, zinc oxide, and linseed oil with or without necessary color pigments and dryers; or that any such paint does not contain titanox, barium sulphate, asbestine, siliceous material, or any inert material, or that said roof coating contains gilsonite in substantial or other proportion, if and when such representations, statements, or assertions are not true in fact.

(b) From directly or indirectly making or causing to be made any representation, statement, or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that respondent corporation is the manufacturer of any of said paints or roof coating; that it owns, operates, or controls a paint factory, or any other paint manufacturing equipment or facilities used in the manufacture of said paints or roof coating; or that customers in purchasing from respondent are thereby dealing directly with the manufacturer of said products; or that in the sale and distribution of said products by respondent corporation to its customers the same are sold and distributed by and from the manufacturer directly to such customers to the exclusion and without the intervention of middlemen, unless and until respondent becomes the manufacturer and actually owns and operates, or directly and absolutely controls such paint factory and paint manufacturing equipment or facilities by which any and all such products so represented are manufactured; or unless and until, so long as said paint or paint products are manufactured by the Acorn Refining Co., and the relationship subsists between that company and the respondent as set forth in the findings as to the facts, a full and true disclosure of the facts of such manufacture by, and relationship of respondent to, said Acorn Refining Co. be prominently made in conjunction with such representations.

(c) From directly or indirectly making or causing to be made any representation, statement, or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that the prices at which respondent sells its products are manufacturer's prices; or that by reason of respondent being such manufacturer and selling its products under a plan or method of distribution by which

all costs, profits, or other charges of middlemen are eliminated, respondent's said prices are less than the prices at which paint products of equal quality are available, or may be purchased from competitors and from retail stores or through other dealer channels; or that the benefit of such savings by reason of the elimination of such middlemen accrues to purchasers from respondent, or that such saving is a certain definite amount, such as \$1 to \$1.50 per gallon, or 40 percent, unless and until respondent owns and operates, or directly and absolutely controls a factory or manufacturing facilities in or by which said products are manufactured, and such representations are otherwise true in fact.

(d) From directly or indirectly making or causing to be made any representation, statements, or assertion, in advertisements, trade promotional literature, or by any other means, to the effect that respondent is a million dollar company, or that it owns or operates a million dollar factory, or that it has investments to the extent of \$1,000,000 in a paint or roof coating factory or similar manufacturing equipment, or that its gross annual sales of paints and roof coating exceed several million dollars, or that it has been engaged in manufacturing paints and roof coating for a period of 22 years or more, unless and until such representations, statements, or assertions are true in fact.

It is further ordered, That respondent corporation The Progress Paint Co., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Commissioner Ferguson dissenting to issuance of order as to use of the word "manufacturer"; Commissioner Humphrey dissenting in memorandum attached.

Dissenting Opinion by Chairman Humphrey

One who is not a manufacturer is guilty of an unfair practice in advertising that he is such, because the public believes that by buying from a manufacturer they save the middleman's profit.

There is no such element in this case. The respondent is in every particular regarding additional profits a manufacturer. He is in fact, while not a sole manufacturer, a part manufacturer. There may be a deception in the technical sense to the public, but there is no injury to the public.

This case involves a method of business conduct that it is admitted increases the sale of the products of the respondent. It therefore

increases competition, and is to that extent in the interest of the public.

To cause the respondent to cease calling itself a manufacturer, would do him substantial injury in many ways. It would benefit no one. I believe that the Commission should issue no order that is not clearly in the interest of the public. This proposition is so plain that it calls for neither argument nor citation of authorities.

Complaint

IN THE MATTER OF

A. S. DOUGLIS AND DAVID HELFINBEIN INDIVIDUALLY
AND AS COPARTNERS TRADING AS A. S. DOUGLIS &
COMPANY AND LINCOLN SALES COMPANY

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

Docket 1862. Complaint, Aug. 12, 1930—Decision, June 28, 1932

Where a firm engaged in the sale of knives, candy, tableware, clocks, and various other small articles of merchandise to wholesale and retail dealers in the various States, supplied said dealers with punch boards, push cards, and fortune boards for retailer's use in selling said various articles in accordance with chance selection by ultimate purchaser of the concealed winning name or number or last purchase or punch on the board, pursuant to a plan under which the purchaser received an article of a value exceeding the price of his punch or nothing, depending upon his fortune or lack of fortune in making his selection and the retailer received an aggregate sum exceeding the cost to him of the articles thus disposed of;

With result that prospects were induced to purchase a punch in the hope and expectation of securing an article, or the desired article for 5 or 10 cents, or to engage in a game of chance, and a great number purchased and continued to purchase punches until all the articles had been distributed, and trade was diverted from competing manufacturers and jobbers of similar merchandise who declined to employ such a means of selling and distributing their merchandise due to its illegality in practically all the States, their belief that it constituted the merchandising of a chance and that it was not good business for a small number of customers to be winners and a much larger number losers, that the practice was morally bad, encouraging both adult and child "to take a chance", that sanction of such methods would result in a progressive increase in the gambling aspects thereof, and that manufacturers, distributors, and wholesalers were not in the gambling but merchandising business, and should not be compelled to adopt such sales methods in order to meet competition:

Held, That such practices, under the circumstances set forth, were to the injury and prejudice of the public and competitors and suppressed and tended to suppress competition in the sale of merchandise and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Mr. J. Bond Smith and *Mr. Lucius Q. C. Lamar*, of Washington, D.C., and *Mr. John A. Nash*, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission

charged respondents, A. S. Douglass and David Helfinbein, of Chicago, partners, engaged as A. S. Douglass & Co. and Lincoln Sales Co. in sale of various articles of merchandise to purchasers in various States, together with various devices and plans of merchandising, involving operation of gift enterprises and/or lottery schemes and sale of merchandise or products in question to ultimate consumers wholly by lot or chance, with using lottery scheme in merchandising, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Said respondents, as charged, supply along with the merchandise and products sold by them, punch boards of various shapes and sizes,¹ for retailer's use in disposing of said merchandise and products, together with display cards advising prospective consumer purchaser of nature of scheme or plan, under which purchaser pays 5 cents or 10 cents for each punch and receives nothing other than privilege of punching a number, or article of merchandise exceeding in value the 5 cents or 10 cents paid, depending upon particular number secreted within the covered holes of the punch board, or the making, in some cases, of the last punch on the board; the assortment and arrangement being such that while the value of any article of merchandise is greater than the cost of a single punch, the "combined value of the articles of merchandise is much less than the cost of the total punches on the board."²

Through the use of said punch boards, push boards, fortune boards, and other similar devices, in conjunction with or as a part of respondents' system of merchandising, the purchasing public, as alleged in the complaint, are "induced and persuaded into purchasing punches from the said boards in the hope that they may obtain one of the prize-winning numbers and thus obtain one of the prizes called for by the said numbers"; so that "the merchandise of the respondents is thus distributed to the purchasers of punches from the board wholly by lot or chance", and as a result of said system of merchandising and the use thereof and cooperation therein by respondents' retail dealer customers, who expose the articles of merchandise in connection with the punch boards, etc., and sell punches, pushes, or fortune cards "to the purchasing public in accordance with the aforesaid plans whereby the said merchandise of the respondents is distributed to the purchasers of punches, pushes, or fortune cards from the said boards wholly by lot or chance", re-

¹ As also push boards or fortune boards and other similar devices.

² The punch boards as described in the allegations of the complaint, may be found described in detail in the findings, *infra*, in the second paragraph on page 357.

As alleged in the complaint "the push boards and the fortune boards involve substantially the same plan and lottery scheme" as the punch boards.

spondents "supply to and place in the hands of others the means of conducting a lottery in the sale of their products in accordance with the respondents' sale plan hereinabove set forth."

Respondents' aforesaid sales plans, as alleged, "thus tend to and do induce many of the consuming public to purchase respondents' said products in preference to the products of respondents' said competitors because of the chance of obtaining one of said articles of merchandise at a price of 5 cents or 10 cents, rather than at the normal retail price of the same, which is many times greater than 5 cents or 10 cents, and the distribution of said articles of merchandise to the consuming public is determined wholly by lot or chance"; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents A. S. Douglis and David Helfinbein, individually and as copartners trading as A. S. Douglis & Co. and Lincoln Sales Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The said respondents entered their appearance and filed their answer to said complaint. Thereafter, the matter being ready for the taking of evidence with respect to the charges in the complaint, a stipulation as to the facts was agreed upon and entered by respondents and counsel for the Commission wherein it was stipulated and agreed that the statement of facts therein recited might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Federal Trade Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and might enter its order disposing of the proceeding. Said stipulation as to the facts was approved by the Commission, and thereafter briefs were filed and the matter was orally argued before the Commission by counsel for the Commission and for the respondents.

Thereupon this proceeding came on for final hearing, and the Federal Trade Commission, having duly considered the entire record and being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, A. S. Dougliis and David Helfinbein, are copartners doing business under the names and styles of A. S. Dougliis & Co. and Lincoln Sales Co. Their principal office and place of business is located in the city of Chicago, State of Illinois. They are now, and for more than 4 years last past have been engaged in selling various articles of merchandise to purchasers thereof located in various States of the United States. They cause said merchandise, when sold, to be transported from their place of business, in the State of Illinois, into and through other States of the United States to purchasers thereof located in a State or States of the United States other than the State of Illinois. The respondents do not manufacture any of the articles of merchandise sold by them. In the course and conduct of their business respondents are engaged in competition with other corporations, partnerships, and individuals engaged in the sale and distribution of similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 above, the respondents have been and are now soliciting the sale of and selling and transporting in interstate commerce to retail and wholesale dealers in various States of the United States certain articles of merchandise. Said merchandise consists of knives, candy, tableware, clocks, dishes, traveling bags, blankets, jewelry, fountais pens, automatic pencils, flashlights, cigarette cases, pipes, sporting goods, fishing tackle, cameras, doll babies, and various other small articles. All the above merchandise is fully described in the catalogs issued by the respondents, copies of which were introduced into the record as Commission's Exhibits Nos. 1 and 2. The respondents, in selling to wholesale dealers or jobbers, use the trade name A. S. Dougliis & Co., and when selling direct to retail dealers use the trade name Lincoln Sales Co. In the sale and distribution of their merchandise, said respondents furnish to wholesale dealers and jobbers, and to retail dealers, various punch boards, push cards, and fortune boards which are complete and ready for use and which bear a legend indicating the method in which said punch boards, push cards, and fortune boards may be used by the retail dealer without alteration or rearrangement. In some cases the punch boards, push cards, and fortune boards are sold by respondent to wholesale and retail dealers with the merchandise and in other cases the punch boards, push cards, and fortune boards are given away or furnished free upon the purchase of merchandise or merchandise assortments.

In all cases, title to the punch boards, push cards, or fortune boards passes when the merchandise is sold. These punch boards, push cards, and fortune boards are varied in their details, but make use of certain principles which are more or less fully illustrated by the exhibits introduced into the record (Com. Ex. Nos. 3, 4, and 5, being a punch board, push card, and fortune board, respectively), the details of which are as follows:

Exhibit no. 3, commonly termed a punch board, is a laminated pasteboard approximately five-eighths of an inch thick and at the top of it appear the following legends:

Super	Novelty	Knives
5 cents per sale	The Midget	5 cents per sale

Immediately below the above legends, a knife is fastened to the board by elastic loops and immediately thereunder appears the legend "last sale." Below the knife just referred to five other knives are fastened to the board by elastic loops and under each knife appears the following numbers: 25, 50, 75, 100, 125, respectively. The remaining section of the board contains 300 holes going entirely through the board, each hole containing a slip of paper bearing numbers from 1 to 300, respectively, but not arranged in consecutive order. A thin paper is pasted under the holes and also over the holes, so as to effectively conceal the slips of paper and to prevent their being examined, but permitting the location of the holes to be easily seen. The person playing the board, or purchasing a chance, punches a slip of paper out of one of the holes, and if the slip bears a number corresponding to the numbers under the respective knives, then the purchaser is entitled to receive, and does receive, the said knife without additional charge. If the purchaser of a punch or chance punches a slip which does not bear one of the winning numbers, he receives nothing for his money except the privilege of punching one of the holes. The purchaser buying the last punch on the board receives the knife directly above the legend "last sale" without additional charge.

Exhibit no. 4, commonly termed a push card, is a cardboard approximately 5 inches by 7 inches, the lower section of which is occupied by 15 perforated holes, each bearing a girl's name, while opposite these 15 holes is the list of girl's names with a blank space thereafter for the purpose of recording the name of the purchaser of each punch. The top section of the board is occupied by a master perforated circle with a seal pasted over it. Under this seal is one of the girl's names appearing in the lower section of the board. This name is effectively concealed from view until the master circle is pushed

out and the seal removed. The pushes, or the privilege of selecting a girl's name on the board cost the prospective purchaser a fixed amount, and when all of the pushes are sold the large hole is pushed out and the seal removed and the purchaser who has selected the name which appears under that seal is the winner of the article of merchandise being distributed by this method. The purchasers of the other pushes receive nothing for their money.

Exhibit no. 5, commonly termed a "fortune board", is a small box-like arrangement containing three compartments containing slips of paper so folded that when the first slip is pulled out, it raises the edge of the next slip so that it can be readily grasped or pulled out. The compartments contain a total of 100 slips bearing numbers from 1 to 100, respectively, but not arranged in consecutive order. The numbers on the said slips are effectively concealed from view until the slip has been pulled from the compartment. The slips also contain a short sentence purporting to represent the purchaser's fortune. The front of the boxlike arrangement contains a space on which legends concerning the winning number or numbers may appear. The cost of pulling one of the slips of paper is fixed and the winning number or numbers is determined before the merchandise and the fortune board are displayed to the public. The purchaser making a purchase draws out one of the slips; and if the slip contains the winning number or one of the winning numbers, he is entitled to receive, without additional cost, the article of merchandise called for. If the slip does not contain the winning number or one of the winning numbers, he received nothing for his money except the privilege of pulling one of the slips.

These exhibits illustrate the principle of the various punch boards, push cards, and fortune boards, although the respondents use numerous variations of the same in particular cases and these numerous variations are fully and completely referred to in respondent's catalogs (Exs. Nos. 1 and 2).

Retailers who distribute the said merchandise by means of the aforesaid punch boards, push cards, and fortune boards use a method substantially as follows:

Said punch boards consist of boards of various shapes and sizes, with from 100 to 4,000 holes. Into each of the holes has been inserted a small slip of paper bearing a printed number, the printed slips bearing separate numbers totaling the number of holes contained in the board, but not consecutively arranged, and said slips are so placed and covered in said punch board that they cannot be seen by the customer until they have been punched from the board.

The punch boards bear legends indicating the numbers which entitle the purchasing public to an article of merchandise or prize, and in some cases the last punch in each board receives a prize. The purchaser of a punch pays 5 cents or 10 cents for the opportunity of punching a number from the board, and if he punches a slip bearing one of the numbers entitling him to a prize, or punches the last punch from the board, he receives the article of merchandise or prize designated by the legend on the punch board, push card, or fortune board. If he does not punch one of the prize-winning numbers, or punch the last punch from the board, he does not receive anything for his money, except the right to punch a number from the board. The said articles of merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single punch from the said board and the total value of punches contained in the boards is usually considerably in excess of the total value of the articles of merchandise or prizes accompanying said boards. The push cards and fortune boards are merely variations of the principle used in the punch boards.

The said punch boards, push cards, and fortune boards are furnished to retail dealers by respondents when various articles or assortments of merchandise are purchased by said retailers from said respondents; and the said punch boards, push cards, and fortune boards are also furnished by respondents to respondents' jobbers and are given by such jobbers to retail dealers who purchase various articles or assortments of respondents' merchandise from said jobbers. These articles of merchandise are displayed by the retail dealers, together with the aforesaid punch board, push card, and fortune board; and the articles of merchandise are sold to the purchasing public by said retail dealers by means of the said punch board, push card, and fortune board. In some cases the said merchandise is assembled upon a display board separate and apart from the aforesaid punch board, push card, and fortune board; in other cases the merchandise is assembled on the punch board furnished by the respondents. In other instances the merchandise sold by the respondents is displayed on a display board, together with the punch board, push card, or fortune board furnished by the respondents, and in addition to the merchandise bought from respondents, the retail dealer distributes other merchandise not purchased from respondents, by means of trade credits.

The retail dealers who sell the said articles or assortments of merchandise to the public by means of said punch boards, push cards, and fortune boards thereby sell or distribute said articles or assortments of merchandise wholly by lot or chance.

PAR. 3. Respondents furnish the said punch boards, push cards, and fortune boards with the articles or assortments of merchandise purchased by such wholesale dealers or jobbers from respondents, with the knowledge that the same are to be resold to retail dealers as assembled or packed by respondents.

Said punch boards, push cards, and fortune boards are designed and intended to be used by retail dealers for the distribution of merchandise to the public in accordance with the method described.

PAR. 4. In the stipulation as to the facts entered into in this case it was agreed by the parties thereto that the statutes of the several States relating to the distribution of the articles of merchandise by lot or chance might be used by, quoted from, or otherwise referred to by the parties to said stipulation without objection because of the failure of formally offering and proving said statutes.

The Commission finds that the sale and distribution of merchandise by lot or chance is against the statutes and public policy of many of the several States of the United States and some of said States have laws making the operation of lottery and gaming devices penal offenses.

PAR. 5. When the articles or assortments of merchandise sold and distributed by these respondents are displayed by the retail dealers along with said punch boards, push cards, and fortune boards, or variations thereof, a number of the consuming public are induced to purchase punches or chances from said punch boards, push cards, and fortune boards with the desire, hope, and expectation of obtaining an article of merchandise or prize for an expenditure of 5 or 10 cents, depending upon the price of a punch or chance; a number of the purchasing public who desire an article of merchandise sold by means of said punch boards, push cards, and fortune boards purchase punches or chances in the hope and expectation of obtaining the article of merchandise so desired at a price of 5 or 10 cents, depending upon the price of a punch or chance; a number of the public purchase punches or chances from said punch boards, push cards, and fortune boards without any particular desire or wish for the merchandise, but just for the privilege of engaging in a game of chance; and a great number of the consuming public continue to purchase punches from said boards until said articles or assortments of merchandise are fully and completely distributed.

PAR. 6. In the sale and distribution of their merchandise to jobbers and wholesale dealers and direct to the retailers, respondents are in competition with the manufacturers and jobbers of similar merchandise throughout the United States. Many of said manufacturers and jobbers sell and distribute such merchandise to whole-

sale dealers and jobbers and retail dealers and do not furnish with such merchandise punch boards, push cards, and fortune boards, nor employ the means and methods of sale used by respondents as hereinabove set forth.

The manufacturers and jobbers who do not furnish punch boards, push cards, and fortune boards for use in selling and distributing their merchandise through retail dealers have various reasons for not furnishing such punch boards, push cards, and fortune boards, among such reasons being the following:

1. That they believe that it is against the laws of the several States of the United States to use such paraphernalia or devices in the distribution of merchandise and such manufacturers or jobbers do not care or do not desire to be a party to such transactions.

2. That they believe that it is not good for the merchandising industry to undertake the merchandising of a chance and that the sale of merchandise by this method constitutes the merchandising of a chance.

3. That they believe that it is not good business for a small number of customers to be winners and a much larger number of customers to be losers. For example, by the use of exhibit no. 3 there would be 300 customers, of which only 6 would obtain anything of value for their purchase; that they believe that the use of such sales methods will not create permanent business, but will react to the detriment of the merchandising industry as a whole.

4. That they believe that the use of such sales methods is morally bad and encourages not only the adults but the child to take a chance.

5. That they believe that reliable manufacturers and distributors and jobbers should not be compelled to adopt such sales methods in order to meet competition.

6. That they believe that if such methods of merchandising were allowed to continue it would gradually go further and further toward gambling and that such manufacturers, distributors, and wholesalers are not in the gambling business but are in the merchandising business.

Many manufacturers, distributors, and jobbers who hold a part or all of the above-recited views feel that their business is being affected and is suffering by reason of the use of the sales methods heretofore described, but that notwithstanding their loss of business and the serious effect such sales methods are having on their business, they are unwilling to adopt such methods because of their above-recited objections to the use of such sales methods.

Many retail dealers purchase punch boards, push cards, and fortune boards without purchasing merchandise, for the purpose of

using such punch boards, push cards, and fortune boards in the distribution of merchandise sold by such retail dealers, but not furnished to such retail dealers by these respondents.

Because of the element of chance involved in the distribution of merchandise by retail dealers through the use of said punch boards, push cards, and fortune boards and because of the appeal which such sales methods have to a portion of the general or consuming public, many wholesale and retail dealers in such merchandise, however, prefer to and do purchase merchandise from respondents rather than from those distributors who do not use the method of distribution heretofore described.

PAR. 7. The use by respondents of the method of sale and distribution of merchandise described herein results in a diversion of trade to respondents from competitors of respondents, who do not employ such a method or means of sale and distribution of their merchandise.

PAR. 8. The distribution of respondents' products by the retail dealer through the use of the above-described plans or methods constitutes the selling of a chance rather than or as well as the merchandising of respondents' products.

PAR. 9. The sale by the respondents of the articles or assortments of merchandise and the furnishing by respondents to the jobbers and wholesale and retail dealers of the punch boards, push cards, and fortune boards is an absolute sale; and respondents have no control whatever over the method of resale of their merchandise by either the retail or wholesale dealers or the jobbers to whom respondents sell said merchandise.

PAR. 10. The gross sales of respondents, trading under the name A. S. Douglass & Co., in the calendar year 1927, were \$42,227.30; in 1928, were \$48,679.40; in 1929, were \$37,107.19; and in 1930, were \$36,132.61.

The gross sales of respondent, trading under the name Lincoln Sales Co., in 1927, were \$128,366.94; in 1928, were \$68,246.14; in 1929, were \$70,131.78; in 1930, were \$52,519.77.

The sales by respondents, trading under the name A. S. Douglass & Co., and under the name Lincoln Sales Co. of merchandise with which punch boards, push cards, and fortune boards were furnished, amount to approximately 50 percent of respondent's total gross sales.

Pursuant to the stipulation certain exhibits were initialed by the parties and were made a part of the record of this case. These exhibits consist of two catalogs (exs. 1 and 2), and a punch board, a push card, and a fortune board (exs. 3, 4, and 5, respectively).

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The catalogs fully describe the merchandise of the respondents and also rather fully explain the merchandising methods of the respondents. The last three exhibits illustrate the principle involved in the disposing of merchandise by such methods, although there are numerous variations in details as to arrangements of such devices.

PAR. 11. The catalog of the respondents (Com. Ex. 1) on the inside cover has this statement: "We are the pioneer of the sales stimulator or sales board assortment business, having originated and designed this novel and effective method of selling high grade merchandise." The respondents' business is the selling of merchandise. The furnishing of punch boards, push cards, and fortune boards to retail dealers in connection therewith is the respondents' method of competing against other manufacturers and distributors of similar merchandise. The sale of assortments of merchandise and the furnishing of punch boards or similar devices with said assortments so assembled that they can be sold by means of the punch boards, or similar devices, without rearrangement or readjustment is illegal in practically all States of the United States.

CONCLUSION

The acts and practices of the said respondents, under the conditions and circumstances described in the foregoing findings of fact are and have been all to the injury and prejudice of the public and have a natural tendency to, and do, suppress competition in the sale of merchandise in interstate commerce and are to the injury and prejudice of respondents' competitors and are unfair methods of competition in interstate commerce, and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the entire record, including the complaint of the Commission, the answer of the respondents thereto, the stipulation as to the facts agreed upon and approved, and the briefs and arguments of counsel for the parties hereto, and the Commission having made its findings as to the facts with its conclusion that said respondents have been and are violating the provisions of section 5 of the act of Congress entitled "An act to create a

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Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

It is now ordered, That respondents A. S. Douglass and David Helfinbein, individually and as copartners trading as A. S. Douglass & Co. and Lincoln Sales Co., and each of them, their agents, representatives, servants, employees, and successors in business, in connection with the sale and distribution of merchandise in interstate commerce, cease and desist:

1. From selling and distributing to jobbers and wholesale dealers, for resale to retail dealers, and to retail dealers direct, merchandise or assortments of merchandise so arranged or assembled that final sales of such merchandise to the general public are to be made or promoted by means of a lottery or gaming device.

2. From supplying to or placing in the hands of wholesale dealers and jobbers and retail dealers punch boards, push cards, or fortune boards in connection with the sale by respondents of merchandise or assortments of merchandise.

3. From supplying to or placing in the hands of wholesale dealers and jobbers and retail dealers, punch boards, push cards, or fortune boards, or other lottery or gaming device, for the purpose of enabling retail dealers to resell merchandise purchased from respondents to the consuming public by means of said punch boards, push cards, fortune boards, or other lottery or gaming device.

It is further ordered, That said respondents shall within 60 days of the service upon them of a copy 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 hereinbefore set forth.

Complaint

IN THE MATTER OF
BEACON MANUFACTURING COMPANY

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

Docket 1873. Complaint, Nov. 3, 1930—Decision, June 28, 1932

Where a corporation engaged in manufacture of colored blankets patterned after the design of the American Indian, hand-made blanket, and in sale thereof to retail dealers under such distinguishing grade names as "Wigwam," "Sachem," etc., supplied said dealers with window display "cut-outs" for their use in depicting an Indian, with its so-called Beacon blanket, in said dealers' window displays, in act of weaving such a blanket on an Indian loom, and in various characteristic Indian scenes with such blankets, together with such descriptive captions as "Beacon Blankets," "Beacon Indian Blankets," "The Pueblo Marriage," "The Pueblo Indian announces his marriage by slipping his blanket around his mate," and thus supplies said dealers with the means of deceiving persons into believing such blankets to be genuine Indian made blankets, and trespassed upon the rights of the sellers of such blankets, to their prejudice and injury and that of the Indian makers and sellers thereof, and the substantial industry therein established by them:

Held, That such acts and practices were to the prejudice of the consuming public and Indian makers and sellers of the genuine Indian made blanket, and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Hinckley, Allen, Tillinghast, Phillips & Wheeler, of Providence, R.I., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Massachusetts corporation engaged in the manufacture of blankets, shawls, bath robes and other similar napped fabrics, and in the sale and distribution thereof among various States, and with mills in New Bedford, Mass., and Swannanoa, N.C., and executive officers in New Bedford and salesrooms in New York and Chicago, with advertising falsely or misleadingly and misbranding or mislabeling as to nature of manufacture of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, in its catalogs describes certain blankets not made by American Indians, but made, woven, or knit by machinery in mills or factories as "Indian Blankets", "Ombre Indian Blankets", "Wigwam Blankets",

"Sachem Blankets", "Agawam Blankets", "Mingo Blankets", and "Casco Blankets", and sells said blankets labeled with such trade names as "Wigwam", "Sachem", "Huron", "Agawam" and/or "Mingo", with capacity and tendency to deceive and mislead purchasing public into buying same as and for blankets made or woven by American Indians.¹

Respondent further, as charged, "furnishes to retail dealers advertising matter consisting of Indian cut-outs, show cards, newspaper cuts, and photographs of window displays, which advertising matter depicts Indians in the act of weaving blankets and Indian group scenes for use of the retail dealer in selling the said blankets to the public and the said advertising matter when so used has the capacity and tendency to deceive and mislead the public into buying said blankets in the belief that the said blankets were made or woven by American Indians when in truth and in fact the said blankets were not made by American Indians."

Such acts and things, as charged "are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Beacon Manufacturing Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The complaint was filed in November, 1930, and charged the respondent, Beacon Manufacturing Co., with unfair methods of competition in connection with sales and advertisements of its blankets in the failure to discriminate sufficiently between its manufactured blankets and blankets made by American Indians.

The respondent entered its appearance and filed its answer to said complaint, denying the deceptive character of its representations. Thereafter hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondent.

¹As alleged, "there are in the United States several tribes of Indians who make a product designated as 'Indian Blankets' and said product is sold in interstate commerce under the aforesaid designation to the trade and the purchasing public. These tribes include the Hopi, Leupp, and Navajo Indians in Arizona, and the Pueblo Bonita, San Juan, and Southern Pueblo Indians of New Mexico. The value of their output is substantial, and their blankets, so designated, have acquired a reputation for wearing qualities, and there is a valuable good will in the word 'Indian' as applied to the same."

Thereupon, this proceeding came on for final hearing on the briefs and oral argument, and the Commission, being fully advised in the premises, makes this its findings as to the facts and conclusion :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Beacon Manufacturing Co., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, and has been, since about 1905, engaged in the manufacture of blankets and the sale and shipment thereof throughout the various States of the United States. Its principal place of business and executive office is located at New Bedford, Mass. It maintains sales offices at New York City, and Chicago, Ill., and owns and operates manufacturing mills at New Bedford, Mass., and at Swannanoa, N.C. The respondent, during all the times herein mentioned, has been and still is engaged in selling, distributing, and shipping to its customers throughout the United States blankets, which selling and shipping is done at and from the said offices or manufacturing mills of respondent. The preponderant part of its sales of blankets is made direct to the retail trade, which in turn resells said blankets to the ultimate consumers. A comparatively small part of its sales is made to "concession" jobbers, who resell to buyers such as fairs and bazaars for resale to the public. The respondent publishes catalogs for use in soliciting and making sales of its blankets to the retail trade, and it also employs traveling salesmen who call on the retail trade for said purpose.

PAR. 2. The respondent in 1912 began the manufacture and sale of a blanket of Indian colors and design. The design was patterned after that of hand-made blankets of the American Indian. The respondent designated this type of blanket in its catalogs, "Beacon Indian Blanket." About 1922, the respondent began the manufacture of Indian-design blankets of different grades and quality, and in order to distinguish the different grades, gave to each grade of blanket an Indian name, such as "Wigwam," "Sachem," "Agawam" ; "Huron," "Casco," and "Mingo." These blankets appear in the catalogs as "Beacon Indian Blankets," "Wigwam," "Beacon Indian Blanket," "Sachem," etc. The respondent, in connection with sales to retail dealers, affixes to each Indian design blanket a label. The blankets are resold to the consuming public with the label attached. This label is approximately 4 inches by 7 inches in size and contains a picture of a manufacturing plant or factory and carries the word "Beacon" in large type; in smaller

type the words "Beacon Blankets Make Warm Friends," and the Indian name to designate the particular quality, such as "Sachem," "Wigwam," etc. The sale and distributing of Indian design blankets by respondent in its business as above described extend to all the States of the United States. Respondent's annual sales of Indian design blankets in the United States for the year 1930 amounted to \$85,000, and said sales represent between 30,000 and 35,000 Indian-design blankets.

PAR. 3. The respondent furnished its retail dealer customers books containing instructions and suggestions regarding newspaper advertising and store and show window display advertising of its blankets. Among the material furnished retail dealers for newspaper advertising there were "mats" or "cuts" which, when reproduced, were pictures of Indians, Indian blankets, and Indian scenes which carried the words "Beacon Blankets" and "Beacon Indian Blankets" (Com. Ex. 22, p. 41; Com. Ex. 13, pp. 39, 44, 47, 52, 55). In addition to the furnishing of books containing suggestions regarding store and show window display advertising of its blankets, the respondent furnishes the material for store and window display advertising, among which are various pictures depicting and representing Indians, Indian blankets, Indians weaving blankets, looms on which Indian blankets are woven, and various Indian scenes. Some of these pictures are on heavy pasteboard and are in the shape or outline of the things pictured; they are made to stand alone and are referred to as "cut-outs." Some of the picture display advertising carries the words "Beacon Blankets", and a few of the display advertising pictures carry the words "Beacon Indian Blankets"; some of the pictures, in addition to the above-mentioned words, carry the words, "Beacon Blankets Make Warm Friends." One of the pictures, which depicts an Indian marriage, has on it in addition to the words "Beacon Blankets Make Warm Friends", the following: "The Pueblo Marriage." "The Pueblo Indian announces his marriage by slipping his blanket around his mate." No other words or markings appear on the above-described pictures (Com. Ex. 13, pp. 4, 33, 66, 72; Com. Ex. 22, pp. 14, 15, 18, 19, 23; Com. Exs. 7, 8, 8a, 9, 9a, 9b, 10, and 11).

Commission's Exhibits 8 and 8a are cut-outs which, when assembled according to directions of respondent, form a single display and depict a blanket being woven on an Indian loom by an Indian child guided by an elderly Indian. These exhibits are in natural colors, but an assembled picture of this display appears in respondent's advertising book furnished dealers, and in this book respondent

describes this picture as "The Indian Blanket Weavers" (Com. Ex. 22, p. 15). The top portion of this picture is a true representation of the top of a Navajo Indian loom on which Indian blankets are woven by the Navajo Indians. The only words appearing on this assembled picture when displayed according to respondent's instructions are the words "Beacon Blanket." The instructions for assembling and displaying these exhibits direct the user to place one of respondent's blankets so as to hang directly below the warp of the loom and to have the Indian's hands at the point where the weaving operation takes place.

Commission's Exhibits 9, 9a, and 9b are cut-outs which, when assembled according to directions of respondent, depict a blanket being woven on an Indian loom by an adult Indian squatting in front of the loom. These exhibits are in natural colors, but an assembled picture of this display appears in respondent's advertising book furnished to dealers, and in this book respondent describes this exhibit as "The Weaver" (Com. Ex. 22, p. 23). The instructions direct that a Beacon blanket be inserted in this loom at the point where the warp ends, and the combined exhibit so arranged and the hands of the Indian are raised to the point where the weaving operation takes place.

The respondent furnishes to its dealers other Indian cut-outs and they are shown in respondent's book of suggestions to dealers and are described by respondent in the following language:

Large Indian cut-outs in full color. Made to stand alone. So realistic are these cut-outs when displayed with Indian blankets that they compel instant attention to your window. (Com. Ex. 13, pp. 62, 63.)

The respondent conducts on a large scale advertising of the above nature and character. Such advertising is displayed to the public by means of these pictures. The instructions of respondent to its retail dealers to insert a Beacon blanket in the above cut-outs of Indian looms (Exs. 8, 8a, 9, 9a, and 9b) result in the respondent's blankets being exhibited and displayed to the public in these looms, and show or depict Indians hand-weaving one of respondent's machine-made blankets. These picture representations made by respondent in connection with sales of its blankets are false.

PAR. 4. There are in the United States American Indians belonging to the Navajo Tribe who weave a product which is used mostly for floor coverings and for decorative purposes, such as couch covers and throws over beds. A considerable number are used as tapestries and for pillowtops and wall decorations. This product is referred to and designated as "Indian blankets" and "Navajo rugs." The

two terms are used interchangeably. They are too heavy for ordinary personal or bed wear of the white race. Two of these blankets or rugs have been placed in evidence (Com. Ex. 26 and Resp. Ex. 4).

The Navajo Tribe is located in Arizona and New Mexico, and has a population of approximately 40,000. Their livelihood is gained principally from the raising of sheep, from the wool therefrom, and from the making of blankets from the aforesaid wool. The wool which the Indians use comes from their flocks and is carded, spun, and dyed by them. The loom which they use for the weaving of blankets consists of two horizontal bars, one hung above the other, and the warp is stretched between. A very small loom is in evidence as Commission's Exhibit No. 28. The said blankets have acquired a reputation for wearing qualities, and there is a valuable good will in the word "Indian" as applied to the same.

The United States Indian Office, Department of the Interior, supervises the development of industries among the Indians. The art of making blankets is taught by the Indian Office in fourteen schools located on the reservations. These schools are operated by the United States Government.

The making of blankets by Navajos is a substantial industry, and, with the moneys gained thereby, constitutes one of their principal sources of livelihood. Between \$500,000 and \$750,000 worth of blankets are woven and sold annually by the Navajo Tribe, principally to the traders licensed by the Government and located in Arizona and New Mexico. These Indian traders carry stores of clothing and food supplies which are sold or traded to the Indians for their products. The traders sell the blankets at wholesale to dealers, such as art, curio, and specialty shops. They also sell, to a limited extent, to department stores located in the principal cities; also at retail, to tourists, and by catalog to persons residing throughout the different States of the United States. The art, curio, and specialty shops are located throughout the United States, usually in the principal cities, and sell at retail to the public. The annual retail value of blankets made by Navajo Indians amounts to between \$1,000,000 and \$1,500,000.

PAR. 5. The retail dealer buyers of respondent's Indian design blankets know the origin of the said blankets. The words "Beacon Blankets", or the words "Beacon Indian Blankets", signify to such buyers blankets made by the respondent. The use of the word "Indian" and the use of Indian pictures therewith do not deceive this class of buyers. The question is, What do the members of the consuming public understand by the representations made to them by the respondent by means of the term "Indian Blanket", and by

means of pictures of Indians and Indian scenes, and pictures of genuine Indian blankets and Indian blanket looms, and Indians weaving blankets?

PAR. 6. The evidence shows that respondent's blankets of Indian design are sold by respondent to retail dealers and are resold in retail stores in every State of the United States. The evidence shows that there is a class of the consuming public to whom the name, designation, or representation "Indian", when applied to blankets, means blankets made by Indians. The evidence shows that there is a class of the consuming public which does not know what tribe or tribes of Indians weave blankets. The respondent produced testimony which shows a class of ultimate buyers who have heard of blankets made by Indians and have heard blankets designated "Indian blankets", but that such ultimate buyers know nothing about the construction, quality, appearance, or price, and cannot distinguish between a blanket made by an Indian and a machine-made blanket of Indian design. One Indian trader who handled Navajo blankets as well as machine-made blankets testified as follows:

Q. Does the average person you deal with in the East know an Indian blanket when he sees it?

A. No; not always; very rarely.

Q. It is very rare for them to know it?

A. Yes, sir.

Q. On numerous occasions have you had any difficulty convincing them it was a genuine Indian blanket?

A. I have often had to convince them. I can always convince a person (tr. p. 498).

Another witness called by the respondent testified on cross-examination:

Q. In selling them curios and Indian blankets do you have numerous occasions to explain to them the weave and the material of which the Indian blanket is made?

A. Yes, sir.

Q. Have you not as a result of your seven years' experience been able on numerous occasions to determine whether or not the prospective customer is familiar with Indian blankets?

A. Yes; conversation with them; yes.

Q. Is it unusual for customers coming in not to know, or to show that they do not know, or to indicate their lack of knowledge, rather, of an Indian blanket.

A. No.

Q. By that do you mean that it is not unusual.

A. It is not unusual; no.

Q. Isn't that true in a large number of cases where a customer indicates they are from the East, or not from this section of the country?

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A. Yes; I would say so.

Q. You have traveled extensively in the East?

A. Yes, sir.

Q. Have you discussed the subject matter of Indian blankets in the East?

A. Yes; on occasion.

Q. Do you find the lack of knowledge as to what an Indian blanket is composed of, or how it is woven, quite general throughout the East?

A. Yes (Tr. 524).

Another witness called by the respondent testified on cross-examination as follows:

Q. Do you come in contact with prospective customers who come into your place of business?

A. Yes; I do.

Q. Are they made up, to a certain extent, of tourists that are from other parts of the country, other than New Mexico and Arizona?

A. Yes; almost entirely.

Q. Have you had occasion to explain to your prospective customers the details of the weaving of Navajo blankets?

A. Yes; very frequently.

Q. Have you, as a result of coming in contact with such prospective customers, been able to ascertain their knowledge or lack of knowledge of the product woven by the Indians?

A. Yes.

Q. Is it a fact that a substantial number of prospective customers that come into your place of business are not sufficiently familiar with the Navajo product to determine its genuineness at the time they first come into your store?

A. Yes; I think the majority are quite ignorant of what constitutes a piece of handcraftsmanship of any kind (Tr. p. 564).

PAR. 7. The respondent called a number of witnesses from the larger and more representative department and dry goods stores of the country which handle its blankets. They testified as to the knowledge of the public of the term "Beacon" as applied to blankets. These witnesses testified that respondent's Beacon blanket is one of the best-known cotton blankets in America, and that it is well and favorably known to the buying public, and that respondent's Beacon blankets meant to a portion of the public a line of manufactured blankets.

The evidence establishes that to many of the public the word "Beacon" means a manufactured blanket. They could not and do not take the word "Beacon" to mean a blanket made by the Beacon Manufacturing Co., for even respondent's label fails to disclose this fact. The evidence of this class of witnesses proves no more than that there is a class of buyers who know Beacon blankets and know they are manufactured blankets.

The word "Beacon", in connection with respondent's show cards carrying the word "Indian", and respondent's Indian "cut-out" pictures, does not convey to a portion of consumer buyers the understanding that the blankets are not made by Indians. One witness, a member of the consuming public and an associate editor of a well-known women's magazine, testified that respondent's cut-out displays (Com. Exs. 9, 9a, and 9b, and 8 and 8a) would convey to her the impression and understanding that the blankets were made by Indians. Commission's Exhibits 8 and 8a, and 9, 9a, and 9b are true representations of Indians making blankets, and when one of respondent's blankets is inserted in either of these combined exhibits, is a representation of Indians hand weaving respondent's machine-made blankets. The witness referred to above testified, in answer to the following inquiries:

Q. * * * I am going to direct your attention * * * to an exhibit which we have here. For the purpose of identifying it in the record it is Commission's Exhibits Nos. 9, 9a, and 9b, and it has also in it Commission's Exhibit No. 24. What representation, if any, does that exhibit, as now set up, give to you?

A. Why that is an Indian blanket being made by a North American Indian.

Q. And what does the term "Indian blanket" mean to you?

A. A blanket made by Indians.

Q. If you saw that exhibit in a reliable department store window, what impression, or what would you expect to find offered for sale?

A. Blankets made by Indians.

Q. And on those two exhibits I direct your attention to the words "Beacon blankets." What, if anything, do these words carry to you?

A. Well, then I realized that it was undoubtedly intended as a trade name. My business training would tell me that. I probably would not have particularly noticed it. It is rather in my mind secondary to the impression of the Indian; the impression I first got.

Q. Are you familiar with Beacon blankets?

A. I do not happen to be (Tr. pp. 1944-1980).

Another woman witness, member of the consuming public, conducting an art school and engaged in teaching fine arts, testified (R. pp. 1933-2011) that the term "Indian blanket" meant to her a blanket made by the Indians, and testified that respondent's pictures representing Indians conveyed to her the same meaning, and that the word "Beacon" did not correct this impression. This witness testified with respect to the impression conveyed to her by Indian pictures carrying the word "Beacon", "I would think that that was their form of manufacture, and that they were Indian blankets and that they employed the Indians to do the work" (R. p. 2000).

Another witness, engaged in the real-estate business, testified (R. pp. 2013-2037) that respondent's Indian cut-outs carrying the word "Beacon" conveyed to him the impression that the blankets were made by Indians. This witness testified in response to such inquiry, "Well, I should think it was a blanket made by the Indians and distributed by somebody named Beacon. I would think they were distributors for the Indian blankets" (R. 2018).

On Commission's exhibits 6 and 6a and exhibit 10 there are representations of an Indian smoke signaling with a blanket. The word "Beacon" itself suggests the outdoor life of the Indian and the activities of the Indian. It was a custom of the Indian tribes to set out beacon signals as warnings and to convey other information. The word "Beacon" is more indicative of Indian life and industry than of a manufacturing plant or mill, and to those not acquainted with Beacon blankets the word "Beacon" on Indian pictures accentuates the impression given by the pictures themselves.

The word "Beacon" as exhibited to the purchasing public on respondent's pictures does not mean to a portion of such buyers that the blankets are manufactured by others than Indians. The evidence is that the word "Beacon" has no such universal meaning. The word itself appearing on pictures of Indian blankets and Indians weaving blankets conveys the understanding to those whom the word has no definite meaning or understanding, that Beacon is a seller or distributor of genuine Indian blankets. It is at least more reasonable that the word "Beacon" would convey this meaning than an understanding that the blankets are manufactured by others than Indians.

PAR. 8. The cut-out pictures of Indians weaving their blankets are true pictorial representations of Indians and Indians weaving their blankets; and when one of respondent's blankets is inserted according to the directions of respondent into the proper opening on Commission's Exhibits 8 and 8a and 9, 9a, and 9b, the representation is that blanket of respondent is woven or being woven by Indians. To those of the public who know and understand the term "Beacon" to mean a manufactured blanket, the cut-out pictures would not be misleading or deceptive, but to members of the public who do not attribute such meaning to the word "Beacon", no other meaning can be attributed to the picture cut-outs than a representation that the blankets so advertised are made by Indians. Such pictures, in connection with the sale of respondent's blankets, and when respondent's blankets are inserted therein according to the instructions of the respondent, are palpably false, and their use in connection with

the sale of such blankets is a trespass upon the rights of sellers of Indian blankets. If the respondent is allowed to continue the use of the cut-out pictures depicting Indians weaving blankets and pictures of Indian looms, substantial injury to the Navajo Indians and sellers of their blankets will result.

The representation by means of pictures that the blankets are made by Indians is as complete as if made by adequate words, and is more impressive and lasting. To those who purchased respondent's blankets, the label attached to the blanket might have corrected the deception created by the pictures. Even here there is the chance that some would not see the label, and the likelihood of some who did inspect the label to be deceived or left in doubt and confusion. The use of the label carrying the word "Beacon" and a picture of a manufacturing plant or mill, even though it is assumed, contrary to the evidence, that all who purchased the blankets saw the label and understood that the blankets were not made by Indians, does not justify the false representation of respondent by means of pictures that its blankets are made by Indians. Having created the false impression that the blankets are made by Indians, it is immaterial that a true representation was made to buyers in another manner.

The use of pictures of Indians and Indian scenes and the use of the words "Indian blankets" and the words "Beacon Indian blankets", without clearly showing in connection therewith that the blankets are not made by Indians, will work injury to sellers of Indian blankets, and this, irrespective of whether or not the public may or may not buy respondent's blankets under its label as and for blankets made by Indians. The said false pictures and words offer the chance of deception, and provide retailers with the means of deception, and will cause confusion in the minds of the public who are not acquainted with the Indian blankets, and create in the minds of the public doubt and distrust as to the genuineness of Indian blankets when offered for sale, and will work injury to the industry of the Navajo Indians.

PAR. 9. The blankets made by respondent and the blankets made by the Navajo Indians do not precisely fill the same commercial wants. The evidence shows that the purpose of respondent's use of the false pictures is not to injure the sale of the Indian blankets but to increase its own sales through the use of the advertising described. The practice of respondent is, nevertheless, a competitive practice in the course of commerce as defined in the Federal Trade Commission Act and does result in injuriously affecting the blanket industry of the Navajo Indians.

PAR. 10. The evidence shows that the Pendleton Woolen Mills, of Pendleton, Oreg., manufacture and sell a woolen blanket of Indian design. The Pendleton company uses two labels in connection with sales of its blankets—one a paper card label approximately 6 inches by 4 inches, carrying the words in clear type, "Pendleton Indian Blanket, Pendleton Woolen Mills, Pendleton, Oregon"; the other is a silk label which is sewed on each blanket and carries the words, "Warranted to be a Pendleton, Pendleton Woolen Mills, Pendleton, Oregon". The Esmond Mills also manufacture and sell a cotton Indian-design blanket. This blanket carries two labels—one a paper card approximately 2 inches by 5 inches carrying the trade mark, picture of a rabbit, and the words, "Esmond blanket soft and warm as rabbit fur Indian blanket". On the reverse side of this card label appears the following words: "Esmond blankets are made that way in the peace and quiet of an old New England village, Esmond, Rhode Island." The record contains no evidence that the Pendleton Woolen Mills or the Esmond Mills used pictures such as are used by the respondent, or used the words "Indian blanket" without clearly indicating that said blankets are made by Pendleton Woolen Mills, or Esmond Mills, respectively.

CONCLUSION

The representations and practices of the respondent as set forth in the findings as to the facts herein are to the prejudice of the consuming public and the Navajo Indians and sellers engaged in selling Navajo blankets, and constitute unfair methods of competition within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the testimony and evidence introduced and briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondent, Beacon Manufacturing Co., its officers, agents, and employees, in connection with selling, advertising, or offering for sale its blankets in interstate commerce

between and among the several States of the United States, do cease and desist from:

(1) Using pictures depicting, portraying, or representing Indians weaving blankets, looms on which Indian blankets are made, and Indian blankets, and using pictures depicting, portraying, or representing Indians, or Indian camping or marriage scenes, or other Indian scenes, unless such pictures have thereon appropriate language, such as Beacon Manufacturing Co. Indian blankets, or Beacon Indian design blankets, or Indian design blankets, or other words or phrases clearly indicating that the blankets thus advertised are not woven by American Indians but are manufactured by respondent.

(2) Furnishing retail dealers of respondent with such pictures as just above described for the purpose of advertising respondent's blankets, unless appropriate language appears on said pictures clearly representing or showing that respondent's blankets are not made by American Indians but are manufactured by respondent.

(3) Using the word "Indian", or the words "Indian blankets", or the words "Beacon Indian blankets", in advertising by means of show cards, display cards, and the like, or otherwise, unless accompanied by appropriate words such as "Beacon Manufacturing Co. Indian blankets", or "Beacon Indian design blankets", or "Indian design blankets", or other words or phrases clearly indicating that respondent's blankets are not made by American Indians, but are manufactured by respondent.

(4) Furnishing respondent's retail dealers with advertising material such as show cards, display cards and the like, or otherwise, bearing the word "Indian", or the words "Indian blankets", or the words "Beacon Indian blankets", unless such advertising material bears thereon apt words such as "Beacon Manufacturing Co. Indian blankets", or "Beacon Indian design blankets", or "Indian design blankets", or other words or phrases clearly indicating that respondent's blankets are not woven by American Indians, but are manufactured by respondent.

It is further ordered, That respondent shall, within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

IN THE MATTER OF
BROWN FENCE & WIRE COMPANY

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

Docket 1929. Complaint, Mar. 19, 1931—Decision, June 28, 1932

Where a corporation engaged in the sale, on mail order, direct to the consuming public through advertisements in farm journals, and approximately a million catalogues distributed annually to customers and prospective customers in the farming communities, principally, and dealing in (1) wire fencing, fence posts, gates, fence stretchers, and other fencing accessories, manufactured chiefly in one of its three plants; (2) a considerable amount of wire fencing and fence anchors, made in and purchased from mills neither owned nor controlled by it, shipped upon order direct from place of production to consumer, and made, in case of said anchors, with tools and pursuant to designs developed by it for the manufacture thereof; (3) paints, varnishes, and enamels made for it according to its own special formulae in a factory in which it owned no interest; and (4) tires and tubes, baby chicks and poultry supplies, nursery stock, stoves and stove supplies, cream separators, roofing and shingles, nails, shrubs, storage tanks, water heaters, lamps, gas engines, hog troughs, and incubators; some of which merchandise was made for it by the manufacturers in their dull season under contracts pursuant to which it advanced funds for materials and bought the products at cost thereof, plus manufacturing expense, and thereby through its volume of business and considerations of overhead and seasonal losses sometimes obtained said products at cost and less and was thus able to resell same at a very low price, and all of which merchandise, excepting only that made by it as aforesaid, or for it under said contracts, it purchased from manufacturers in 35 distributing centers in various States under arrangement by which the merchandise was sent from the factory direct to the consumer upon receipt of its order at a price including two separate profits;

Represented in its catalogues that it sold direct from factory to consumer and that its prices for the articles there advertised were low because the customer did not have to pay anything for middlemen's profits and expenses, and were lower than competitors' prices because its customers paid only actual cost of manufacturing plus one small profit and described its prices as "direct from factory prices", and implied that all its goods were made by it, through such statements as "Forty years ago I started my straight line selling plan. Now I have over a million customers and the largest direct from factory fence business in the world! * * *", "My prices are so low because you don't pay a cent for middlemen's profits and expenses. No dealer, salesman, or jobber comes between us. You get the saving in cash and better quality", "My direct from factory plan of dealing is the most economical way of buying goods", "Every middleman who handles the goods on its way from the factory to you must add his profit and expense and include it in his selling price.

This adds cost but does not add value. When you buy from my factory direct you save these 'in between' costs—nothing is added to factory cost except one small manufacturer's profit. That's why you get so much greater value at less cost"; facts being it was a middleman and, excepting only aforesaid fencing and accessories and articles purchased at a loss as aforesaid, made a middleman's profit in the resale of the merchandise sold by it, in which there was an expense or profit accruing at the original source of the articles and a profit to it, both of which were passed on to the consumer;

With tendency to mislead and deceive the purchasing public into believing that by reason of its supposed manufacture of the various articles dealt in by it, the public was obtaining better goods at a lower price and thereby induce public to purchase such articles from it in preference to purchase from its competitors, some of whom do not so misrepresent:

Held, That such practices, under the conditions and circumstances set forth, were to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Mr. PGad B. Morehouse for the Commission.

Mr. John Wattawa, of Washington, D.C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation engaged in selling by mail various articles and supplies such as paint, roofing, cream separators, etc.,¹ to farmers or ranchers, chiefly, freight prepaid, from (1) its principal place of business in Cleveland, (2) factories of a manufacturing corporation of which it owned the stock, and (3) distributing points in various States, with misrepresenting business or trade status or advantages, and advertising falsely or misleadingly in said respect and as to composition of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, in sale of its products in competition with others similarly engaged in sale and distribution of farm and home supplies as well as in competition with those engaged in wholesale manufacture, sale and distribution of such articles through jobbers and retailers, represents and has represented by catalogues and other advertising media, of which about one million copies are distributed throughout the United States annually, that it is a manufacturer of all the products so advertised and sold and that prospective purchasers by buying direct from the

¹ Other articles named in the complaint are stoves, furnaces, tires and tubes, shrubs, lamps, gas engines, hog troughs, incubators, baby chicks, fencing steel posts, barb wire and gates.

factory, will save a middleman's profit on all such products and obtain the same at factory cost plus one profit only; the facts being it manufactures nothing other than the fencing, steel posts, barb wire and gates made by its aforesaid subsidiary manufacturing corporation, but "buys and resells all of its other said merchandise from others, all in such manner that the purchaser of said products does not pay a factory price plus one profit only, as represented by respondent, and there is certain expense or charge accruing to the subsidiary corporation aforesaid or to the other original sources of the said products, in addition to a profit to respondent, which is passed on to the consumer."

Respondent further, as charged, "represents and has represented in its catalogues and advertising matter as aforesaid that its fence wire so advertised, offered, and sold in interstate commerce, is a steel wire containing from .15 to .30 percent of copper, by means of which the durability of said wire is doubled, whereas in truth and in fact the copper content of said wire is and has been in many cases grossly exaggerated in, to wit, that analyses have shown the copper content to be from .01 to .07 percent."¹

Said representations, as alleged, "are calculated, have a tendency, and operate to mislead and deceive purchasers and prospective purchasers of respondent's merchandise into the belief that when purchasing such merchandise they are saving a middleman's profit and obtaining a 'direct from factory to consumer' price, and to mislead and deceive the purchasers and prospective purchasers of fence wire into the belief that the durability thereof is that of a wire containing 15 to 30 percent copper, all of which tends to and does divert trade from competitors of respondent to the respondent," and said alleged acts and things and false and misleading representations, as charged, are to the prejudice of the public and competitors and constitute unfair methods of competition.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Brown Fence & Wire Co., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced

¹ Charge corrected to conform to stipulation. See paragraph 3 of Findings, on p. 384.

upon behalf of the Commission and respondent before a trial examiner of the Commission duly appointed thereto, and said trial examiner having filed his findings of facts herein and counsel for both the Commission and the respondent having filed exceptions thereto,

Thereupon this proceeding came on for final hearing on the record herein, briefs, and oral arguments of both counsel for the Commission and respondent, and the Commission having duly considered the matter and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Brown Fence & Wire Co., was incorporated in 1901 under the laws of the State of Ohio. In 1923 it was reincorporated under the laws of the State of Delaware and acquired the stock of and has ever since wholly managed and controlled the Peerless Wire & Fence Co., a corporation owning and operating factories at Adrian, Mich., and Memphis, Tenn. Respondent's principal place of business and a plant operated under its own name are at Cleveland, Ohio. It is now and since long prior to 1923 has been engaged in the business of selling on mail orders direct to the consuming public such merchandise as wire fencing, fence posts, gates, fence stretchers and other fencing accessories, most of which it manufactures in one of its three plants aforesaid. The rest of the articles in the same manner advertised and sold by it, such as fence anchors, tires and tubes, baby chicks and poultry supplies, nursery stock, stoves and stove supplies, cream separators, paints, varnishes and enamels, asphalt roofing and shingles, nails, shrubs, storage tanks, water heaters—and since 1931, lamps, gas engines, hog troughs and incubators—are bought by respondent from the most conveniently located factory, hatchery or nursery and shipped directly from such place of production to the customer, under respondent's name and guarantee and with freight prepaid on orders exceeding \$5 in amount. The fence anchors and a considerable amount of wire fencing are purchased by respondent in a finished state from mills not owned or controlled by it, and shipped upon order direct from the place of production to the consumer.

Respondent developed the tools and designs used by the other mills for making the fence anchors. The paints, varnishes, and enamels so sold by respondent are manufactured for it on contracts in a factory in which respondent owns no interest, according to specially owned formulæ of respondent. It advances funds for the materials and buys such paint products at the cost of the raw material plus

manufacturing costs at a fixed price per gallon. This arrangement with the paint company and also with some of the other contracting manufacturers is confined to their dull seasons. Through considerations of overhead and seasonal losses respondent with its volume of business in some cases obtains the products for which it has so arranged at cost and sometimes less than cost, and is thus able to resell at a very low price. Orders received by respondent for merchandise sold by it (other than such of the wire fencing and allied products as are manufactured by it and other than such products as it has been able to buy at or below the manufacturing cost) are filled pursuant to arrangement which respondent has with manufacturers located in thirty-five distributing centers in various States of the United States, and such merchandise is sent from the factories of such manufacturers direct to the consumers upon the order of respondent, with two separate profits included in the sale price.

Respondent causes all of the merchandise so sold by it to be transported from the point of origin through and into various other States of the United States to the respective purchasers thereof, and in the course and conduct of its business has been, and is now in active competition with other individuals, partnerships, and corporations engaged in a similar sale and distribution in interstate commerce of home and farm supplies of a like kind and nature, as well as with individuals, partnerships, and corporations engaged in the wholesale manufacture, sale, and distribution in interstate commerce, through jobbers and retailers, of such articles.

PAR. 2. In the course and conduct of its business as aforesaid respondent causes advertisements to be published in farm journals having general circulation in various States of the United States, and issues each year approximately one million catalogues which it causes to be distributed to customers and prospective customers principally in farming communities in all of the States of the United States. In these catalogues respondent uses as an inducement to prospective customers to buy from it in preference to its competitors, the representations that it sells direct from the factory to the consumer; that the prices for the articles advertised in such catalogues are low because the customer does not have to pay anything for middlemen's profits and expenses, and that such prices are lower than others (by "others" intending and meaning respondent's competitors), for the reason that customers of respondent pay only the actual cost of manufacture plus one small profit, and the prices asked by respondent for the merchandise offered for sale in such catalogues are described as "direct from factory prices." Among such statements are the following:

Forty years ago I started my straight line selling plan. Now I have over a million customers and the largest direct from factory fence business in the world! Why? Simply because my higher quality and lower price save a lot of money for my customers. *Every page of this book* proves that it pays to buy your fencing and *other farm and home needs* direct from Jim Brown's factory.

BETTER QUALITY AT LOWER PRICE

My prices are so low because you don't pay a cent for middlemen's profits and expenses. No dealer, salesman, or jobber comes between us. You get the saving in cash and better quality. Go through this catalogue carefully. Compare my low, freight paid prices with others. * * * See how much I save you on farm and poultry fencing, gates, steel posts, barb wire, smooth wire, poultry netting, paint, roofing, furnaces, heaters, oil stoves, tires, tubes, cream separators, baby chicks, brooders, and the many other things shown in this, my 40th Anniversary Money Saving Bargain Book. (*Italics supplied.*) (From inside front cover of respondent's 1929 catalogue—Commission's Exhibit No. 1.)

Introductory statements of like tenor and effect preface the indices and pages of respondent's 1930 and 1931 catalogues. By plain implication, catalogue arrangement, illustrations, and direct statements, representation is made by respondent that the goods sold (without limitation to such of the fencing and accessories as are manufactured by respondent) are from respondent's own factories, viz:

My direct from factory plan of dealing is the most economical way of buying goods. It increases the purchasing power of your dollars fully 33½ percent. In other words, whenever you buy goods in a retail store from 25 to 50 percent of the price you pay represents the profits and expenses of the store keeper, the jobber and the wholesaler. Every middleman who handles the goods on its way from the factory to you must add his profit and expense and include it in his selling price. This adds cost but does not add value.

When you buy from my factory direct you save these "in between" costs—nothing is added to factory cost except one small manufacturer's profit. That's why you get so much greater value at less cost when you buy from Jim Brown. (From page 4 of respondent's 1930 catalogue—Commission's Exhibit No. 2.)

Reference is here made to pages 2 and 3 of respondent's 1931 catalogue, Commission's Exhibit No. 3, wherein the same representations are made.

Whereas, in truth and in fact, with reference to all articles sold by it other than such of the fencing and accessories as are manufactured by it and such articles as it has purchased from a manufacturer at a loss to that manufacturer, respondent is a middleman and makes a profit in the resale of merchandise purchased by it from various manufacturers, and on this account the foregoing representations contained in its catalogue to the effect that the purchases from respondent are direct from factory to consumer and that the prices at which respondent sells its merchandise are "direct-from-factory

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prices", have a tendency to mislead and deceive the purchasing public into the belief that by reason of the fact that respondent manufactures such articles the public is obtaining better goods at a lower price, and thereby induce the public to purchase such articles from respondent in preference to respondent's competitors, some of whom do not so represent. The Commission finds with reference to the aforesaid articles there is an expense or profit accruing at the original source of the said articles and a profit to respondent, both of which are passed on to the consumer.

PAR. 3. Paragraph 3 of the complaint as amended by a stipulation reported on page 2 of the transcript charged the respondent with misrepresenting the copper content of its fence wire. Commencing with its 1930 catalogue respondent stressed its fence wire as "copper bearing", thereby intending and meaning and being by the public generally understood to represent such wire as having a copper content of not less than .15 percent. The evidence shows that fifty-three samples in all were analyzed by the Bureau of Standards. Thirty-nine of these samples were copper bearing steel wire ranging from .16 percent to .38 percent of copper content. The evidence further shows that since 1930 respondent had a valid and subsisting contract with a Pittsburgh steel company from which it purchases all the wire out of which it fabricates its fencing, and such contract contains the proviso that such wire shall have a copper content of not less than .15 percent. As to such wire fencing as is purchased by respondent from others for resale, the evidence shows that respondent has insisted upon the proper copper content; that analysis of the wire rods furnished such company was made and showed a general run of .15 percent or more. Commission's Exhibit No. 8 was a piece of wire obtained through the agency of a competitor upon respondent's order placed with the Northwestern Barb Wire Co., and was only one of fourteen different samples purchased by that competitor in the same manner and for the same purpose. Analysis of this sample showed a copper content of less than .15 percent, and respondent offered the explanation that there might have been a mistake made by the Northwestern Barb Wire Co. After giving careful consideration to all the evidence relating to this matter the Commission finds that the charges of paragraph 3 of the complaint are not supported by the weight of evidence.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the first two paragraphs of the foregoing

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findings are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent thereto, the testimony taken and briefs filed herein, and the oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, Brown Fence & Wire Co., a corporation, its agents, representatives, servants, and employees, in connection with the sale or offering for sale in interstate commerce of all articles by it not manufactured, fabricated, produced, or grown in any mill, plant, factory, nursery, hatchery, or establishment actually owned, managed, operated, or controlled by respondent, cease and desist as follows:

1. From representing, directly or by implication, that such articles are by it so manufactured, fabricated, produced, or grown.

2. From directly or by implication giving as a reason for its alleged ability to sell said articles not by it so manufactured, fabricated, produced, or grown, the fact that said articles are furnished direct to the consumer from respondent's own factories, mills, nurseries, hatcheries, or other establishments without any expense or charge for a middleman, or with but one profit plus the manufacturer's cost, when such is not the case.

It is further ordered, That the complaint be, and the same is hereby dismissed as to paragraph 3 thereof, on the ground that the charges contained in said paragraph have not been proven.

It is further ordered, That the respondent, Brown Fence & Wire Co., a corporation, shall within 60 days after service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order to cease and desist.

IN THE MATTER OF
ELBY EXTRACT COMPANY

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

Docket 1940. Complaint, Apr. 16, 1931—Decision, June 28, 1932

Where a corporation engaged in the manufacture and sale of flavoring extracts and sirups,

- (a) Employed words "Bouquet 3me" and "London Dry Essences", in describing its said products in circular letters and in labeling the same, and stated that such products were "absolutely our own products manufactured and imported exclusively by us under our own special formula";
- (b) Labeled its product with the words "Eugene et Joseph Freres" and a depiction of a building typical of European edifices, with aforesaid words upon the front thereof, and, below, the legend "Huiles essentielles, chimiques, fine synthétiques, extraits supérieur, Grasse, France—New York, U.S.A." (subsequently changed to the English equivalent thereof), and reproduced upon the wooden containers of its bottled product a pictorial representation of aforesaid label bearing the words "Eugene et Joseph Freres", and the aforesaid French legend (thereafter changed as aforesaid); and
- (c) Featured the words "Eugene et Joseph Freres", with the words "Bouquet 3me" in advertising its product in a trade periodical and depicted in said advertising the bottle in which said product was sold by it and the wooden containers enclosing the bottles for sale, together with said names "Eugene et Joseph Freres", said building typical of European edifices, with said names on the front thereof, and below, the French legend above referred to for which it later substituted the English version as above set forth;

Facts being products in question were not made abroad nor imported, but were composed to the extent of 70 or 75 percent of domestic solvents, and to the extent of 25 or 30 percent of essential oils purchased by it from or through importers and manufacturers' agents in the United States, only a small part of the building depicted was ever occupied by it, and the words "Eugene et Joseph Freres" at no time appeared across the front thereof, but only over one of the doors or windows of the part used by it;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers into believing said products to have been imported, and to divert trade to it from competitors selling imported extracts made in France and other foreign countries, and those selling extracts made in the United States out of imported essential oils, in combination with domestic solvents, and truthfully advertising and describing the same, to the injury of said competitors' business:

Held, That such practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.
Schneider & Groggins, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture of flavoring extracts and sirups and in the sale and transportation thereof to purchasers in the various States and with principal place of business in New York City, with advertising falsely or misleadingly and misbranding or mislabeling as to source, origin, or composition of products and trade and business status, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, represents in circular letters distributed among customers and prospective customers that "Our Bouquet *3me* and London Dry Essences are absolutely our own products manufactured and imported exclusively by us under our own special formula," and sells certain of its products bearing labels on which appeared the legend "Eugene et Joseph Freres", followed by a pictorial representation of a building typical of European edifices, bearing upon its front the words "Eugene et Joseph Freres", and below such words * * *:

Huiles essentiels, chimiques fine synthetiques,
extraits superieur

Grasse	New York
France	U.S.A.

and also stencils on containers of its "Bouquet *3me*" products the words "From the wood".

The facts are that products thus "advertised, designated, described, and labeled, have not been, were not, and are not manufactured by Eugene et Joseph Freres at Grasse in France, or in any foreign country, and were not, have not been, and are not imported into the United States from France, or any other foreign country, but have been, were, and are manufactured by respondent Elby Extract Co. at its place of business in the city and State of New York, and a substantial portion of the ingredients thereof have been, were and are of domestic origin, and the product sold and distributed by respondent under the trade name of Bouquet *3me* was not, has not been, and is not aged in wood."

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Said acts and practices, as alleged, "have had and have, and each of them has had, and has the capacity and tendency to mislead and deceive the purchasing public, and have furnished and furnish dealers, wholesale and retail, with the means by which they have been and are enabled to mislead and deceive their customers, into the belief that the products of respondents' so advertised, labeled, described, and designated have been, were and are manufactured in France and imported by respondent into the United States, and that such products have been and are aged in wood", and "have had and have the capacity and tendency to divert trade to respondent from competitors offering for sale and selling in interstate commerce, flavoring extracts and sirups truthfully described", and, as charged, "are all to the prejudice of the public and respondent's competitors, and have been, and are unfair methods of competition within the meaning and intent of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the Elby Extract Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed answer, testimony and documentary evidence were received, duly recorded, and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony, and evidence, briefs and oral arguments by counsel for the Commission and counsel for the respondent, and the Commission having duly considered the same now makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Elby Extract Co. is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the City of New York and State aforesaid, engaged in the manufacture of flavoring extracts and sirups and their sale and transportation, when sold, from its said

place of business to purchasers in the various other States of the United States than the State of New York.

In the course and conduct of its business respondent Elby Extract Co. has been, and at all times hereinafter mentioned was and now is, engaged in competition with individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of flavoring extracts and sirups.

PAR. 2. Respondent Elby Extract Co., in the course and conduct of its business as described in paragraph 1 hereof, has solicited the purchase of its products by the circulation and distribution, among customers and prospective customers, of a circular letter which contained the following language:

Our Bouquet 3me and London Dry Essences are absolutely our own products manufactured and imported exclusively by us under our own special formula.

and respondent Elby Extract Co., has also offered for sale and sold, in the course and conduct of its business described in paragraph 1, certain of its products bearing labels on which appeared the legend "Eugene et Joseph Freres", followed by a pictorial representation of a building typical of European edifices, bearing upon its front the words "Eugene et Joseph Freres", and below such words the following:

Huiles essentieles, chimiques fine synthetiques,
extraits superieur

Grasse

New York

France

U.S.A.

Respondent has caused a pictorial representation of such label bearing the aforesaid legend "Eugene et Joseph Freres" and other French words to appear on the wooden containers of the bottles in which its said products have been offered for sale and sold.

Respondent Elby Extract Co. has advertised and offered its product for sale in the Malt Age, a journal circulated in the various States of the United States among individuals, partnerships, and corporations engaged in the manufacture or sale of malt extracts and sirups. In such advertisements appears the following: "Eugene et Joseph Freres" in large and conspicuous letters and beneath such words appears "Bouquet 3me." The advertisement also contains a pictorial representation or illustration of the bottle in which products of respondent have been offered for sale and sold and of the wooden container in which such bottles have been enclosed when sold. Such representations or illustrations also present the names "Eugene et Joseph Freres", together with the building typical of European edifices, bearing upon its front the words "Eugene et Joseph Freres" and below such words the following:

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Huiles essentielles, chimiques, fine synthétiques,
extraits supérieur

Grasse	New York
France	U.S.A.

Sometime in April, 1931, after commencement of an investigation into its practices by the Federal Trade Commission and the receipt of a communication from the chief trial examiner in respect thereto, respondent caused the labels on its products to be altered by substitution of the following, to wit: .

Essential Oils	
Fine Chemicals	Synthetics
Superior Extracts	
Contents	New York
17½ ozs	U.S.A.

The substituted words are a translation into English of certain French words theretofore appearing on the labels of respondent and in its advertising matter immediately below the pictorial representation or illustration of the edifice bearing the inscription "Eugene et Joseph Freres" across its front. Thereafter respondent caused a similar change to be made in its labels on the wooden container of its bottled product, and in its advertisements in "Malt Age" caused to appear illustrations or representations of its bottles and of the wooden containers bearing the new or altered labels.

Respondent has, since such time, offered for sale and sold its product in bottles bearing its altered label enclosed in wooden containers on one side of which appears a representation or illustration of its bottles, showing the label thereon containing the words "Eugene et Joseph" in large and conspicuous letters and the word "Freres" appearing immediately below. Such altered label still contains a representation of the same building which originally appeared on labels of respondent with the words "Eugene et Joseph" across its front. It also still contains in large and conspicuous letters on the bottom the word "Bouquet" followed by "3me", and on the reverse side of the wooden container and clear across it are stamped in large letters "Eugene et Joseph Freres", while on the top of the wooden container appear the words "Genuine Bouquet 3me."

Respondent Elby Extract Co. has also sold a product, the containers of which have borne labels identical with, or similar to, the aforesaid labels except at their bottom have appeared the words "Non-Alcoholic, London Dry Essence" in place of the legend "Bouquet 3me." In truth and in fact the products sold by respondent Elby Extract Co. under the names "Bouquet 3me" and "Lon-

don Dry Essence" are now, and at all times heretofore, have been manufactured by respondent in the City and State of New York, at 110 Park Row. They have not been and are not manufactured in France, or any other foreign country, and imported into the United States.

Essential oils, which compose the base for the manufacture of such products of respondent, have been purchased by respondent from or through importers' and manufacturers' agents in the United States. Respondent Elby Extract Co. is not an importer and has not imported and does not import the essential oils, or any of them, used in the manufacture of the products involved herein. Solvents necessarily used in the manufacture of the products are entirely domestic in their origin. Such solvents compose from 70 percent to 75 percent of the product and the essential oils from 25 percent to 30 percent.

The label of respondent contains false and misleading representation of the building in which respondent formerly conducted its business. Respondent occupied only a small portion of the building, and the words "Eugene et Joseph" have at no time appeared across the front of such edifice, as represented on the labels of respondent, or at all. When respondent occupied a small portion of said building, the name Eugene et Joseph did appear over one of the doors or windows in the portion used by respondent.

The extract sold by respondent is a concentrate so potent that 1 ounce is sufficient to flavor from 7 to 10 gallons of a beverage. It sells to dealers at \$10 for a 17½-ounce bottle, or three bottles for \$25 for the Bouquet *3me* and \$5 a bottle for the London Dry Essence.

PAR. 3. There have been and are competitors of respondent offering for sale and selling in the United States, extracts manufactured in France and in other foreign countries and imported into the United States therefrom, and offering for sale and selling extracts manufactured in the United States from and out of essential oils imported from France or other foreign countries in combination with solvents of domestic materials, which extracts have been and are offered for sale and sold in interstate commerce truthfully advertised and described.

PAR. 4. The practices of respondent described in paragraph 2 hereof of using the French language in its advertisements and upon its labels and containers have had and have, and each of them has had and has the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that the product sold by respondent as Bouquet *3me* and London Dry Essence have been and are imported products.

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The aforesaid practices have had and have, and each of them has had and has the capacity and tendency to divert trade to respondent from, and otherwise to injure, the business of competitors described in paragraph 3 hereof.

CONCLUSION

The acts and practices of respondent described in paragraph 2 hereof have been and are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition within the intent and meaning of section 5 of an act approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding, having been heard by the Federal Trade Commission, upon the complaint of the Commission, answer of respondent thereto, the testimony, evidence, briefs of counsel, oral arguments having been waived, and the Commission having filed its report stating its findings as to the facts, with its conclusion drawn therefrom, that respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Elby Extract Co., cease and desist, directly and indirectly, from representing that it imports sirups and flavoring extracts offered for sale and sold by it in interstate commerce, unless such sirups and flavoring extracts are, in fact, directly imported into the United States by respondent, and from using in connection with offering for sale or selling in interstate commerce any sirup or flavoring extract manufactured in the United States the words "Eugene et Joseph" or "Eugene et Joseph Freres" or the words "Bouquet 3me", or any other words in the French language, on containers of such product or on labels or in advertisements thereof, unless clearly and conspicuously appear in connection therewith apt and adequate words in the English language clearly showing that such products are manufactured in the United States.

It is further ordered, That respondent, Elby Extract Co., file within 60 days from and after service of this order a report in writing setting forth in detail the manner and form of its compliance therewith.

Syllabus

IN THE MATTER OF

ARROW-HART & HEGEMAN, INC., AND THE ARROW-HART & HEGEMAN ELECTRIC COMPANY

COMPLAINTS, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1498. Complaint, Mar 3, 1928¹—Decision, July 6, 1932

Where a corporation, following its organization and pursuant to the purpose thereof, acquired all the common voting stock of two companies, which were (a) engaged in direct and substantial competition with each other in the manufacture, sale, and distribution in interstate commerce, under their respective trade marks, of a full line of electrical "shelf goods", i.e., those wiring devices ordinarily stocked and distributed by electrical supply distributors or jobbers, consisting of material of a standard type packed in suitable units for resale and described in catalogs under various schedule numbers, (b) had sales in the case of each of four million dollars a year or more, and together did a business in excess of 25 percent of the total sales of all manufacturers of electrical wiring devices of all descriptions, (c) were competitors as to the entire output of one of said companies and at least 59 percent of the sales volume of the other, selling said goods, of similar quality and for the same uses by the ultimate purchasers, to the same class of trade in the same territory and at approximately the same prices, and with 25 to 30 percent of their customers common to both, and (d) maintained sales offices, commission men, and branches in numerous large cities scattered across the country, from which they traveled salesmen or "missionary men", and thereafter authorized its president and vice president to vote for five years the stocks of said former competitors, subsequent operations of which recognized their community of interest;

With result that competition between said companies in the sale and distribution of electrical wiring devices in interstate commerce was substantially lessened, commerce therein in those sections and communities where the two were engaged in business was restrained, and said acquisition tended to create a monopoly in the electrical wiring devices industry; and

Where a second corporation brought into being as a result of said acquisition, by those responsible therefor, following its formation of two holding companies and a series of transactions which were planned to and did result in (a) said corporation's becoming possessed of the assets, stock, and businesses of said competing companies, and (b) said competitors' old stockholders becoming possessed of stock in it proportionately representing their former interests, made numerous changes in officer and employee personnel and arrangement of sales territories, etc., of said formerly competing organizations, whose plants it operated as a unit, and distributed their two former recognized competitive brands, under their old trade marks, through separate divisions under arrangements pursuant to which salesmen of said divisions, in some cases representing both, and in all instances under common district sales managers, continued to call upon the trade, but with no price, service, or credit inducements to obtain business from each other;

With result that total volume of sales of said new corporation exceeded volume of sales of parallel lines of electrical wiring devices of any one of its six

¹ Supplemental complaint, June 29, 1929.

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competitors selling full lines of such devices and it assumed a dominant position in the electrical wiring devices industry, said acquisition of the stock and assets of said two operating companies substantially lessened competition between them, commerce in distribution of electrical wiring devices in those sections and communities where the two were engaged in business was restrained, and said acquisitions tended to create a monopoly in the electrical wiring devices industry:

Held, That acquisition by said corporation first referred to of the outstanding common voting stocks of said two competing companies and its continued ownership and/or control and voting of said stocks leading to organization of said second corporation, and latter's acquisition through merger of aforesaid companies' stocks and assets, under the conditions and circumstances set forth, constituted a violation of section 7 of the Clayton Act.

Mr. Everett F. Haycraft for the Commission
Shipman & Goodwin and Gross, Hyde & Williams, of Hartford Conn., for respondent.

COMPLAINT

The Federal Trade Commission charges that Arrow-Hart & Hegeman, Inc., hereinafter called respondent, is violating and has violated the provisions of section 7 of an act of Congress approved October 15, 1914 (the Clayton Act), entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", and the Federal Trade Commission states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Connecticut and has its principal office in the city of Hartford, in said State. Respondent has an authorized capital stock of \$2,000,000 consisting of 200,000 shares of common stock all outstanding and at a par value of \$10 per share. Respondent was organized and incorporated on or about October 4, 1927, for the purpose of acquiring the stock or share capital of The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co., both corporations under the laws of the State of Connecticut. On or about October 10, 1927, respondent acquired all of the common voting stock or share capital of said Hart & Hegeman Manufacturing Co. and Arrow Electric Co. and still holds, owns, and controls such stock or share capital.

PAR. 2. The Hart & Hegeman Manufacturing Co. is a corporation organized in 1891 under the laws of Connecticut and has its principal office in the city of Hartford in said State. On and prior to the acquisition of its common stock by Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Conn., at which plant electrical wiring devices of various types, kinds and classes

were made. It also owned all of the common stock of the H. T. Paiste Co., a subsidiary corporation, located at Philadelphia, Pa., and engaged in manufacturing electrical wiring devices which it sold to the parent corporation and all of the common stock of The Electric Porcelain & Manufacturing Co., a subsidiary corporation, located at Trenton, N.J., and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Hart & Hegeman Manufacturing Co. for the year 1926 were \$4,089,621.11, of which \$3,505,988.36 were made in interstate commerce. For many years Hart & Hegeman Manufacturing Co. has been engaged in selling such electrical wiring devices and is and has been causing such electrical wiring devices when sold to be shipped and transported to purchasers among the several States of the United States and the District of Columbia in competition with said Arrow Electric Co. and with other persons and corporations similarly engaged and in so doing The Hart & Hegeman Manufacturing Co. is and has been engaged in interstate commerce within the purview of said act of Congress approved October 15, 1914 (the Clayton Act).

PAR. 3. The Arrow Electric Co. is a corporation organized in 1905 under the laws of Connecticut, and has its principal office in the city of Hartford, in said State. On and prior to the acquisition of its common stock by respondent Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Conn., at which plant electrical wiring devices of various types, kinds, and classes were made. It also owned all of the common stock of the Washington Porcelain Co., a subsidiary corporation, located at Washington, N.J., and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Arrow Electric Co. for the year 1926 were \$4,125,191.97, of which \$3,869,715.96 were made in interstate commerce. For many years it has been engaged in selling such electrical wiring devices and is and has been causing such electrical wiring devices when sold to be shipped and transported to purchasers among the several States of the United States and the District of Columbia in competition with The Hart & Hegeman Manufacturing Co. and with other persons and corporations similarly engaged and in so doing The Arrow Electric Co. is and has been engaged in interstate commerce within the purview of said act of Congress approved October 15, 1914 (the Clayton Act).

PAR. 4. The effect of such acquisition by the respondent Arrow-Hart & Hegeman, Inc., of the stock or share capital of The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. may be:

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(a) To substantially lessen competition in electrical wiring devices between the Hart & Hegeman Manufacturing Co. and the Arrow Electric Co. whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some of such sections or communities; or

(c) Tend to create a monopoly of commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices.

PAR. 5. The use by the voting or granting of proxies, or otherwise, by respondent, Arrow-Hart & Hegeman, Inc., of the stock or other share capital of The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. has been and is:

(a) To substantially lessen competition in electrical wiring devices between the Hart & Hegeman Manufacturing Co. and the Arrow Electric Co. whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some of such sections or communities; or

(c) Tend to create a monopoly of commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices.

SUPPLEMENTAL COMPLAINT

Whereas the Federal Trade Commission heretofore, to wit on the 3d day of March, 1928, issued a complaint² against respondent Arrow-Hart & Hegeman, Inc., charging that, by its acquisition of the stocks of two other and formerly competing corporations, said respondent had violated and was then violating the provisions of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" and known as the Clayton Act; and

Whereas since the issuance of the said complaint said respondent has carried out certain steps, hereafter set forth, collectively designated by it as a course of "reorganization", whereby a corporation known as The Arrow-Hart & Hegeman Electric Co. has been formed by the merger and consolidation of the two said formerly competing

² See *ante*, p. 394.

corporations and of two certain holding corporations, hereinafter described, and

Whereas the said so-called reorganization by said respondent, Arrow-Hart & Hegeman, Inc., has vested all the stock, franchises, property, and assets of the said formerly competing companies and of the said holding companies in the said The Arrow-Hart & Hegeman Electric Co. without having restored competition between the two said originally competing companies in and for the benefit of the public as by the said Clayton Act required, but rather with the purpose, and, unless the instant proceeding prevail, with the result of perpetuating the destruction of competition between the two said originally competing corporations;

Wherefore the Federal Trade Commission brings this, its supplemental complaint, adding to the original corporate party respondent, the said merged and consolidated corporation, the said The Arrow-Hart & Hegeman Electric Co., and thereunto alleges and charges as follows, to wit:

PARAGRAPH 1. Respondent, Arrow-Hart & Hegeman, Inc., on or about October 4, 1927, was organized under the laws of the State of Connecticut, with its principal place of business in the city of Hartford in said State, remained a corporation with all its corporate rights and powers until its dissolution as described in paragraph 7 (*j*) hereof and still retains its corporate entity to such extent as may be necessary to effectuate the relief designed in the regulation of interstate and foreign commerce by the enactment of the federal antitrust laws. It had an authorized capital stock of \$2,000,000 consisting of 200,000 shares of common stock outstanding and of par value of \$10 per share. Said respondent's incorporation was for the purpose of acquiring the stock or share capital of The Hart & Hegeman Manufacturing Co. and of The Arrow Electric Co., both corporations under the laws of the State of Connecticut, and on or about October 10, 1927, it did so acquire all of the common voting stock or share capital of two last named companies and continued to hold, own, and control such stock or share capital until subsequent to the issuance of the original complaint herein, to wit, until the events averred in paragraph 7 (*b*) hereof.

PAR. 2. The Hart & Hegeman Manufacturing Co. was, and until the merger described in paragraph 7 (*f*) hereof, remained a corporation under the laws of Connecticut, organized in 1891 with its principal place of business in the city of Hartford in said State. On and prior to the acquisition of its common stock by Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Conn., at which plant electric wiring devices of various types, kinds,

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and classes were made. It also owned all of the common stock of the H. T. Paiste Co., a subsidiary corporation, located at Philadelphia, Pa., and engaged in manufacturing electrical wiring devices which it sold to the parent corporation and all of the common stock of The Electric Porcelain & Manufacturing Co., a subsidiary corporation, located at Trenton, N.J., and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Hart & Hegeman Manufacturing Co. for the year 1926 were \$4,089,621.11, of which \$3,505,988.36 were made in interstate commerce. For many years Hart & Hegeman Manufacturing Co. was engaged in selling such electrical wiring devices and caused such electrical wiring devices when sold to be shipped and transported to purchasers among the several States of the United States and the District of Columbia in competition with The Arrow Electric Co. aforesaid and with other persons and corporations similarly engaged and in so doing The Hart & Hegeman Manufacturing Co. was engaged in interstate commerce within the purview of the aforesaid Clayton Act.

PAR. 3. The Arrow Electric Co. was, and until the merger and consolidation described in paragraph 7 (*f*), remained a corporation organized under the laws of the State of Connecticut, in 1905, having its principal place of business in the city of Hartford in said State. On and prior to the acquisition of its common stock by respondent Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Conn., at which plant electrical wiring devices of various types, kinds, and classes were made. It also owned all of the common stock of the Washington Porcelain Co., a subsidiary corporation, located at Washington, N.J., and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Arrow Electric Co. for the year 1926 were \$4,125,191.97 of which \$3,869,715.96 were made in interstate commerce. For many years it was engaged in selling such electrical wiring devices and caused such electrical wiring devices when sold to be shipped and transported to purchasers among the several States of the United States and the District of Columbia in competition with The Hart & Hegeman Manufacturing Co. and with other persons and corporations similarly engaged, and in so doing, The Arrow Electric Co. was engaged in interstate commerce within the purview of the aforesaid Clayton Act.

PAR. 4. The effect of such acquisition by respondent, Arrow-Hart & Hegeman, Inc., of the stock or share capital of The Hart & Hegeman Manufacturing Co., and The Arrow Electric Co. may be:

(a) To substantially lessen competition in electrical wiring devices between The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some of such sections or communities; or

(c) Tend to create a monopoly of commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices.

PAR. 5. The use by the voting or granting of proxies or otherwise by respondent, Arrow-Hart & Hegeman, Inc., of the stock or other share capital of The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co., has been and is:

(a) To substantially lessen competition in electrical wiring devices between The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some sections or communities; or

(c) Tending to create a monopoly of commerce in electrical wiring devices, of various types, kinds, and classes or in some such electrical wiring devices.

PAR. 6. Alleging facts substantially as in paragraphs 1 to 5 hereof, inclusive, the Commission on March 3, 1928, issued its complaint against respondent, Arrow-Hart & Hegeman, Inc., under section 7 of the said described Clayton Act. Respondent corporation appeared and filed its answer on September 7, 1928.

PAR. 7. On November 10, 1928, the president of respondent, Arrow-Hart & Hegeman, Inc., notified the stockholders thereof by circular letter that the dissolution of said corporation and the distribution of its assets among its stockholders had been recommended by counsel and that the directors had voted to recommend such plan to the stockholders. By the said circular letter, and by a circular letter also addressed to the stockholders of said Arrow-Hart & Hegeman, Inc., dated December 1, 1928, a plan of so-called "reorganization", was propounded to the said stockholders who controlled, as in paragraph 1 hereof described, through Arrow-Hart & Hegeman, Inc., as a holding company, the stock of the two formerly competing concerns, to wit, The Hart & Hegeman Manufacturing Co.

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and The Arrow Electric Co. The method of reorganization thus recommended was adopted, carried into effect and consisted of the following steps:

(a) Between December 1 and December 7, 1928, two new Connecticut incorporations, The Arrow Manufacturing Co. and The H. & H. Electric Co. were organized, solely by action of said respondent.

(b) Immediately thereafter the common stock of The Arrow Electric Co. was transferred by Arrow-Hart & Hegeman, Inc., to The Arrow Manufacturing Co. and at the same time the common stock of The Hart & Hegeman Manufacturing Co. was transferred by respondent, Arrow-Hart & Hegeman, Inc., to The H. & H. Electric Co.

(c) Simultaneously with and as the consideration to respondent, Arrow-Hart & Hegeman, Inc., for the transfers last described. The Arrow Manufacturing Co. and The H. & H. Electric Co. in pursuance of a vote taken by the Arrow-Hart & Hegeman, Inc., issued to the stockholders of respondent, Arrow-Hart & Hegeman, Inc., and in the respective name of each such stockholder all of their shares of capital stock. To this end a transfer agent acting for the reorganizing interests, delivered to the said respective stockholders non-negotiable receipts, advising that the certificates of such stock would be held for their account, unless they insisted upon a present delivery thereof.

(d) Accordingly by virtue of such exchange each recipient stockholder of respondent, Arrow-Hart & Hegeman, Inc., became the owner of the same number of shares of The Arrow Manufacturing Co. as each owned in said respondent and of the same number of shares of The H. & H. Electric Co., as each owned in said respondent. But the new shares were not delivered to the said stockholders unless by specific instruction.

(e) On December 10, 1928, the stockholders of respondent, Arrow-Hart & Hegeman, Inc., voted to dissolve said respondent corporation, in conformity with a recommendation of the directors favoring dissolution which had been voted November 10, 1928.

(f) On December 31, 1928, at successive hours the stockholders of The Arrow Electric Co., the Hart & Hegeman Manufacturing Co., The Arrow Manufacturing Co., and The H. & H. Electric Co. acted favorably upon a merger and consolidation agreement under the laws of the State of Connecticut. And on the same day, immediately effective, the secretary of state of Connecticut approved the merger and consolidation of the said four incorporations.

(g) The consolidated corporation is respondent, The Arrow-Hart & Hegeman Electric Co. with an authorized capital stock of \$7,083,300, of which \$3,750,000 is common stock and \$3,333,300 is preferred

stock. The capital stock with which this company commenced business was \$5,228,300, divided into 200,000 shares of common stock of \$10 par value each, and 32,283 shares of preferred stock of \$100 par value each. Preferred stockholders have no power to vote "except as provided by statute" unless in case of default in payment of dividends on preferred stock for six quarters.

(h) The following is the manner in which the shares of the common stock in each of the consolidating companies were "converted" into shares of the common stock with which the consolidated corporation commenced business:

100,000 shares thereof were issued in lieu of the entire capital stock of The Arrow Manufacturing Co., the latter being 200,000 shares of common stock, at the rate of one half of one share in the consolidated company in exchange for one share in The Arrow Manufacturing Co.

Another 100,000 shares thereof were issued in lieu of the entire capital stock of The H. & H. Electric Co., the latter being 200,000 shares of stock, at the rate of one half of one share in the consolidated company in exchange for one share in The H. & H. Electric Co.

No shares of the consolidated company were issued in lieu of the outstanding common stock, 30,000 shares of \$25 par value each in The Arrow Electric Co., since all of the common stock of the latter company was, on such consolidation, owned by The Arrow Manufacturing Co. Similarly, no shares of the consolidated company were issued in lieu of the common stock, 20,000 shares of \$25 par value each, in The Hart & Hegeman Manufacturing Co., since all the common stock in the last named company was then owned by The H. & H. Electric Co.

(i) The following was the manner of converting the shares of preferred stock, in such of the consolidating companies as had preferred stock outstanding, into shares of preferred stock with which the respondent consolidated company commenced business, to wit:

18,950 shares were issued, share for share in lieu of the entire then outstanding preferred stock in The Arrow Electric Co., the shares exchanged being identical in number and in par value.

The balance of 13,333 shares were issued in lieu of the entire then outstanding preferred stock, identical in number of shares and in par value, of The Hart & Hegeman Manufacturing Co.

(j) On April 11, 1929, the final certificate of dissolution of the respondent Arrow-Hart & Hegeman, Inc., was executed.

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PAR. 8. The stocks of the two aforesaid formerly competing corporations, The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. acquired unlawfully as charged in the original complaint in this proceeding, were used by respondent throughout the aforesaid reorganization, as in paragraph 7 hereof alleged, to effect the merger and consolidation alleged in paragraph 7, subparagraphs (f) to (i) inclusive hereof described. By such merger and consolidation, unless this proceeding prevail, the said stocks were so used as finally to vest the physical properties, franchises, and share capital of both the said formerly competing corporations in respondent The Arrow-Hart & Hegeman Electric Co. and thereby to perpetuate the elimination of competition between the said formerly competing corporations, in the following manner:

(a) The transfer of the stock of The Arrow Electric Co. to The Arrow Manufacturing Co. and also the transfer of the stock of The Hart & Hegeman Manufacturing Co. to The H. & H. Electric Co. by respondent Arrow-Hart & Hegeman, Inc., were not preceded by the restoration of the independent and competitive character of the said two formerly competing corporations nor of the diverse interests which they had represented. The said transfers were accomplished solely by the direct use of the voting franchise of the stockholders of respondent Arrow-Hart & Hegeman, Inc., in the exercise of powers which resulted immediately from said respondent's acquisition of the stocks of the said two formerly competing companies contrary, as charged in the original complaint herein, to section 7 of the Clayton Act. In exercising their voting franchise to this end the stockholders of said respondent did not act as stockholders in either of the respective formerly competing corporations. They acted as stockholders in said respondent after all conflicting interests between the said originally competing corporations had been eliminated. The same voting body, to wit, the stockholders of respondent, Arrow-Hart & Hegeman, Inc., included the owners of both said formerly competing corporations and acted alike upon both transfers to the said new holding corporations, The Arrow Manufacturing Co. and The H. & H. Electric Co. Any moving consideration to act independently as regards the two formerly diverse and competing interests had been extinguished and was not restored prior to the said transfers.

(b) The consideration to the respondent Arrow-Hart & Hegeman, Inc., for the surrender by said respondent of the stocks in

the said formerly competing corporations was the promised transfer to said respondent of all the shares of the capital stock in the said newly formed holding companies, which shares were to be and actually were issued direct to said respondent's stockholders, in lieu of being issued to respondent, pursuant to a vote taken by the said respondent corporation. This consideration to the said respondent and its stockholders was made possible through the original unlawful acquisition of the share capital of the said originally competing corporations by the said respondent.

(c) When the aforesaid four corporations voted to consolidate, as in paragraph 7 (f) hereof described, the shareholders of respondent Arrow-Hart & Hegeman, Inc., as the direct result of the said unlawful acquisition of the share capital of the said formerly competing corporations, had control over the said formerly competing corporations through their ownership of the share capital of the said newly formed holding corporations. The four corporations when they voted to consolidate no longer comprised two respective, independent or distinct voting bodies, but their interests and ownerships had already consolidated and merged. Each stockholder of said respondent had an interest in the existence, franchises, property, and stocks of both the Arrow and the Hart & Hegeman interests. There was no stockholder in either so-called "Arrow" company who did not have the same interests in the corresponding "Hart & Hegeman" or "H. & H." corporation. No one of the said four corporations which voted to merge and consolidate voted under the same circumstances, with the same body of voters or prompted by the same consideration as would have existed if the alleged unlawful acquisition of the stocks of the said two originally competing corporations had not been made by respondent Arrow-Hart & Hegeman, Inc.

PAR. 9. The divestment by respondent Arrow-Hart & Hegeman, Inc., in favor of the two newly formed holding corporations, the Arrow Manufacturing Co. and the H. & H. Electric Co., was not such a divestment as to constitute a compliance with said section 7 of the Clayton Act. Competition was not restored. The said new holding corporations were created by said respondent and received the stocks of the said formerly competing corporations only on consideration of their transferring of their own share capital to the stockholders of the said respondent. A new and complete violation of said section 7 of the Clayton Act was brought about by respondent Arrow-Hart & Hegeman, Inc., by its acquisition, in the name of its

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stockholders direct of the stocks of the said two new holding corporations.

PAR. 10. The steps of reorganization described in paragraph 7 hereof were undertaken and were consummated, largely by the use of proxies, at the instance and through the leadership, aid, and instigation of respondent Arrow-Hart & Hegeman, Inc. These steps were but parts of a unified plan and, as set forth in paragraph 8 hereof, were all made possible by the original acquisition of the stocks of the formerly competing corporations, The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co., by respondent Arrow-Hart & Hegeman, Inc. Against the said acquisition, the Federal Trade Commission, in order to restore competition between the said formerly competing corporations as required by the aforesaid section 7 of the Clayton Act, directed its original complaint in this proceeding, as in paragraph 6 hereof described. Said action was timely and prior to the securing of actual title and possession by either respondent corporation, to the physical property of said formerly competing corporations.

PAR. 11. The intent and purpose of respondent, Arrow-Hart & Hegeman, Inc., and its officers and stockholders in advocating, directing, and taking the steps described in paragraph 7 hereof, was to oust the Federal Trade Commission of its statutory powers and jurisdiction over the aforesaid acquisition of stock by said respondent, Arrow-Hart & Hegeman, Inc., and the same time to retain and to perpetuate the elimination of all competition, which had previously existed as in paragraph 3 hereof set forth, between the Arrow Electric Co. and The Hart & Hegeman Manufacturing Co. Said competition, respondent Arrow-Hart & Hegeman, Inc., through the steps described in paragraphs 1 and 4 to 7, inclusive, hereof has uniformly and constantly aimed to destroy. To this end the respondent corporations have employed certain statutory provisions made by the legislature of the State of Connecticut for the dissolution and for the merger and consolidation of its corporations, for purposes which were not within the contemplation of the legislature in enacting the said provisions and in such a manner and with such effect, unless this proceeding prevail, as to bring about an evasion of the commerce clause of the Federal Constitution, and a violation of section 7 of the said Clayton Act, enacted in order to carry into effect certain of the powers granted by the commerce clause. The course of action of respondent Arrow-Hart & Hegeman, Inc., and its aforesaid creature corporations and the formation by merger and consolidation of respondent, the Arrow-Hart & Hegeman Electric Co., as described in paragraph 7, are of no force and effect to accomplish a violation of the said section of the Clayton Act or to effect the

ousting of the Federal Trade Commission from its jurisdiction over the matters and things alleged in the original complaint or over those herein set forth.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), the Federal Trade Commission issued and served its original complaint upon Arrow-Hart & Hegeman, Inc., and issued its supplemental complaint against the said Arrow-Hart & Hegeman, Inc., and The Arrow-Hart & Hegeman Electric Co., respondents herein, charging them with violating section 7 of said act.

The said respondent, Arrow-Hart & Hegeman, Inc., entered its appearance and filed its answer to the said original complaint and the said respondent, The Arrow-Hart & Hegeman Electric Co., entered its appearance and filed its answer to the said supplemental complaint, hearings were had before an examiner of the Commission theretofore duly appointed; testimony and evidence was offered and received in support of the charges of the said complaints, and testimony and evidence was offered and received in defense of the matters charged in the said complaints, all of which said testimony was reduced to writing and filed in the office of the Commission; and thereafter, the proceeding came on for final hearing on the record, briefs and oral arguments of counsel; and the Commission being fully advised in the premises, now makes this its report and states its findings as to the facts and its conclusion drawn therefrom, as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Arrow-Hart & Hegeman, Inc., hereinafter referred to as the original respondent, was organized on or about October 6, 1927, under the laws of the State of Connecticut, with an authorized capital of \$2,000,000, consisting of 200,000 shares of common stock having a par value of \$10 per share, and with its principal business office in the city of Hartford and State of Connecticut.

On or about October 10, 1927, said original respondent acquired all of the outstanding common or voting stocks of the Hart & Hegeman Manufacturing Co., a Connecticut corporation, and of the Arrow Electric Co., also a Connecticut corporation, and continued to hold said common or voting stocks until on or about December 6, 1928, on or about which date said common or voting stocks were transferred to holding companies organized by said original respondent as hereinafter set forth in paragraph 5 hereof.

PAR. 2. The said Hart & Hegeman Manufacturing Co. was, at the time its common stock was acquired by the said original respondent, as set forth in paragraph 1 hereof, a corporation under the laws of the State of Connecticut, with its principal place of business located in the city of Hartford, in said State. Since its organization in 1891, the said Hart & Hegeman Manufacturing Co. had been engaged in the manufacture and sale of electrical wiring devices, including particularly electric snap switches and wall plates. In 1914 it began to sell as exclusive selling agent, the Paiste line of electrical wiring devices consisting of sockets, receptacles, and porcelain cut-outs attachment plugs and other similar devices, manufactured by H. T. Paiste Co., a Pennsylvania corporation located at Philadelphia, in said State. Between 1914 and 1927 the said Hart & Hegeman Manufacturing Co. acquired all the outstanding common stock of the said H. T. Paiste Co. and in October, 1927, operated the latter mentioned company as a subsidiary corporation in the manufacture of a part of its line of electrical wiring devices.

In 1926 the said Hart & Hegeman Manufacturing Co. acquired, and in October, 1927, owned all the capital stock of the Electric Porcelain & Manufacturing Co. of Trenton, N.J., which for a number of years prior thereto had been engaged in the manufacture of porcelain parts which it furnished to the said Hart & Hegeman Manufacturing Co. or its subsidiary, the said H. T. Paiste Co., for use as raw material in the manufacture of electrical wiring devices.

In October, 1927, the said Hart & Hegeman Manufacturing Co. was engaged in the sale and distribution of a full line of electrical wiring devices which it sold to electrical jobbers and other customers located in the various States of the United States, causing said products, when sold, to be transported from the State of manufacture to the purchasers thereof located in other States.

About the year 1909, one Shiras Morris acquired more than a majority of the common stock of the said Hart & Hegeman Manufacturing Co., because its president and treasurer, and continued as such until his death on February 2, 1927, when he was succeeded as president and treasurer by one Samuel P. Williams, who had been associated with the said Hart & Hegeman Manufacturing Co. since 1918, in various capacities, including sales manager, secretary, and assistant treasurer. At the time of the death of Shiras Morris, the outstanding capitalization of the said Hart & Hegeman Manufacturing Co. was \$200,000 in common stock and \$300,000 in preferred stock.

Although said Shiras Morris, during his lifetime had contemplated a merger between the said Hart & Hegeman Manufacturing

Co. and the said Arrow Electric Co., negotiations were not entered into until after his death, in June, 1927, discussions were had between the said Samuel P. Williams, representing the said Hart & Hegeman Manufacturing Co., and one Edward R. Grier, president of the said Arrow Electric Co., and on August 6, 1927, an agreement was entered into between the stockholders of the said Hart & Hegeman Manufacturing Co. and the stockholders of the said Arrow Electric Co. which provided for the readjustment of the capital structure of the two corporations involved as a preliminary step to the organization of the said original respondent. Pursuant to this agreement, the said Hart & Hegeman Manufacturing Co., prior to October 6, 1927, increased its outstanding common stock from \$200,000 to \$500,000, and the preferred stock was increased from \$300,000 to \$1,333,000, the par value of the common stock being \$25 per share and the preferred stock \$100 per share. The estimated value of the assets of the said Hart & Hegeman Manufacturing Co. on or about October 6, 1927, was \$3,500,000. The holders of the new preferred stock of the said Hart & Hegeman Manufacturing Co. had no voting power except in the event the preferred dividends were not paid for six successive quarters, in which event and so long as any default should continue, the holders of preferred shares issued and outstanding were entitled to elect a majority of the board of directors. There is no evidence in the record that the said preferred dividends were not paid or that the said preferred stockholders ever were entitled to elect a majority of the said board of directors.

On October 10, 1927, the said original respondent acquired all of the outstanding common or voting stock of the Hart & Hegeman Manufacturing Co. (20,000 shares), by exchanging for the same 80,000 shares of the capital stock of the said original respondent.

PAR. 3. The said Arrow Electric Co. was organized under the laws of the State of Connecticut with its principal place of business located at Hartford, in said State, and at the time its common stock was acquired by the said original respondent, in October, 1927, as set forth in paragraph 1 herein, owned and operated a plant at Hartford where it manufactured a general line of electrical wiring devices, including sockets, receptacles, attachment plugs, heater plugs, switches, wall plates, rosette shade holders, and small accessories, and also owned all the common stock of the Washington Porcelain Co., a New Jersey corporation located at Washington, N.J., and engaged in the manufacture of porcelain parts for electrical wiring devices which it for a number of years had sold to the Arrow Electric Co. It sold said products to electrical jobbers and

other customers located in the various States of the United States, causing said products, when sold, to be transported from the State of manufacture to the purchasers thereof located in other States.

At the time the original respondent acquired the common stock of the said Arrow Electric Co. in October, 1927, the latter mentioned company was capitalized at \$750,000 common stock, par value \$25 per share, and \$2,000,000 preferred stock at \$100 per share, the preferred stock having been issued during 1927. The holders of preferred stock had no voting power except in the event the preferred dividends were not paid for six successive quarters, in which event and so long as any default should continue, the holders of preferred shares issued and outstanding were entitled to elect a majority of the board of directors. There is no evidence in the record that the said preferred dividends were not paid or that the said preferred stockholders ever were entitled to elect a majority of the said board of directors.

Said original respondent, on October 10, 1927, acquired all of the outstanding common or voting stock of the said Arrow Electric Co. (30,000 shares), by exchanging 120,000 shares of the common stock of the said original respondent for the said 30,000 shares of common stock of the said Arrow Electric Co.

PAR. 4. At the time the said original respondent acquired the capital stocks of the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co., these said companies were in direct and substantial competition with each other in the manufacture, sale, and distribution in interstate commerce of a full line of electrical wiring devices usually described in the trade as "shelf goods", the same being wiring devices ordinarily stocked and distributed by electrical supply distributors or jobbers. Generally speaking, this material is of a standard type, packed in suitable units for resale, and described in catalogs under various schedule numbers. For instance, both companies listed in the catalogs which they distributed to the trade under schedule "B" all electrical sockets and socket bases and receptacles of all kinds which are threaded for the reception of a lamp. Under schedule "S" they both listed all the "quick" make-and-break switches. Under schedule "H" they listed all plates and miscellaneous flush receptacles, signal devices, warning lights, radio receptacles, shade holders, knife switches, and rosettes. Under schedule "P" they listed such standard items as convenient outlets, attachment plugs and caps, service bases, cord connectors, etc., and under schedule "Y" they listed miscellaneous devices not included in the other schedules.

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During and prior to the year 1926 and that portion of 1927 prior to October, both the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. sold their said products to the same class of trade, that is, electrical and hardware jobbers and large users, such as manufacturing plants, throughout the United States and in foreign countries, both companies maintaining branches, sales offices, or commission men, located for convenience in making distribution, as follows: Boston, Mass., for the New England territory, including the New England States; New York City, N.Y., for the New York territory, including the States of New York, New Jersey, Pennsylvania, Delaware, and the northern part of West Virginia; Baltimore, Md., for the territory including Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida; Chicago, Ill., including the territory from the Rocky and Sierra Nevada Mountains on the West, to the territory already described on the East; San Francisco, Calif., for the Pacific Coast territory, including the States of Washington, Oregon, and California. Both companies traveled salesmen from these branch offices who acted chiefly as "missionary men", calling upon the consumers or users of electrical wiring devices, seeking to interest them in the respective Arrow and Hart & Hegeman products. A comparison of the sales of the two companies for the year 1926 through the branch offices named, is set forth below:

Cities	Arrow Electric Co.	Hart & Hegeman Mfg. Co.
Boston.....	\$483,933	\$315,911
New York.....	1,107,680	1,010,373
Baltimore.....	240,517	144,163
Chicago.....	1,524,220	1,368,941
San Francisco.....	462,989	169,254

The approximate total of domestic sales for the year 1926, for the Arrow Electric Co., was \$3,825,000 and for the Hart & Hegeman Manufacturing Co., \$3,145,000. The approximate total sales of the two companies for that year, including export and miscellaneous business, were: Arrow Electric Co., \$4,000,000; Hart & Hegeman Manufacturing Co., \$4,150,000.

At the time the said original respondent acquired the capital stocks of the said Hart & Hegeman Manufacturing Co. and the said Arrow Electric Co., at least 59 percent of the volume of the sales of the said Hart & Hegeman Manufacturing Co. consisted of electrical wiring devices generally known in the trade as "shelf goods" heretofore described, of similar quality which were sold in direct and active competition, with the entire output of the said Arrow Elec-

tric Co. to the same class of trade in the same territory at approximately the same prices and were used for the same purposes by the ultimate purchasers thereof; the remaining 41 percent of the sales of the said Hart & Hegeman Manufacturing Co. consisted principally of electrical switches and other devices manufactured to the order of customers for use in appliances requiring such devices, such as vacuum cleaners, radios, electric irons, etc., a market where the said Arrow Electric Co. did not actively compete with the said Hart & Hegeman Manufacturing Co. except on a limited number of items such as heater switches. Approximately 25 to 30 percent of the customers of the said Hart & Hegeman Manufacturing Co. and the said Arrow Electric Co. at that time, and for a number of years prior thereto, were joint or common customers, sales of similar items bearing their respective trade marks being made to such customers by both companies.

PAR. 5. The Federal Trade Commission, on March 3, 1928, issued its original complaint in this proceeding against Arrow-Hart & Hegeman, Inc., hereinbefore described as the original respondent, charging said original respondent with violation of section 7 of the Clayton Act in the acquisition of the capital stock of the said Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. On September 7, 1928, said original respondent filed its answer to the charges of the Commission's complaint. On November 10, 1928, the directors of the original respondent voted to recommend to the stockholders that the said original respondent be dissolved and its assets, consisting of shares of common stock of the said Arrow Electric Co. and of the Hart & Hegeman Manufacturing Co., be distributed to its stockholders; and on the same day issued a notice to the stockholders of the original respondent, reading in part as follows:

The dissolution of Arrow-Hart & Hegeman, Inc., and the distribution of its assets among its stockholders have been recommended by counsel to meet the recent criticism of the Federal Trade Commission of the organization of our company and its control of the two companies, The Arrow Electric Co. and The Hart & Hegeman Manufacturing Co., through stock ownership.

The directors of Arrow-Hart & Hegeman, Inc., have, therefore, voted to recommend its dissolution and the distribution of its assets among its stockholders in kind. Enclosed is formal notice of meeting of stockholders to confirm such action. The entire assets of the corporation are shares of the common stock of the Arrow Electric Co. and of The Hart & Hegeman Manufacturing Company. It is expected that distribution will be made of these shares in kind so that each stockholder shall receive shares of the common stock of either one or both of said companies.

Enclosed we hand you proxy and consent which concerns the dissolution of Arrow-Hart & Hegeman, Inc., and the distribution of its assets among you as stockholders.

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As a three-fourths vote of the stock of this company is required to carry out this plan, please sign and return this consent and proxy to the Phoenix State Bank & Trust Co., Trust Department, Hartford, Conn., as soon as possible, for which a reply envelope is enclosed.

We believe that upon distribution of this company's assets the directors of The Arrow Electric Co. and of The Hart & Hegeman Manufacturing Co. will propose to the stockholders of each company an agreement of consolidation of these two companies. Further details will be sent you upon the conclusion of the liquidation of Arrow-Hart & Hegeman, Inc., for your approval.

Much progress has been made in efficiency and economy through the organization of your company and more, we are confident, can be accomplished by actual merger and consolidation of the two companies, viz: The Arrow Electric Co. and the Hart & Hegeman Manufacturing Co.

On or about November 30, 1928, the board of directors of the said original respondent were advised by counsel that a distribution of its assets to the stockholders of the said original respondent might involve them in a claim by the United States Treasury Department of a profit taxable to them, and, upon advice of counsel, the original plan of dissolution as voted on November 10, 1928, by the said board of directors was amended. On or about November 30, 1928, at a special meeting, the board of directors of the said original respondent recommended to the stockholders of the said original respondent a general plan under which the said original respondent would transfer all its shares of the common stock of the said Hart & Hegeman Manufacturing Co. to a new corporation, organized under the laws of the State of Connecticut, known as the H. & H. Electric Co., and said original respondent would transfer all its shares of the common stock of the said Arrow Electric Co. to a new corporation organized under the laws of the State of Connecticut, to be known as The Arrow Manufacturing Co., in exchange for the issue by each of these new companies of all their shares of common stock to the stockholders of the original respondent, with the further recommendation that after such steps had been taken the said original respondent would be dissolved and the four remaining corporations named would merge under the laws of the State of Connecticut.

On November 30, 1928, pursuant to said plan, the said original respondent caused said The H. & H. Electric Co. and The Arrow Manufacturing Co. to be organized under the laws of the State of Connecticut.

Notice was given to the stockholders of the said original respondent on December 1, 1928, containing the said recommendation of the said board of directors and calling for a special meeting of the stockholders of said original respondent for December 6, 1928. Said letter was as follows:

ARROW-HART & HEGEMAN, INCORPORATED

Hartford, December 1, 1928

TO THE STOCKHOLDERS OF ARROW-HART & HEGEMAN, INCORPORATED:

OUTLINE OF PLAN OF REORGANIZATION

Supplementing our circular letter to you, dated November 10, 1928, we now outline to you more fully the steps in the plan of reorganization involving this company, The Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., indicating, subject to change, the various steps which shall be taken to consummate such plan of reorganization.

It is proposed that—

(a) By vote of its stockholders Arrow-Hart & Hegeman, Inc., will transfer to a new Arrow company all the shares of the common stock of The Arrow Electric Co. in exchange for all the shares of the new Arrow company which will be issued either to this company or directly to you as its stockholders in proportion to your present holdings of the stock of this company. Likewise, Arrow-Hart & Hegeman, Inc., will transfer to a new Hart & Hegeman company all the shares of the common stock of The Hart & Hegeman Manufacturing Co. in exchange for all the shares of the new Hart & Hegeman company which will be issued either to this company or directly to you as its stockholders in proportion to your present holdings of the stock of this company. When this stock of the new companies has been issued, the entire value of your present holdings will be represented by the new stock. There will, therefore, be no necessity for you to surrender the certificates of stock which you now hold in Arrow-Hart & Hegeman, Inc.

To authorize this first step in the plan of reorganization a special stockholders' meeting of Arrow-Hart & Hegeman, Inc., will be held on December 6, 1928, of which a formal notice is enclosed herewith, with a form of proxy running to the same six gentlemen who are your proxies for the meeting called for December 10th, which you will kindly execute and return promptly in the enclosed envelope.

(b) That when such exchange of shares in conformity to the plan or reorganization, made necessary to meet the criticism of the Federal Trade Commission, as indicated in our former letter and notice, has been consummated there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and therefore, at a meeting called for December 10, 1928, or at an adjournment thereof, it is anticipated that that corporation will be dissolved.

(c) That immediately thereafter a merger or consolidation of the four corporations then in existence, namely, The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, the new Arrow company and the new Hart & Hegeman company, will be submitted to the stockholders for approval. It is hoped that if adopted this merger or consolidation will be effective at the close of business on December 31, 1928.

These separate steps, as a part of one plan of reorganization, in the opinion of counsel, are desirable not only to meet the criticism of the Federal Trade Commission but also to bring the reorganization unquestionably within the

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provisions of the Revenue Act of 1928 in such a way that the exchange of shares will involve no tax to any stockholder. Your officers and counsel have conferred upon this point with Col. Robert H. Montgomery, of New York, the well-known authority on income-tax law and procedure, and it is his opinion that this plan of reorganization under the provisions of the revenue act involves no taxable gain to the stockholders.

As above stated, it is essential that we have your prompt cooperation to effect these corporate steps. A two-thirds vote of all the stock is necessary for the meeting called for December 6. A form of proxy is enclosed, which will authorize the gentlemen named therein to act for you in support of such a plan of reorganization above outlined and as the same may be modified with their approval. The proxy will also authorize those gentlemen to receive on your behalf the stock in the new Arrow company and in the new Hart & Hegeman company and to surrender that stock on your behalf in exchange for shares of the merged or consolidated corporation which it is expected will be organized before the close of the year. The proxy also gives them the right to execute any instruments and do any acts, sign any waivers, or take any other steps which may be necessary or advisable in their opinion to accomplish such reorganization in the best and most expeditious manner.

At a meeting of your directors, held November 30, 1928, it was voted to close the stock transfer books of this company from November 30, 1928, until after the adjournment of the meeting called for December 10, 1928.

Yours very truly,

EDWARD R. GRIER, *President.*

SAMUEL P. WILLIAMS, *Vice President.*

On December 6, 1928, at a special meeting, the stockholders of the said original respondent adopted the general plan described in the foregoing letter as recommended by the board of directors, and authorized the transfer of all the shares of stock held by it in the said Arrow Electric Co. to said The Arrow Manufacturing Co., and authorized the transfer of all of the shares of stock held by it in the said Hart & Hegeman Manufacturing Co. to said The H. & H. Electric Co., and also authorized the new corporation which should result from the proposed merger to take the name of "The Arrow-Hart & Hegeman Electric Co", or some similar name, said corporate action being taken as the result of a voting of proxies which had been signed by the stockholders of the said original respondent. Said The Arrow-Hart & Hegeman Electric Co. is hereinafter referred to as the new respondent.

On December 6, 1928, said original respondent, Arrow-Hart & Hegeman, Inc., transferred to the new holding company, said The Arrow Manufacturing Co., all the shares of the common stock of the said Arrow Electric Co., consisting of 30,000 shares of common stock, of the par value of \$25 per share, in exchange for all the shares of stock of said The Arrow Manufacturing Co., consisting of 200,000 shares of the par value of \$5 per share, and the said original respondent, on the same date, transferred to the new holding company, said

The H. & H. Electric Co., all the shares of the common stock of the said Hart & Hegeman Manufacturing Co., consisting of 20,000 shares of the par value of \$25 per share, in exchange for all the capital stock of said The H. & H. Electric Co., consisting of 200,000 shares of the par value of \$5 per share, and on the same date said The Arrow Manufacturing Co. and said The H. & H. Electric Co. issued all of their respective capital stocks to the stockholders of the said original respondent.

On December 10, 1928, at a special meeting, the stockholders of the said original respondent voted to confirm the action of the directors to terminate the corporate existence of the said original respondent, and, thereupon, a majority of the directors of the said original respondent signed a preliminary certificate of dissolution of the said original respondent, dated December 10, 1928, and filed said certificate in the office of the secretary of state of the State of Connecticut on said date, and caused notice of such dissolution to be advertised as required by law.

On April 11, 1929, a majority of the directors of the said original respondent executed and filed in the office of the secretary of state of the State of Connecticut, a certificate showing that they had completed their duties as trustees in liquidation, and said certificate was examined and approved by the said secretary of state on said date.

On December 31, 1928, the general plan approved by the stockholders of the said original respondent on December 6, 1928, was carried out, and at successive hours the stockholders of the two original operating companies, the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., and the stockholders of the two new holding companies, The H. & H. Electric Co. and The Arrow Manufacturing Co., who were actually the stockholders of the original respondent, acted favorably upon the merger and consolidation agreement under the laws of the State of Connecticut, which had been approved by the stockholders of the said original respondent on December 6, 1928. On December 31, 1928, immediately effective, the secretary of state of the State of Connecticut approved the merger and consolidation of the four corporations and there came into being the said new respondent, The Arrow-Hart & Hegeman Electric Co.

The authorized capital stock of the said new respondent was \$5,228,300, divided into 200,000 shares common stock of the par value of \$10 each and 32,283 shares of preferred stock of the par value of \$100 each; and pursuant to the said consolidation agreement, said new respondent, on the date of its organization, issued 18,950 shares of its preferred stock in lieu of the preferred capital

stock of the said Arrow Electric Co. (18,950 shares); 13,333 shares of its preferred capital stock in lieu of the preferred capital stock of the said Hart & Hegeman Manufacturing Co. (13,333 shares); 100,000 shares of its common capital stock in lieu of the capital stock of said The Arrow Manufacturing Co. (the new company organized by the board of directors of said original respondent on November 30, 1928, to hold the capital stock of the Arrow Electric Co.), and 100,000 shares of its common capital stock of the H. & H. Electric Co. (the new company organized by the board of directors of said original respondent on November 30, 1928, to hold the capital stock of the said Hart & Hegeman Manufacturing Co.).

As the said consolidation agreement was actually carried out by the parties thereto, the common-stock holders of the original respondent never obtained possession of the shares of common stock of said The Arrow Manufacturing Co. and The H. & H. Electric Co., the two corporations organized by the board of directors of the original respondent to hold the stock of the said Arrow Electric Co. and Hart & Hegeman Manufacturing Co.; but the stockholders of the said original respondent were required to and did submit their certificates of common stock to the Phoenix State Bank & Trust Co., Hartford, Conn., transfer agent, which said certificates were stamped as follows:

THIS CERTIFIES

That the holder hereof has assented to the plan of reorganization adopted by the stockholders; and that under such plan Arrow-Hart & Hegeman, Inc., has distributed all its assets and voted to terminate its corporate existence, and there has been issued to the holder hereof a certificate for the same number of shares of The Arrow-Hart & Hegeman Electric Co., in full settlement of all his rights under such plan.

ARROW-HART & HEGEMAN, INC.
S. P. WILLIAMS, *Treasurer.*

and the holders of such certificates received certificates for a like number of shares in the new respondent.

As a result of the merger of the operating companies, said Arrow Electric Co. and Hart & Hegeman Manufacturing Co., and of the said two new holding companies, said The H. & H. Electric Co. and The Arrow Manufacturing Co., the new respondent became the owner of all the assets of the merging corporations, and particularly the assets of said The H. & H. Electric Co. and The Arrow Manufacturing Co., which consisted of the capital stock of the two said operating companies, the said Arrow Electric Co. and Hart & Hegeman Manufacturing Co.

On December 31, 1928, the holders of the common stock of the new respondent were identically the same as the holders of the

common stock of the said original respondent on November 30, 1928.

On January 1, 1929, the first meeting of the board of directors of the new respondent, The Arrow-Hart & Hegeman Electric Co., was held. The said directors were the directors of the said original respondent before the merger, and were named in the said consolidation agreement as the directors of the new respondent upon its organization. The said meeting was called by Edward R. Grier and Samuel P. Williams, president and vice president, respectively, of the said original respondent. At this first meeting of the board of directors of the new respondent, Edward R. Grier and Samuel P. Williams were elected president and vice president, respectively, of the new respondent, and certain other business was transacted, including the declaration of a dividend paid out of the earnings of the said two operating companies, the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., while subsidiaries of the said original respondent, and payable on or after January 15, 1929, to stockholders of the said new respondent when and as they converted their shares of stock of the consolidating corporations into common stock of the said new corporation and evidenced their consent to the plan under which said consolidation had been effected.

The first meeting of the stockholders of the said new respondent was held on January 28, 1929, it having been called by the newly chosen president, the said Edward R. Grier. At this meeting a set of bylaws was adopted and a financial report showing the condition of the new respondent as of January 1, 1929, was read and later submitted to the stockholders of the said new corporation. This report, which served as the basis for the future operations of the new respondent, contained a statement of the combined profit and loss and surplus accounts of the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co. for the year 1928, and disclosed a net income for the year of \$1,253,252.85, which was reduced as of January 1, 1929, by increase in outstanding common stock arising from recapitalization prior to the formation of the new respondent, to \$2,710,625.28.

The Federal Trade Commission, on June 29, 1929, issued its supplemental complaint including the new respondent as a joint respondent, and alleging that since the issuance of the original complaint the said original respondent had formed the said new respondent by the consolidation of the two formerly competing corporations with two holding companies which it had organized, and all of the stocks, franchises, property and assets of the former competing companies had been transferred to the said new respondent.

The said new respondent, in its answer to the Commission's supplemental complaint, filed October 14, 1928, denied the allegations in so far as they alleged that the original respondent organized the new respondent; affirmatively alleging in defense that the said original respondent was not in any way a party to the merger and consolidation resulting in the said new respondent.

PAR. 6. At a special meeting of the board of directors of the said original respondent held on January 5, 1928, Edward R. Grier and Samuel P. Williams, president and vice president, respectively, were authorized to vote all of the shares of stock of the two operating companies, namely, Hart & Hegeman Manufacturing Co. and Arrow Electric Co., respectively, for a period of five years. During the year 1928 there was an interchange of employees between the said two operating companies, and certain statistical production and engineering experts of one organization performed services for the other organization without additional compensation. Also, the Arrow Electric Co. purchased some of the assets of the H. T. Paiste Co. from the Hart & Hegeman Manufacturing Co. and took over the business of manufacturing porcelain parts for the said Hart & Hegeman Manufacturing Co., which said business was discontinued by the said H. T. Paiste Co. Also, the said Hart & Hegeman Manufacturing Co. manufactured plates for the said Arrow Electric Co., and the said Arrow Electric Co. manufactured certain screws and parts for the said Hart & Hegeman Manufacturing Co. The plant of the Electric Porcelain Manufacturing Co., which corporation was owned by the said Hart & Hegeman Manufacturing Co., was closed and its machinery and equipment were transferred to the Washington Porcelain Co., a subsidiary of the said Arrow Electric Co.

At the beginning of the year 1929 the said new respondent continued the business of the manufacture and sale of electrical wiring devices which had been theretofore conducted by the said operating companies, Hart & Hegeman Manufacturing Co. and Arrow Electric Co., operating the manufacturing plants of both companies as one unit, but maintaining separate sales divisions, through which it distributed its two recognized brands of electrical wiring devices, namely, "Arrow" and "H. & H."; thereafter the Arrow brand was sold under the "Arrow Electric Division" of the Arrow-Hart & Hegeman Electric Co., and the "H. & H." brand was sold under the "Hart & Hegeman Division" of The Arrow-Hart & Hegeman Electric Co.

The said Edward R. Grier, president of the said new respondent, was placed in full charge of all its operations, directing its various

business policies, including the establishment of prices, terms, and discounts, etc. In the year 1930, under his direction and leadership, the following changes were made in the sales organizations of the said new respondent:

Harvey C. Pond, former sales manager of the Arrow Electric Co., became vice president and sales manager of the new respondent, still maintaining direct control over the sales of the Arrow Division, but assuming under his new position, control over the sales of the Hart & Hegeman Division, as well.

John R. Cooke, formerly in charge of the special appliance division of the Hart & Hegeman Manufacturing Co., was appointed general manager and vice president of the new respondent, in charge of special appliances, of both the Arrow and the Hart & Hegeman divisions.

J. W. Alexander, formerly Hart & Hegeman's district sales manager, Baltimore-Philadelphia territory, was placed in charge of the district sales of both divisions in that territory, with office at Philadelphia, certain changes having been made in the territory to be covered.

A. P. Deacon, former Arrow district manager in the Baltimore-Philadelphia territory, was made joint manager of both divisions in the Metropolitan New York area, with office in New York City.

G. S. Wentworth was made joint manager of both divisions in what was known as "Upper New York State" territory, with headquarters at Syracuse, N.Y.

A. C. Nelson, formerly Arrow district manager in the New England territory, was made joint manager of both divisions in that same territory, with office in Boston.

J. W. Saladine, former Hart & Hegeman manager in the New England territory, was transferred to the Hartford office of the new respondent and placed in charge of special promotional work of both divisions.

Paul Ramsey, former Arrow salesman at Atlanta, Ga., was made joint southern manager of both divisions over a new territory created in the South, with his district sales office in Atlanta.

R. E. Lubeck, former western manager of Hart & Hegeman Manufacturing Co., located in Chicago, was made joint manager of both divisions for a new territory with headquarters at Detroit, Mich.

R. L. Wildauer, former Arrow western manager at Chicago, was made joint manager of both divisions for a newly created western territory, with headquarters at Chicago.

During 1930 and 1931, the same salesmen, soliciting business in the State of Texas and the city of New Orleans, began to represent

both divisions. Also, in the States of New Hampshire, Vermont, and Maine, as well as the State of Connecticut, the same salesmen began to represent both divisions.

In the balance of the territory of the United States covered by the sales organizations of the new respondent, salesmen of both divisions continued to call upon the trade generally, as before, but offered no price inducement, service inducement or credit inducement to obtain business from each other, and were responsible in all instances to common district sales managers.

Separate catalogs have been published by the two sales divisions of the new respondent since January 1, 1929, but these catalogs carry practically the same printed matter, describing new items that are brought out by the new respondent under their respective trade marks, "Arrow" and "H. & H.", and some new items bear the combined trade mark, "Arrow-H. & H." While there is no competition between these two sales divisions of the new respondent, there still remains a form of rivalry in the promotion of sales.

PAR. 7. The sales of the Arrow Electric Co. during the time it was operated as a subsidiary of the said original respondent, were approximately as follows: 1927, \$3,849,000; 1928, \$3,537,000; and during the first year the Arrow business was conducted by the Arrow division of the new respondent, the sales were approximately \$3,584,000.

The sales of the Hart & Hegeman Manufacturing Co., during the time it was operated as a subsidiary of the original respondent, were approximately as follows: 1927, \$4,537,000; 1928, \$4,478,000; and during the first year the Hart & Hegeman Manufacturing Co. business was conducted by the Hart & Hegeman division of the new respondent, the sales were approximately \$4,599,000.

The total volume of sales of both the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co. during 1927 was in excess of 25 percent of the total volume of sales of all manufacturers of electrical wiring devices of all descriptions during that year.

At the time the testimony was taken in this proceeding, the principal competitors of the new respondent were the General Electric Co., the Bryant division of the Westinghouse Electric Co., the Hubbell company, Pass & Seymour, Weber Electric, and Cutler & Hammer companies, all of which sell full line of electrical wiring devices similar to that sold by the said new respondent. In addition there are other competitors who sell limited or special lines. The total volume of sales of the said new respondent exceeds the volume of sales of parallel lines of electrical wiring devices of any one of its competitors and the said new respondent has assumed a dominant

position in the electrical wiring devices industry, it being the largest producer of electrical wiring devices in the United States.

PAR. 8. Since January 1, 1929, the said new respondent has combined a number of manufacturing departments, which has resulted in substantial saving in the cost of production of many of the electrical wiring devices manufactured and sold by the said new respondent. The manufacturing profit of the two operating companies, namely, the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., during 1927 was 31 percent, and in 1928 was 34 percent, and the manufacturing profit of the Arrow and the Hart & Hegeman divisions of the new respondent for the year 1929 was 35 percent. In addition, substantial economies in designing and manufacturing were realized by the new respondent as a result of the consolidation of the engineering departments of the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., and also there has been substantial development in the field of experimentation as a result of such consolidation. Price levels of electrical wiring devices have not increased since the year 1927, and on some items the prices have been reduced, with no corresponding reduction in quality.

The net profits realized by the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. for the years 1927 and 1928, were as follows:

Arrow—for 1927, \$500,000; 1928, \$600,000. Ratio to net sales for both years, 13 percent.

Hart & Hegeman for 1927, net profit, \$470,000. Ratio to net sales, 8 percent; 1928, net profit, \$639,000. Ratio to net sales, 14 percent.

In 1929, the Arrow Electric division of the new respondent made a net profit of \$585,000, which was 12 percent of the net sales, and the Hart & Hegeman division made a net profit of \$768,000, which was 16 percent of the net sales.

PAR. 9. The effect of the acquisition by the said original respondent of the common stocks of the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., on or about October 10, 1927, has been, is and may be:

(a) To substantially lessen competition between the said Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. in the sale and distribution of electrical wiring devices in interstate commerce;

(b) To restrain interstate commerce in electrical wiring devices in those sections and communities where the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co. were engaged in business;

(c) To tend to create a monopoly in the electrical wiring devices industry.

PAR. 10. The divestment by the said original respondent of the common stocks of the said Arrow Electric Co. and Hart & Hegeman

Manufacturing Co. to the holding companies organized by said original respondent in December, 1928, as set forth herein, was not such a divestment as to constitute a compliance with the said Clayton Act.

PAR. 11. The course of action of the said original respondent in organizing the said new respondent, as described in paragraph 5 hereof, was not taken to restore the competition which had previously existed between the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co., but was in part to avoid a claim for income tax by the United States Treasury Department, and in part an artifice and subterfuge designed in an attempt to evade the provisions of sections 7 and 11 of the said Clayton Act and to perpetuate the elimination of all competition which had existed prior to October 10, 1927, between the said Hart & Hegeman Manufacturing Co. and the said Arrow Electric Co.

PAR. 12. The effect of the organization of the said new respondent and the acquisition by it, through merger, of the common or voting stocks of the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co., and of the assets of said two last named corporations, on December 31, 1928, as hereinbefore described in paragraph 5, has been, is and may be:

(a) To substantially lessen competition between the said Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. in the sale and distribution of electrical wiring devices in interstate commerce;

(b) To restrain interstate commerce in electrical wiring devices in those sections and communities where the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co. were engaged in business;

(c) To tend to create a monopoly in the said new respondent in the electrical wiring devices industry.

CONCLUSION

The acquisition by the said original respondent, Arrow-Hart & Hegeman, Inc., of all the outstanding common or voting stocks of the said Hart & Hegeman Manufacturing Co. and Arrow Electric Co., and the continued ownership and/or control, and the voting of said stocks by the said original respondent, which culminated in the organization of the said new respondent, The Arrow-Hart & Hegeman Electric Co., and the acquisition by the said new respondent, through merger, of the common or voting stocks of the said Hart & Hegeman Manufacturing Co. and Arrow Electric Co. and of the assets of the two last named corporations, under the conditions and circumstances described in the foregoing findings, constitute a violation of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act).

Order

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ORDER TO DIVEST

This proceeding having been heard by the Federal Trade Commission upon the complaint and supplemental complaint of the Commission, the answers of respondents, the testimony, briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act):

Now, therefore, it is ordered, That the said respondent, The Arrow-Hart & Hegeman Electric Co., forthwith cease and desist from violation of the provisions of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", and within 90 days from the date of the service upon it of a copy of this order, divest itself absolutely, in good faith, of all common stock of the Hart & Hegeman Manufacturing Co. acquired by it as a result of the merger of the said Hart & Hegeman Manufacturing Co. and Arrow Electric Co., The Arrow Manufacturing Co., and The H. & H. Electric Co. on or about December 31, 1928, so as to include in such divestment the said Hart & Hegeman Manufacturing Co.'s manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern and so as neither directly nor indirectly to retain any of the fruits of the acquisition of common stock of the said Hart & Hegeman Manufacturing Co.; or within 90 days from the date of the service upon it of a copy of this order divest itself absolutely, in good faith, of all the common stock of the said Arrow Electric Co. acquired by it as a result of the merger of the said Hart & Hegeman Manufacturing Co., Arrow Electric Co., The Arrow Manufacturing Co., and The H. & H. Electric Co. on or about December 31, 1928, so as to include in such divestment the said Arrow Electric Co.'s manufacturing plants and all other property necessary to the conduct and operation thereof as a complete going concern, and so as neither directly nor indirectly, to retain any of the fruits of the acquisition of the common stock of the said Arrow Electric Co.

It is hereby further ordered, That the said new respondent, The Arrow-Hart & Hegeman Electric Co., shall within 90 days from the date of service upon it of a copy of this order, divest itself absolutely, in good faith, of the said Hart & Hegeman's Manufacturing plants and equipment and all other property necessary to

the conduct and operation thereof as a complete going concern; or within 90 days from the date of the service upon it of a copy of this order, divest itself absolutely, in good faith, of the said Arrow Electric Co.'s manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern.

And it is further ordered, That such divestment of the common stock or assets of the said Arrow Electric Co. or Hart & Hegeman Manufacturing Co., as the case may be, shall not be made directly nor indirectly to the said The Arrow-Hart & Hegeman Electric Co. or to any stockholder, officer, director, employee or agent of, or anyone otherwise directly or indirectly connected with or under the control of the said The Arrow-Hart & Hegeman Electric Co.

And it is hereby further ordered, That the respondent The Arrow-Hart & Hegeman Electric Co., within four months from the day of the date of the service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has conformed to this order.

Commissioner Humphrey dissenting in memorandum attached.

Dissent of Chairman Humphrey

There is no injury to the public shown in the alleged transfer of stock in this case. There is no evidence to show any injury, except the mere blotting out of whatever competition there existed between the two corporations.

It seems the majority of the Commission has consistently held in all these section 7 cases, that the mere acquisition of stock of one corporation by a competing corporation is in itself a violation of the statute, regardless of the effect of such acquisition on the public.

Paragraph II of the order directs that the respondent divest itself absolutely of all the common stock it acquired as a result of the merger, so as to include in such divestment manufacturing plants and all other property necessary to conduct and operate a complete, going concern.

Did the respondent acquire stock "by merger?" If so, what was the value of such stock? What does it now represent? If the respondent divests itself of such stock, what is the effect of such divestment?

It appears so plain that none will dispute it, that even granted that the respondent did acquire stock by this merger, it is utterly valueless, and to compel the respondent to divest itself of such stock would be an idle gesture.

I do not think that the Commission ought to spend its time and money in so futile a performance.

The third paragraph of the order directs the respondent absolutely to transfer assets, without in any way directing the transfer of the stock. I do not believe that the courts will ever hold that the Commission has the power to make an order of the character stated either in the first or second paragraph.

The section 7 cases have always been regarded by the Commission as especially reprehensible. The acquisition of stock has been the one unpardonable sin.

From the beginning, the Commission has had employees assigned the duty of reading the papers to see if there were any violations of section 7 of the Clayton Act. No such method has been followed in regard to any other class of cases. These employees immediately report any item that appears in the press involving stock acquisition. Then, on the merest *ex parte* showing, without any preliminary hearing as in other cases, complaint is issued and served upon the respondent. The supposed justification for such action was that the respondent might acquire the assets and oust our jurisdiction. Even if true, it did not in any way relieve the respondent from being prosecuted by the Department of Justice if the law had been violated. The anxiety of the Commission to exercise its jurisdiction in these cases, in view of its "successes" is hard to understand.

The record shows that we have had about 800 preliminary inquiries and investigations of section 7 cases. Complaints have been issued in 59 cases. 41 of these cases were afterwards dismissed by the Commission. Order of divestiture was issued in 9 cases. One of these was sustained by the circuit court, but it is the almost universal opinion of the bar of the country that if this case could have been reviewed by the Supreme Court of the United States it would have been reversed. One order was sustained in part by the Supreme Court. All the others have been reversed by the Supreme Court. This is the sum of what has been accomplished in over fifteen years of vigorous prosecution under section 7 of the Clayton Act. Has the result justified the action of the Commission?

It seems to me, in view of this record of accomplishment, that the Commission is not justified any longer in expending large sums of money in trying these cases—and, in refusing to follow the decision of the Supreme Court in the *International Shoe Co.* case, when, speaking of the Clayton Act, they said:

the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree * * * that is to say, to such a degree as will injuriously affect the public,

Complaint

IN THE MATTER OF

LIMOGES CHINA COMPANY

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

Docket 1912. Complaint, Feb. 5, 1931—Decision, July 7, 1932

Where chinaware made at Limoges, France, had long been imported into the United States and increasingly sold therein, and had come to acquire a favorable reputation in the United States as china of beauty, quality, and utility made at Limoges, and to be in great popular demand and the leading china in the markets of the United States, and was sold in the United States with the word "Limoges" prominently displayed thereon, and was generally so known to and described by the trade and public; and thereafter a domestic corporation engaged in the manufacture of earthenware and pottery and sale thereof to wholesalers, department stores, and other retailers, adopted the word "Limoges" as part of its corporate name and featured said word in its advertising and in brands employed by it, with words, if any, suggestive of domestic manufacture or origin either blurred or illegible or in such small and inconspicuous letters as to fail to give effective notice of said fact;

With capacity and tendency to mislead public into believing aforesaid ware to be that produced at Limoges and imported therefrom and to divert trade from competitors dealing in fact in genuine Limoges china, and competitors dealing in comparable domestic products, without claiming falsely foreign origin therefor, and with effect of placing in the hands of retailers the means of similarly deceiving their customers and purchasers as to the origin of its aforesaid Limoges marked products:

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

Mr. James M. Brinson for the Commission.

Byrnes, Stebbens, Parmelee & Blenko, of Pittsburgh, Pa., *Metzger, McCarthy & McCorkhill*, of Salem, Ohio, and *Barnum, Hammond, Stephens & Hoyt*, of Youngstown, Ohio, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Ohio corporation, engaged in the manufacture of earthenware and pottery, and in the sale thereof to wholesale and retail dealers and department stores, and with principal office and place of business at Sebring, Ohio, with using misleading trade or corporate name, advertising falsely or misleadingly and mis-

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branding or mislabeling as to source or origin or nature of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, features its corporate name in its advertisements, letterheads, and other stationery and in the marks or brands upon its products, through such statements as "Limoges * * * Fine Dinner Ware Made Especially for Department Stores. Here is a name that stands at the very top of the list, when potters discuss the plant equipment of the world * * * Shapes are constantly being modernized, colors improved * * * The Limoges China Co. * * *", "The Flanders Poppy Table Service in American Limoges Ivory", "peach-blo ware by Limoges, Sebring, Ohio * * *" (with word "Limoges" conspicuously featured), etc., notwithstanding fact products in question thus advertised, marked, or stamped "have not been, were not, and are not, either porcelain or china manufactured at Limoges, France, or porcelain or china of the type or character or quality manufactured there or of the type, character, or quality which has been and is associated with, or identified by, the word 'Limoges' in the minds of the purchasing public."¹

Each of said practices, as alleged, namely, "the adoption and use of the word 'Limoges' as a part of its corporate name, the use of such word in its advertisements to describe or designate its products and its use on such products as a brand, trade mark, or designation thereof has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the products of respondent, particularly those so described, marked, or designated, have been and are porcelain or china manufactured at Limoges, France, and imported into the United States, or porcelain or china of the type, character, and quality, of the porcelain or china manu-

¹ As alleged in the complaint, "There is now, and for more than one hundred and fifty years approximately, there has been manufactured, at Limoges, in France, a vitreous, translucent, and glazed ware which is now, and has been during said period of time, designated, described, and known as porcelain, or as china by reason of its original or initial manufacture in China before its introduction into Europe. In the early part of the nineteenth century, porcelain, or china as it gradually came to be called, began to be exported from Limoges in France, into the various countries of Europe and America and particularly into the United States of America and into and through the several States thereof. Such porcelain or china immediately thereupon acquired a favorable reputation in the United States, as porcelain or china of utility and beauty resulting in the establishment of a good will which developed from time to time an increasingly popular demand for the products of Limoges. In 1904, when respondent was incorporated, this porcelain or china manufactured at Limoges in France and imported therefrom into the United States had long been widely and generally known, and the word 'Limoges' had for many years theretofore come to signify and mean, did signify and mean, ever since has signified and meant, and now signifies and means porcelain or china manufactured at Limoges, France, and imported into the United States therefrom."

factured at Limoges, France, and usually signified or represented by the word 'Limoges', and to induce purchase of products of respondent in reliance on such erroneous belief."

Said practices, further as charged, "have placed and place, and each of them has placed and places in the hands of dealers selling products of respondent, the means to mislead and deceive the consuming public into the purchase of respondent's glazed earthenware as and for porcelain or china manufactured at Limoges, France, or as porcelain or china of the type, character, and quality there manufactured," and "have had and have and each of them has had and has the capacity and tendency to divert trade to respondent from individuals, partnerships, and corporations offering for sale and selling porcelain or china manufactured at Limoges, France, from individuals, partnerships, and corporations offering for sale and selling porcelain or china manufactured elsewhere, of the type, character, and quality of the porcelain or china manufactured at Limoges, France, and also from others offering for sale or selling glazed earthenware truthfully described"; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon Limoges China Co., a corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed answer, testimony and documentary evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and evidence, and briefs in support of the complaint and on behalf of respondent, and oral arguments, and the Commission having duly considered the same now makes this its report in writing, and states its findings as to the facts and conclusion drawn therefrom as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Limoges China Co. is now, and since 1904 has been a corporation organized and existing under and by virtue of the laws of the State of Ohio with its principal office and

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place of business at Springfield, Ohio. It has been since 1906, and now is, engaged in the business of manufacturing and selling earthenware and pottery in commerce among the various States of the United States. It sells to wholesale and retail dealers, including department stores, and when sold, respondent Limoges China Co. causes its products to be transported from its said place of business at Sebring, Ohio, to purchasers in the various other States of the United States than the State of Ohio. In the course and conduct of such business respondent has been and now is in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of earthenware, china, and other pottery.

PAR. 2. There has been for one hundred and fifty years manufactured at Limoges, in the Republic of France, chinaware which ware has been since the early part of the nineteenth century exported from Limoges into the United States of America where during such period it has been sold in increasing quantities so that it has acquired and now has a favorable reputation in the United States as chinaware of beauty, quality and utility made at Limoges, France. Since 1885 there has been a great popular demand for this china in the United States and since that date it has been the leading china in the markets of the United States. In 1904 the popularity of said china from Limoges, France, had become widespread among the purchasing public and it had become generally known and described by the word "Limoges", the name of the place in France where it was produced. This significance and meaning of the word "Limoges" has continued to prevail with the trade and with the purchasing public and said china has been since its first importation into the United States generally designated by the trade and public as Limoges china.

PAR. 3. In 1904 respondent adopted as part of its corporate name the word "Limoges". It did so because of the signification of this word as descriptive of the china made in Limoges, France, as more particularly mentioned in paragraph 2 hereof. For a period of two years after its organization respondent manufactured china. In 1906 respondent discontinued the manufacture of china and commenced and since has continued the manufacture of earthenware.

Until 1921, or during the period of seventeen years intervening between 1904 and 1921, the ware manufactured by respondent bore no stamp, brand, or mark except either "Limoges China" or "Limoges China Co." and no indication of manufacture in the United States or of domestic origin. In 1921 respondent began to stamp on its ware, in addition to the name of the company, the words "U.S.A."

or "Sebring, Ohio", beneath the words "Limoges China Co.", still without any statement or indication that its product was manufactured in the United States or of domestic origin.

In 1930 respondent discontinued use of its corporate name accompanied by "U.S.A." or "Sebring, Ohio", on its ware and substituted therefor the words "Peach-Blo by Limoges" with the words "Sebring, Ohio", either blurred and illegible in connection with the lower part of the capital L in the word "Limoges", or in letters relatively so small and inconspicuous as to be unnoticeable. At the same time the word "Limoges" itself was featured in large and conspicuous letters. In other words, it was the most prominent word upon the plate. While it had been featured theretofore in the corporate name, respondent began in 1930 to make the word "Limoges" the outstanding or predominating feature of the brand or stamp on the ware sold by it in interstate commerce. In August, 1930, respondent commenced to use and did use, until July, 1931, as the brand or stamp on its ware, the words "Peach-Blo by Limoges" with the words "Sebring, Ohio", below the word "Limoges" in smaller and less conspicuous letters.

In July, 1931, respondent discontinued use of such stamps or brands and commenced the use of a stamp or brand containing the words "Peach-Blo" in the upper part of a circle, with the word "Ware" below them, immediately beneath which appeared the words "By Limoges, Sebring, Ohio", the word "Limoges" expressed in large and conspicuous letters. In such stamp or brand the words "Peach-Blo" and the word "Limoges" are the outstanding, predominating features. In none of such stamps or brands has there appeared or does there appear, any statement or indication of domestic origin.

Respondent Limoges China Co., in soliciting the sale of its products in commerce among and between the various States of the United States, has used in its advertisements such representations as the following:

LIMOGES * * * Giant of Production of Fine Dinner Ware
Made Especially for Department Stores

Here is a name that stands at the very top of the list, when potters discuss the plant equipment of the world * * * With the last word in kilns and machinery for quality and volume production, Limoges offers the buyer whose strong point is the moving of merchandise a vast, and almost unlimited source of supply. But mechanical and technical equipment is not the whole of Limoges service to you. Shapes are constantly being modernized, colors improved. See the "New Belmont", the "New Plaza", the "Kokus", and above all the new "Peach-Blo", a colored body, not a luster or a colored glaze. New! See it at Pittsburgh. Judge for yourself. The Limoges China Co. Donald Sebring Albright, general manager Sebring, Ohio.

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The word "Limoges" is conspicuously featured, in the prominence of its position and by its appearance in larger letters than any other word or words in such advertisements.

PAR. 4. There are various producers of china at Limoges, France, and their products are generally sold in the United States. One or more of them distribute their china through their own agents, who offer for sale and sell it in commerce between the various States of the United States, and others sell to importers who, in turn, sell to the trade in the various States of the United States. All of such china bears the word "Limoges" and on all of it such word is prominently placed. It is offered for sale and sold in the leading establishments of Boston, New York, Chicago, Detroit, Minneapolis, and Kansas City, as well as generally throughout the United States. The respondent, in its answer, acknowledges that its product is sold in competition with certain products manufactured at Limoges, France, known as Haviland China, all of which, the evidence shows, bears the name "Limoges" in prominent letters.

There is also offered for sale and sold throughout the United States, china manufactured by the Lennox China Co. at Trenton, N.J., and by other china companies in various parts of the United States, which china has been for many years last past and now is sold in interstate commerce.

There are many competitors of respondent manufacturing and selling earthenware at approximately the same price as the earthenware of respondent Limoges China Co., in competition with the products of such respondent. The result is that the ware of respondent Limoges China Co. competes in interstate commerce not only with China from Limoges, France, and earthenware from England, but with china and with earthenware of domestic producers.

PAR. 5. The practices of respondent described in paragraph 3 hereof have had and have the capacity and tendency to mislead the public into the belief that the ware offered for sale and sold by the respondent is ware produced at Limoges, France, and imported into the United States.

The aforesaid practices have also had and have the capacity and tendency to divert trade to respondent from competitors offering for sale and selling in interstate commerce china made at Limoges, France, and from competitors who manufacture in the United States products like those of the respondent and who do not represent that said products are made at Limoges, France, or in other foreign countries.

The practices of respondent also result in placing in the hands of retailers the means of deceiving customers and purchasers from

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said retailers into the belief that the products manufactured by respondent and marked as hereinbefore described are made in Limoges, France.

CONCLUSION

The acts and practices of respondent as described in the foregoing findings of fact have been and are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding, having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of respondent thereto, the testimony, evidence, briefs, and arguments of counsel, and the Commission having filed its report stating its findings as to the facts, with its conclusion drawn therefrom, that respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That respondent, Limoges China Co., cease and desist, directly and indirectly, in connection with offering for sale or selling in interstate commerce, any china, porcelain, chinaware, or earthenware manufactured in the United States from using the word "Limoges" either in its corporate name or in any trade mark or trade name or in advertisements or advertising matter, or to describe, designate, brand, stamp, or mark such china, porcelain, chinaware, or earthenware, unless accompanied in letters equally conspicuous, either by the phrase "Made in America", or "Made in the U.S.A." or "Made at Sebring, Ohio, U.S.A." or by other apt and adequate words clearly indicating that such product is made in the U.S.A.

It is further ordered, That respondent file within 60 days from and after service of this order a report in writing setting forth in detail the manner and form of its compliance with the order.

IN THE MATTER OF

H. L. METZGER, DOING BUSINESS AS NATIONAL
RAILWAY INSTRUCTION BUREAU

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

Docket 1987. Complaint, Nov. 14, 1931—Decision, July 7, 1932

Where an individual conducting a correspondence school course of instruction designed and intended to train students for various railroad positions such as fireman, brakeman, baggageman, passenger train porter, pullman porter, and pullman conductor.

- (a) Falsely represented himself in advertising his course in newspapers, magazines, and publications circulated among the various States as having railroad positions to offer and the advertisements as those of a railroad, through causing the same to be signed "Railway Bureau", and their frequent insertions in "help wanted" columns or columns containing such advertisements;
- (b) Represented that calls from railroads for men were frequent and that those who bought and pursued his courses of study would be assured of jobs, facts being students had no such assurance, calls from railroads for men were not frequent, vacancies were very few and the railroads generally pursued the policy of filling positions by advancement, or from former employees or experienced men in other lines, and did not generally give preference to graduates of said individual's school or to those of other schools;
- (c) Represented that he had close connection with leading railroads and great influence with the officials thereof, and was thereby enabled to place students, and displayed copies of purported letters or extracts therefrom in which railroads or railroad officials inquired for men to fill positions, facts being he had no such connections, and letters in question were written many years ago and in many cases incident to strikes or threatened strikes and did not reflect existing or recent employment conditions;
- (d) Falsely represented in form letters to prospective students that certain offers there made were limited as to time and were special offers to the addressee; and
- (e) Represented that the school owned its own building devoted exclusively to school uses, facts being portions of the building were so used only at times or incidentally, and portions thereof were used as living quarters for said individual and the janitor of the building;

With capacity and tendency to mislead and deceive members of public and to induce them to purchase such courses in erroneous beliefs thus induced, and with effect of unfairly diverting business to said individual from competitors who in no wise misrepresent their business status, their connection with railroads, or facilities for securing places for their students, or such special offers as may be made, and with tendency so to do:

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

Mr. Harry D. Michael for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, owner and manager of a business engaged in the sale and distribution of courses of study and inspection for training students for various railway positions such as fireman, brakeman, baggageman, etc., and with principal office and place of business in East St. Louis, Ill., with misrepresenting business status or advantages, and demand and possibilities of product or service offered, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, so advertises in newspapers and magazines as to imply and create the erroneous belief among readers that the advertisements are those of a railway and that he wishes to employ men in various capacities as specified in said advertisements in the "help wanted" columns or mixed columns, through such statements (with a number preceding the words) as: "Firemen, brakemen, baggagemen, (white or colored), sleeping car, train porters (colored), \$150-\$250 monthly. Experience unnecessary, 236 Railway Bureau, East St. Louis, Ill."

Respondent further, as charged, makes representations in catalogs, circulars, contracts, and other literature sent to those answering such advertisements which "tend to and do create the impression that those who buy and pursue the courses of study described therein are assured of jobs and that respondent's school has great influence and close connection with the great railroads of the country and the officials thereof when such is not the case"; making such statements as "No charge * * * for securing graduates a position", "Thousands of graduates now in the service earning good wages", "Success is assured", "The many employing officials of the best railroads * * * know about this institution and our responsibility", "We have had many calls in for graduates that we were unable to supply. One hundred and thirty-two different calls from railroad officials in 1 day * * *";¹ the facts being respondent is

¹ Other statements alleged and set forth in the complaint include the following: "This work is steady employment throughout the year. You will have a lifetime job. Our guarantee with every course, you cannot fail to pass. Quick promotion. Failure impossible. Many of our graduates have previously made unsuccessful attempts to secure a position, before receiving our assistance. * * * They afterward communicated with us, enrolled, completed the course, and were at once employed. Our student can choose his location. Any road in any State. He can start any season, any month, or any day of the year. Our facilities for referring you personally to the different officials are

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not in a position to secure positions for his graduates, has not any special influence or connection with railroads whereby he or his graduates are given any special consideration in the employment of men, and many of such railroads listed by him have not called upon him for men and do not now do so, exceptions thereto having been many years ago."

Respondent further, as charged, states in his catalogs that "we own and occupy our building of three floors, 6,750 square feet devoted exclusively to educational and instructive work by mail, courses, and educational books of all kinds", and in circular letters makes certain offers and/or terms to be accepted by certain specified dates or within a specified number of dates, and held out as special confidential offers to the persons addressed, the facts being that said individual's school occupies only one floor of the building referred to and the offers in question are made to all inquirers after they have failed to reply to previous letters, and the time limits are not fixed or adhered to.

Said representations, as alleged, have the tendency and capacity "to confuse, mislead, and deceive members of the public into the belief that respondent has positions to offer to those who answer his advertisements; that such advertisements are those of a railroad; that respondent has special influence with railroads and officers thereof whereby he is enabled to secure positions for his students; that those who enroll, and pursue respondent's courses are assured of positions; that respondent's building is used exclusively for school purposes; and that offers of special prices and terms are special to the persons addressed and must be accepted within certain specified times, * * * and to induce members of the public to answer respondent's advertisements and to purchase and pursue his said courses because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of correspondence courses in interstate commerce in similar and kindred lines to those of respondent and from those engaged in the conduct and sale of correspondence courses in other lines", all to the injury and prejudice of the public and competitors.

unsurpassed. When you complete the course, we will immediately, at no cost to you, get busy to at once get you into a job on a good road nearest your home, if you prefer it, by recommending you to the proper official. That good railroad job still awaits your decision. Success is assured. There are no 'ifs and ands' about our proposition. There is no possibility of failure when you enroll with us. Our business relations with the employing officials, division superintendents, train masters, master mechanics, road foremen of engines, etc., in every section of the country, are the best."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, H. L. Metzger, doing business under the name and style of National Railway Instruction Bureau, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent having entered his appearance and filed his answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint before a trial examiner of the Federal Trade Commission theretofore duly appointed. The respondent elected not to introduce any evidence in his behalf. At the close of the introduction of evidence on behalf of the Commission the trial examiner ordered the taking of testimony closed. The attorney for the Commission elected not to file a brief and notice of such election was duly served upon respondent by registered mail. No brief was filed by respondent although opportunity was duly given and the time for filing same expired June 15, 1932. Thereafter, this proceeding came on for final hearing upon the record, and the Commission having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, H. L. Metzger, is the sole owner and manager of a correspondence school conducted by him under the name of National Railway Instruction Bureau in the city of East St. Louis, in the State of Illinois, which said business has been conducted by him for a period of 20 years or more. Said business consists in the sale of courses of instructions designed and intended to train students for various railroad positions such as fireman, brakeman, baggageman, passenger train porter, pullman porter and pullman conductor, which said courses of study and instruction are sold to purchasers thereof in various States of the United States, and respondent causes and has caused books and pamphlets containing said courses of study and instructions to be transported in interstate commerce from his said place of business in Illinois to, into and through States of the United States other than Illinois

to persons to whom they are or have been sold. In the course and conduct of his said business respondent has been, and is now, in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of courses of study and instruction in railroad work similar to those of respondent and also in various mechanical and other lines.

PAR. 2. Respondent in advertising his said courses of study and instruction caused advertisements to be inserted in newspapers, magazines, and publications circulated in and among the various States of the United States, which said advertisements, by reason of their wording as well as by being signed "Railway Bureau" and by being frequently inserted in "help wanted" columns or columns containing such advertisements, imply and have the capacity and tendency to cause readers thereof to believe that the advertiser has railroad positions to offer to applicants and that such advertisements are those of a railroad. Respondent also sent out catalogs and advertising matter containing many statements and representations which imply and have the capacity and tendency to create the belief that those who bought and pursued respondent's courses of study would be assured of jobs; that jobs are plentiful; that calls from railroads for men are frequent; and that respondent has close connection with leading railroads and great influence with the officials thereof by reason of which he is able to place students in positions. Such representations were also made by means of copies of purported letters from railroads or officials thereof, or extracts from such letters, in which inquiries were made for men to fill positions. Respondent, in form letters to prospective students, represented that certain offers made therein were limited as to time and were special offers to the persons addressed. Representations were also made by respondent in his advertising literature that said school owned its own building devoted exclusively to school uses.

PAR. 3. Respondent has not had nor does he now have railroad positions to offer to applicants. Advertisements described in the preceding paragraph as having been inserted in newspapers and other publications were not those of a railroad but were those of respondent seeking prospects for his correspondence courses. Students who pursued respondent's courses of study are not assured of jobs. Railroad jobs are not plentiful. Calls from railroads for men are not frequent. Respondent has neither close connection with leading railroads nor great influence with the officials thereof by reason of which he is able to place students in positions. Purported special offers made by respondent were not limited as to

time and were not special to the persons addressed. Letters used by respondent as aforesaid were written many years ago, many of them in times of emergency incident to strikes or threatened strikes, and do not reflect employment conditions as they now exist or as they have been for a number of years last past. Vacancies in railroad positions are now very few. Railroads generally for a number of years have pursued the policy of filling positions by advancement or from former employees or from experienced men from other lines. Preference is not given by railroads generally to graduates of respondent's school or to those of other schools. Respondent owns and occupies his own building and it is used for school purposes, but portions of the building are so used only at times or incidentally and portions are used as living quarters for respondent and the janitor.

PAR. 4. The representations of respondent which imply that he has positions to offer; that the advertisements are those of a railroad; that students of his courses are assured of jobs; that jobs are plentiful; that calls from railroads for men are frequent; that respondent has close connection with leading railroads and great influence with the officials thereof by reason of which he is able to place students in positions; and that purported special offers made are limited as to time and as to the persons addressed, are misleading and deceptive because such are not the facts, and such representations have the capacity and tendency to mislead and deceive members of the public and to induce them to answer respondent's advertisements and to purchase and pursue his courses of study and instruction because of such erroneous beliefs.

PAR. 5. There are among the competitors of respondent those who in no wise misrepresent their business status, their connection with railroads, their facilities for securing jobs for students and special offers which may be made, and respondent's acts and practices as above set forth tend to and do unfairly divert business to respondent, from his competitors to the injury and prejudice of such competitors.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and are in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes."

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony in support of the charges of said complaint and the report of the trial examiner therein, and the Commission having made its findings as to the facts and its conclusion that the respondent has been and is violating the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes";

It is ordered, That the respondent, H. L. Metzger, his agents and employees, in connection with the advertising and offering for sale or in selling in interstate commerce courses of study and instruction and books and pamphlets containing the lessons and subject matter studied in connection therewith, cease and desist from:

(1) Representing by statements which state or imply that men are wanted to fill positions on railroads or that respondent's advertisements are those of a railroad.

(2) Making representations as above set forth by placing advertisements in "help wanted" columns of newspapers or magazines or in columns containing such advertisements, and/or signing such advertisements simply as Railway Bureau, unless such advertisements contain a clear and explicit statement clearly making known that respondent has only courses of instruction for sale.

(3) Representing by statements which state or imply that students who pursue respondent's courses of study are assured of jobs; that jobs are plentiful; that calls from railroads for men are frequent; that respondent has close connection with leading railroads and great influence with the officials thereof by reason of which he is able to place students in positions, unless and until such are the facts at the time such representations are made.

(4) Making use in advertising of letters from railroads inquiring for men to fill positions unless such letters are of comparatively recent date and reflect conditions existing at the time of such use.

(5) Representing that terms offered are special and/or that such offers must be accepted within a specified time when such offers are not special to those to whom the same are made and when such time limits are not adhered to.

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

Complaint

IN THE MATTER OF
BLATZ BREWING COMPANY

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

Docket 1990. Complaint, Dec. 23, 1931— Decision, July 7, 1932

Consent order requiring respondent, in connection with sale in interstate commerce of plain unflavored malt sirup containing no hops, barley or other ingredients produced in or imported from Bohemia, to cease and desist from using word "Bohemian" to describe or designate said product, unless qualified as in said order set forth.

Mr. James M. Brinson for the Commission.

Richmond, Jackman, Wilkie & Toebaas, of Madison, Wis., for respondent.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that the Blatz Brewing Co., hereinafter designated respondent, has been, and is using unfair methods of competition in commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Blatz Brewing Co. is now and has been for several years last past a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Milwaukee, in said State, engaged in the manufacture of malt sirup and its sale in commerce among and between the various States of the United States, in competition with individuals, partnerships, and corporations engaged in the sale of like products in interstate commerce. It has been, and is its practice to cause such product, when sold, to be transported from its aforesaid place of business at Milwaukee in the State of Wisconsin to purchasers located in the various other States of the United States than the State of Wisconsin.

PAR. 2. In the course and conduct of the business described in paragraph 1, it has been, and is the practice of respondent to offer

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for sale and sell certain plain malt sirup containing no hops, foreign or domestic, in cans bearing labels on which appear the following:

Blatz
Bohemian
Malt
Sirup

in large and conspicuous letters, beneath which appear the words
Made by Blatz Brewing Company, Milwaukee,
Wisconsin

in letters relatively small and inconspicuous. The word "Blatz" prominently appears in letters known as script, the word "Bohemian" appears in letters known as German script, while the words "Malt Sirup" and the words "Made by Blatz Brewing Company, Milwaukee, Wisconsin" appear in ordinary block letters. The letters of the word "Bohemian" are colored in bright orange and edged with gold. The other words appear in white letters, and all of this legend is prominently presented from a blue background. There appears below the legend on the blue background the word "Light."

In truth and in fact the product of the respondent is manufactured in the United States, contains no hops or other material produced in Bohemia, and consists entirely of domestic ingredients, and has been, and is manufactured according to no formula or process peculiar to or characteristic of Bohemia.

Respondent has also caused such malt sirup to be widely advertised in trade magazines, periodicals, and newspapers having a circulation in the various States of the United States in which it has been, and is the practice of respondent to describe and designate the said product as "Blatz Bohemian Malt Sirup".

PAR. 3. There have been grown for a considerable period of time in that province of Czechoslovakia formerly known as Bohemia, hops of a kind and quality which have caused them to be favorably known in the various parts of the world including the United States of America. On account of their excellence as a flavoring material for malt sirups, Bohemia has long been associated in the minds of the purchasing public with the production of hops and with malt sirup flavored therewith, and the practice of respondent in using the name Bohemian to describe and designate his product has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the product so described and designated has been imported from Bohemia, or contains one or more ingredients produced in Bohemia and imported into the United States, or

has been, and is made according to some formula or process typical of and peculiar to Bohemia, and into the purchase of such product in reliance on such erroneous belief.

The said practice of respondent has furnished and furnishes dealers, wholesale and retail, to whom it has been and is the practice of respondent to sell said product, with the means by which they have been enabled to mislead and deceive the consuming or purchasing public into the belief that such product has been or is manufactured in Bohemia or manufactured from or out of material produced in Bohemia, in whole or in part, or according to processes or formulas characteristic or typical of Bohemia.

The said practices of respondent have had and have the capacity and tendency to divert trade to respondent from competitors who have been and are offering for sale in interstate commerce, malt sirups containing ingredients or material produced in Bohemia and imported into the United States therefrom, and from competitors offering for sale and selling in like commerce plain malt sirups containing no Bohemian or other foreign ingredient or material, and described or designated by no trade mark suggestive of Bohemia or other foreign countries.

PAR. 4. Said practices of respondent in the sale and distribution of its products have been and are in the circumstances and conditions aforesaid, all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

The Federal Trade Commission having issued and served its complaint herein, and the Blatz Brewing Co. having filed its answer to said complaint, the Commission appointed a trial examiner to take evidence and the taking of evidence was begun. Thereupon, before said trial examiner, counsel for the Commission and counsel for the respondent entered into a stipulation which was dictated by said counsel and transcribed by the official reporter into the record herein, and which was subject to the approval of the Commission. It was agreed by said stipulation that further formalities herein, including the taking of further evidence, the submission of briefs and oral arguments were waived, and respondent consented that the Commission might proceed to enter and serve upon respondent

its order to cease and desist from the methods of competition charged in the complaint. The Federal Trade Commission having approved said stipulation and being fully advised in the premises,

It is ordered, That respondent, Blatz Brewing Co., cease and desist from using directly or indirectly the word "Bohemian" independently or in combination, association, or connection with other words to describe or designate any plain, unflavored malt sirup offered for sale or sold by the respondent in interstate commerce, containing no hops, barley or other ingredients produced in or imported from Bohemia unless the words "Made by Blatz Brewing Company at Milwaukee, U.S.A. from barley grown in the United States" or "Made by Blatz Brewing Company at Milwaukee, Wis., from barley grown in the United States" clearly and conspicuously appear in connection with the words "Bohemian Malt Sirup."

It is further ordered, That respondent within 60 days from and after service of this order shall file with the Federal Trade Commission, a report in writing setting forth in detail the manner and form of its compliance with said order.

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IN THE MATTER OF

PERPETUAL ENCYCLOPEDIA CORPORATION, NORTH AMERICAN PUBLISHING COMPANY, INC., SOURCE RESEARCH COUNCIL, INC., WILLIAM H. GORHAM, TRADING AS NORTH AMERICAN PUBLISHING COMPANY, AND VARIOUS INDIVIDUALS AS OFFICERS OF SAID CORPORATIONS AND IN THEIR INDIVIDUAL CAPACITIES

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

Docket 1371. Complaint, July 13, 1928¹—Decision, July 11, 1932

Where a corporation, which (1) had been formed to sell, on the subscription plan, an encyclopedia (together with a 10-year, loose-leaf semiannual supplement to keep same up to date, and a so-called "research bureau service"), to be published from plates theretofore purchased by two of its officers, stockholders, and organizers from the original compiler, together with the copyrights, organization, business, good will, etc., theretofore acquired and built up by said compiler, (2) had branch offices in Denver, New York, San Francisco, and Los Angeles, and a Canadian subsidiary operating under the name Home and School Education Society, Ltd., and (3) did a business of some \$2,000,000 or more a year; and various individuals, officers of said corporation, long engaged in sale of said work, closely connected in the prosecution thereof, fully aware of the nature of the sales methods and practices involved, which they sponsored, participated in, approved, and benefited by, and selling directly, and through sales or crew managers and the individual agents employed in various communities;

- (a) Simultaneously sold said publication under three different titles directly and at wholesale through other companies and individuals with knowledge it was to be thus resold, and falsely represented the same through their agents as different works with result that those already supplied were misled and deceived into purchasing anew under a different name, a compilation already owned, and with tendency and capacity to mislead and deceive the purchasing public, and cause members thereof to purchase the set under two or more titles as and for distinct and different publications;
- (b) Set forth in their said encyclopedia names of famous persons as contributors, reviewers or revisers and falsely advertised and represented that a staff of editors, writers, photographers, and illustrators was maintained in every part of the world for the preparation of the aforesaid loose-leaf supplements, facts being it had no such contributors, etc., or staff, "contributions" of the famous persons referred to consisted of such matters as secretarial or personal correction or revision of biological sketches or statis-

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tical material, the names of the persons were used without their consent, and cyclopedia was compiled by a single individual, with assistance of 4 or 5 persons connected with educational institutions or with experience in writing, and articles were based upon data solicited from chambers of commerce, school superintendents, and college and university heads respecting their cities, schools, and colleges and upon information gathered from other available sources, including encyclopedias, and loose-leaf supplement consisted largely of newspaper and periodical clippings, and pictures supplied by a service engaged in such work;

- (c) Published late copyright dates in its cyclopedia and left out previous copyright dates, in violation of the copyright laws, and in some cases published a copyright date for a year in which no copyright was obtained; with intent of misleading and deceiving subscribers into believing work in question, compiled some 15 years theretofore, as above set forth, was a new one, published as of the year given;
- (d) Falsely represented to prospective customers that the supplement would take the place of such famous financial services as Moody's, Poor's, etc., and that the work was connected with or published by well-known publications and sold on approval, facts being no such financial service was included, there was no such connection, and contract or order blank specifically provided contract was noncancelable and such provision was insisted upon;
- (e) Secured signatures to contracts or order blanks through falsely representing them as mere receipts or memoranda, or through other fraudulent devices and acts, and changed contracts or orders modified by customers before attaching their signatures, so as to restore the original terms, and declined to relieve customers thus victimized or imposed upon from their obligations, upon having the facts called to their attention, but systematically ignored or rejected such explanations and insisted upon the carrying out of the transactions in accordance with the regular terms of the order or contract;
- (f) Employed names of fictitious collection and credit agencies and papers simulating legal process and threatened publication of delinquents' names in their local papers, and other action, in seeking through threats and intimidations to coerce, and in coercing those whom it had entrapped and misled as aforesaid into carrying out the payments called for by the contracts or order blanks; and

Where (1) said corporation; (2) a company organized to take over the retail sale of said cyclopedia, supplement and service, with former employees of said corporation for its officers, with disbursements of its funds subject to audit and control of one of said corporation's general officers and stockholders, and subject to the control and advice of said corporation and its president; (3) a company engaged in sale of said cyclopedia, supplement, and service in certain sections or to certain classes; (4) an individual similarly engaged; and (5) an employee engaged as its representative in carrying on the sale of its said cyclopedia, etc., in certain far Western States; and officers of aforesaid corporation and concerns, variously engaged in sale of said cyclopedia, etc., directly and through sales or crew managers, etc., as above set forth:

- (g) Sold said cyclopedia contemporaneously under three different titles as aforesaid;
- (h) Represented to prospective purchasers that prospect was being offered the cyclopedia free by virtue of the prospect's position in the community, and

as a part of an advertising plan selected in preference, or as a sequel to expensive periodical advertising and that the prospect was only paying for the supplements or research service, facts being amounts exacted constituted its regular charges;

- (j) Falsely represented the prices and terms upon which the cyclopedia, etc., were regularly sold through naming figures far in excess of the usual and customary price of the three and exhibiting contract forms setting forth some excessive, pretended price for the encyclopedia alone, and representing supplements as sold separately to others at certain specified figures, or to be so sold, and stated that the price would be increased later or that usual selling price was higher than the amount demanded, and made use of contract forms or order blanks with canceled, higher prices than those demanded, or with such words as "Publicity Department—Special Contract", facts being figures at which cyclopedia, supplement, and service were sold constituted regular and usual prices therefor, words referred to were used to lead subscriber to believe he was given a special low price as a means of advertising, and supplements were not sold separately to others but only in conjunction with said cyclopedia and service;
- (j) Made use of contract or order forms which did not adequately advise prospective purchaser that additional sums in excess of the figures mentioned might be demanded for said supplements under reference to provisions of certain coupons not furnished to or seen by the subscriber until after the signing of the contract and receipt of the books, and exacted such additional sums, notwithstanding fact contract or order blanks provided that price set forth covered "total cost" of all benefits described above, including volumes, supplement, and research service, and appeared to cover all charges, for the work, etc., and prospect was compelled to rely, as to complete nature of transaction, on salesmen, who failed to advise of such additional charges;
- (k) Falsely represented that payments could be spread over a period of years, facts being completion of payments in not to exceed a year were called for by contract and insisted upon;
- (l) Falsely represented that said cyclopedia included among its contributors, reviewers, or revisers and as members of its consulting staff to whom subscribers under their research bureau privilege might refer questions, numerous specified prominent persons, and that 200 teachers, eminent educators and scholars had taken part in the preparation of the work, facts being as hereinbefore set forth;
- (m) Falsely represented said work as recently completed, new, and up to date, giving a complete record of "everything man has thought or done down to 1928", and as superior to British and other well-known publications, facts being it was still based on the compilation made many years theretofore, as above set forth, it had had practically no revision for a number of years, and no complete revision, so as to make it an up-to-date encyclopedia, and information supplied by it consisted of more or less superficial summaries upon subjects treated;
- (n) Employed names and signatures of attorneys without their consent, upon letterheads and on letters sent out to intimidate and coerce payments, under contracts to purchase said cyclopedia, etc., brought about through the false and misleading representations and methods hereinbefore set forth; and Where aforesaid corporations; said company controlled as aforesaid; said individual engaged in sale of said cyclopedia, etc.; said far western employee

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and representative; and aforesaid officers thereof; in prosecuting sale of said cyclopedia, etc., as above set forth;

- (o) Made use of sheets falsely purporting to be and represented by the solicitors or agents as reproductions of advertisements which had appeared in Saturday Evening Post, offering said work, etc., at prices much in excess of the regular prices at which in fact usually and customarily sold, to aid in deceiving and misleading prospect as to books and services and their prices;
- (p) Falsely represented directly and through the sales talks supplied to their agents, that the prospect was being called on in connection with her child's school work at the request of the teacher, or in connection with the "school project", or at the suggestion of the woman's club president, etc., and falsely supplied names of persons known to the prospect, as purchasers, and displayed orders and checks falsely purporting to have such persons' signatures;
- (q) Falsely represented said work as having approval and recommendation of superintendent of schools, or 24 State bureaus of education, or the American Library Association, or as sponsored by the Parent Teachers Association;
- (r) Falsely represented said work, supplement, and service as of special benefit to the particular prospect solicited through falsely claiming features or specialization for it in fields of particular interest to the prospect by virtue of his profession or calling as doctor, chemist, engineer, or whatever the facts might be, and in general made such misrepresentations through their agents, regardless of their falsity or misleading character, as would enable them to make a sale to the person solicited; and

Where said corporation; its said officers; and aforesaid individual engaged in sale of said publication, etc.; in soliciting sale of said publication, etc., as above set forth;

- (s) Employed names of fictitious firms or agencies including such names as "Source Research Bureau", "The National Press Syndicate", "American Bureau of Research", "National Publicity Syndicate", "United Press Syndicate", "International News Service", "Home and School Education Society", and such misleading descriptions of the writers as "consulting specialists, * * * directors of publishers' publicity", "Manager, Eastern States", etc., in lead letters, sent to prospective customers in which the prospect was usually offered a complimentary set as a prominent member of his community, or as an advertising method or to secure his endorsement, facts being no free or complimentary sets were given and said fictitious names were used to conceal the business of the senders as book sellers, and to enlist and secure prospect's interest and reply and name on the card enclosed, with a view to his solicitation, as above set forth; and

Where (1) aforesaid company engaged in sale of said cyclopedia, etc., and (2) said individual, similarly engaged in carrying on the sale thereof;

- (t) Falsely advertised or represented said encyclopedia or books as bound in leather;

With effect of injuring competitors who do not use such methods of sale, through (1) diverting to said corporation, concerns and individuals sales of encyclopedias and other reference works to those believing aforesaid false representations to be true, and purchasing encyclopedias, etc., concerned in and by reason of such belief, (2) prejudicing the public against the subscription book industry as a whole and making it difficult for competitors

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to obtain interviews to solicit sale of their encyclopedias, and (3) causing the public to lose confidence in representations of competing publishers who do not use such methods or make such representations; and with capacity and tendency so to divert, etc.:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Winston, Strawn & Shaw, of Chicago, Ill., and *Mr. Roger Shale*, of Washington, D.C., for Perpetual Encyclopedia Corporation and Source Research Council, Inc., and for various respondent individuals as officers thereof and in their individual capacities.

Mr. M. Jason Gould, of New York City, for North American Publishing Co., Inc., Russell O. Priebe and Emma L. Priebe.

COMPLAINT ²

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that the corporations and individuals mentioned in the caption hereof, and more particularly hereinafter described and referred to as respondents, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, issues this amended complaint, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Perpetual Encyclopedia Corporation, is a corporation organized under the laws of the State of Illinois, on or about December, 1922, having its offices and usual place of business in the Monroe Building at No. 104 South Michigan Avenue and 77 East Monroe Street, in the city of Chicago, State of Illinois.

The respondents Frank J. Mackey, Harold C. Sherman, and Robert T. Mackey were the incorporators of the respondent Perpetual Encyclopedia Corporation and are and have been respectively the president, secretary, and treasurer thereof since its organization. The respondents H. F. McGee and Edmund P. Rucker are and have been vice presidents of the respondent Perpetual Encyclopedia Corporation since its organization.

PAR. 2. Respondent North American Publishing Co., Inc., is a corporation organized on July 7, 1924, under the laws of the State of New York, having its principal office and place of business in New York City in said State.

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Respondents Russell O. Priebe and Emma L. Priebe were incorporators of the respondent North American Publishing Co., Inc., and are officers of said respondent company.

PAR. 3. Respondent Source Research Council, Inc., is a corporation organized on December 9, 1927, under the laws of the State of Illinois, having its principal office and place of business in the Monroe Building at No. 104 South Michigan Avenue, and 77 East Monroe Street, in the city of Chicago, State of Illinois.

The respondents, John J. Hennessy, Leonard C. Maier, and Turney T. Culp were the incorporators of the Source Research Council, and are and have been respectively the vice president, secretary, and treasurer, thereof since its organization. The respondent Warren T. Davis is and has been president of the respondent, Source Research Council, Inc., since its organization.

PAR. 4. Respondent William H. Gorham is and has been for several years immediately prior hereto in the business of selling books, trading under the name and style of North American Publishing Co., at No. 844 Rush Street, in the city of Chicago, Ill.

Respondent George A. Seiler is and has been, since on or about November, 1923, the manager of the Pacific Coast office of the respondent Perpetual Encyclopedia Corporation, with an office and place of business in Room 930, Hearst Building, in the city of San Francisco, Calif.

PAR. 5. Respondent, Source Research Council, Inc., was organized for the purpose of selling at retail the "Source Book", published by the respondent, Perpetual Encyclopedia Corporation, and formerly sold at retail by that respondent corporation under its own name, and also under the name, Source Research Bureau, a trade name used by said respondent, Perpetual Encyclopedia Corporation. Respondent Warren T. Davis, president of the Source Research Council, Inc., was formerly vice president of the Coeducational Society, a subsidiary company of the respondent, Perpetual Encyclopedia Corporation, engaged in selling the publications of said Perpetual Encyclopedia Corporation in the Dominion of Canada, located at Toronto, Canada. Respondent John J. Hennessy was for many years, and up to and until the formation of the Source Research Council, Inc., an employee and sales manager of respondent, Perpetual Encyclopedia Corporation. Respondent, Leonard C. Maier, was for many years and up to and until the formation of the Source Research Council, Inc., an employee of and credit manager of respondent, Perpetual Encyclopedia Corporation. Respondent Turney T. Culp, was for years, and up to and until the formation of the Source Research Council, Inc., an employee of respondent, Perpetual Encyclopedia Corporation.

PAR. 6. Respondent, Source Research Council, Inc., since the date of its organization, has been engaged in selling at retail throughout the United States, the publications of respondent, Perpetual Encyclopedia Corporation, under the name of the Source Book. Upon its organization it took over the office and sales personnel of said Perpetual Encyclopedia Corporation, and has at all times used the offices occupied by the Perpetual Encyclopedia Corporation. Some of the employees of said Source Research Council, Inc., are also employees of respondent Perpetual Encyclopedia Corporation. The Source Research Council in the sale of its books or publications employs the same methods as are and have been used by respondent, Perpetual Encyclopedia Corporation, set forth hereinafter, and used the same advertising and other literature as used by said respondent. Respondent Source Research Council, Inc., is affiliated with and operated and controlled by the same persons and interests as those controlling and operating respondent, Perpetual Encyclopedia Corporation.

PAR. 7. The respondents are and have been engaged in the sale of certain books or publications, including those hereinafter referred to, and have sold the same to individuals, firms, and corporations, located respectively in various States of the United States, during the period beginning on or before November 22, 1922, continuously down to the date hereof, and upon making such sales the respondents cause and have caused the books and publications so sold to be transported from their respective places of business to, into and through the District of Columbia and various States of the United States other than the State of origin of the shipment thereof to the purchasers of the same.

During the times above referred to other individuals, partnerships, and corporations are and have been engaged, respectively, in selling books and publications throughout the United States and have caused the books and publications when sold by them to be transported to the purchasers thereof from their respective places of business to, into, and through the District of Columbia and various States of the United States other than the State of origin of the shipment of their said books and publications, and including States into which the respondents are and have been causing the books and publications sold by them, respectively, hereinafter referred to, to be transported, and the respondents are and have been during the times herein referred to in competition in commerce with said other individuals, partnerships and corporations.

PAR. 8. In or about the year 1912 or 1915, and for a number of years thereafter, there was published and sold throughout the United

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States a publication called the "Home and School Reference Work" under copyright registered in the United States Patent Office in or about the year 1912 or 1915. The respondents, Frank J. Mackey and Harold C. Sherman, on or about November 22, 1922, purchased the plates used in printing or reproducing copies and editions of the said publication, and also purchased the rights of the previous owners of the said publication, to the copyright registrations thereof.

PAR. 9. The respondents, Frank J. Mackey, Harold C. Sherman, and Robert T. Mackey, unlawfully, knowingly, and with intent to confuse, deceive, and defraud the public in the sale of said Home and School Reference Work, engaged with and among themselves in a conspiracy, common understanding or agreement on or about November 22, 1922, to print or cause to be printed or reproduced from the plates of the said publication, the Home and School Reference Work, editions or copies thereof, and to publish and sell and to cause the same to be published and sold without any substantial change or revision thereof to members of the public as and for new and completely or substantially completely revised and up-to-date editions or copies of the said publication and also as and for entirely new or recent publications of a date of first or original publication in the year 1924, or of a date many years later than the said copyright dates of 1912 and 1915, and under separate and different names or titles which were intended to and would conceal from purchasers or prospective purchasers the identity thereof, one with the other, as being the same or substantially the same publications or books.

PAR. 10. In pursuance of their said conspiracy, common understanding or agreement, the respondents, Frank J. Mackey, Harold C. Sherman, and Robert T. Mackey caused the respondent Perpetual Encyclopedia Corporation to be incorporated and organized as a corporation; and joining in with the said respondents Mackey and Sherman, and with knowledge thereof and in pursuance of said conspiracy, common understanding or agreement, the respondents, Russell O. and Emma L. Priebe, caused the respondent North American Publishing Co., Inc., to be incorporated, and they and the respondent William H. Gorham, respectively, engaged in business under the form of a corporate organization, entitled North American Publishing Co., and under the trade name North American Publishing Co. for the purpose, on the part of all said respondents, among other things, of holding out the said corporation and trade names to the public as the name or names, respectively, of original publishers of the said Home and School Reference Work, under that or other names or titles, and to conceal from purchasers and prospective purchasers among the public the fact that the said publication, or the

same substantially, had already been copyrighted, published and sold by others during many years before to purchasers throughout the United States.

PAR. 11. All the respondents, acting in concert, respective in pursuance of the said conspiracy, common understanding or agreement, through themselves and through their agents, salesmen, solicitors, and employees, in seeking to sell and in selling the aforesaid books or publications and in seeking to collect and in collecting moneys claimed to be due under alleged orders or contracts in the course of or as a result of such negotiations and sales, have falsely and fraudulently with intent to deceive the purchasers and prospective purchasers, employed without right, wrongfully and unlawfully the names of attorneys at law, the names and forms of corporate organizations, some of which corporate and trade organizations were fictitious, the forms and indicia of corporate instrumentalities, and fictitious office addresses for the aforesaid corporate and trade organizations located throughout the world, with the intent to confuse, mislead, and deceive, and the said respondents have by the aforesaid means and acts confused, misled, and deceived and continue now to confuse, mislead, and deceive said purchasers into believing that communications received by said purchasers, purporting to be signed by an attorney at law, were actually, as to their contents, known to such attorney and that the same were actually in such instances written and signed with his name by him, and that said corporate and trade organizations were actually the publishers of the books or publications sold by them or under their names, respectively, and herein referred to, and that the said organizations were country-wide or internationally known organizations of standing, integrity and credit, with offices and places of business throughout the United States and in foreign countries, when such was contrary to the facts in relation thereto, for the purpose of gaining and enhancing the trust and confidence of purchasers and prospective purchasers that the respondents and their salesmen and representatives, and statements and representations made by them, were reliable and trustworthy, and for the purpose of assisting in coercing and blackmailing purchasers into the payment of money on the aforesaid orders or contracts.

Among the corporate and trade or organization names so employed by the respondents were the following: The Woodrow Wilson Institute, United Press Syndicate, North American Publicity Service, American Reference Library, American Bureau of Research, The Source Book, The Source Research Bureau, Business Extension Institute, International Collection and Adjustment Bureau, The Perpetual Research Bureau, Merchants' Credit Reporting Association, North

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American Publishing Co., Publisher's Clearing House, North American Publishing Co., Inc., Home and School Education Society, International News Service, and others.

PAR. 12. The respondents, in pursuance of their said conspiracy, common understanding or agreement, have made use of fictitious collection agencies with fictitious names which they have represented to purchasers and held out to be in fact independent organizations in the service of business institutions and merchants throughout the country and internationally, in the collection of credit information, and by means of the said collection agencies and the false impression as to their influence created by the said respondents they have attempted to coerce and blackmail, and they have coerced and blackmailed, purchasers of respondents' said books or publications into paying the whole or part of the money alleged to be due on contracts entered into by means of the confusing, misleading, deceitful, and fraudulent acts herein set forth and referred to on the part of respondents aforesaid, their agents, solicitors, and representatives, by threatening to make known the alleged delinquency of the said purchasers in the payments of said moneys by publishing or making known the same to third persons, including financial institutions or employers or to others within the social or business acquaintance of the said purchasers and in other ways, including the drawing of drafts on said purchasers maliciously and for the purpose of affecting the credit of said purchasers, unless the said drafts were paid.

PAR. 13. The respondents have employed salesmen, solicitors, and representatives whom they knew, or with reasonable diligence should have known, have previously used and continue to use, both verbally and written, alias or fictitious names and fictitious addresses, false and deceptive sales talks, and to make false representations in selling or soliciting for the sale of books, publications or other things, and the respondents with knowledge of the use of the same by them, of the aforesaid false and deceptive practices and sales talks on the part of their said salesmen and employees, have employed the said salesmen and representatives and encouraged the said salesmen, solicitors, and employees in the use of the same in the sale of respondents' said books and publications.

PAR. 14. The respondents, further, in pursuance of the said conspiracy, common understanding or agreement have printed only a late copyright date of registration, such as the year 1924, in some of the copies or editions of their said books and publications and have omitted to print the earlier copyright date to show the true fact that the later copyright date was simply issued to cover new matter added in the way of revision.

The respondents, through themselves, their agents, salesmen, solicitors, and employees, have employed, in the sale of their said books or publications, false and deceptive sales talks, and in the sales talks and otherwise, knowingly and falsely, they have among other things, represented that many well-known educators, public officials, writers, scientists and others were and are members of an editorial staff and contributors, revisers, and reviewers employed in the writing of said books or publications, or of articles contained therein, when such was not the fact.

Respondents and their employees have falsely and fraudulently represented that the usual and customary selling prices of said books and publications were certain fictitious and grossly exaggerated amounts of money, far exceeding the usual and customary prices at which they sold the same, or at which they expected to sell them, and greatly in excess of the real value of the same.

The respondents, further, have obtained the signatures of persons to orders or contracts for the purchase of said books and publications by subterfuge, tricks, or artifices, such as inducing such persons, under pretense of obtaining their names and addresses for other purposes, to write their names and addresses on said order blanks or contracts, knowing that said persons had no knowledge that they were at the time signing any obligation or entering into a contractual relation.

The said respondents have further made false and fraudulent representations of fact to purchasers regarding the quality, nature, style, finish, description, and value of the paper material, and the binding, and the material composing it, used in the manufacture of said books and publications and regarding certain extension or research services in connection therewith, which they offered for sale and sold to said purchasers, who bought the said books and publications and services, relying on said statements of the respondents, their agents, representatives, and employees.

The respondents and their employees have further falsely and fraudulently represented that they had given and were giving to certain persons the said books and publications free of charge to such persons, purchasers, or prospective purchasers, or that they had given, or were giving to certain persons free of charge either the said books or certain extension or research services in consideration that the said persons or purchasers pay only for the other, when in fact, such books or services had not been, or were not being given, free of charge, to anyone, but the price of the one represented to be given free was included and was intended by respondents, their agents, salesmen, and employees to be included in the price of the one bought or contracted to be bought by said persons or purchasers.

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PAR. 15. The respondents, their agents, solicitors, salesmen, and employees, by means of the false and fraudulent representations, acts, and practices set forth above, and by means of many other such representations, acts, and practices of like nature and too numerous to be set forth herein, and in pursuance of the aforesaid conspiracy, common understanding or agreement on their part, have sold the said books or publications, including the said research and extension services, and are continuing to sell the same to members of the public throughout the United States, who have been and are, by means of such sales, being cheated, deceived, and defrauded.

PAR. 16. There are among the competitors of respondents referred to herein, many who in the sale of their books and publications do not commit the acts and things complained of herein, and who do not mislead, deceive, and defraud the public.

PAR. 17. The above alleged acts, things, and practices of the respondents are each and all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its power and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served its amended complaint upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances, and having filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and respondents before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing on the brief of counsel, oral argument having been waived, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Perpetual Encyclopedia Corporation, is a corporation organized under the laws of the State of Illinois on December 8, 1922, and existing and doing business under said laws,

with its principal office and place of business in a building having two addresses, viz, 104 South Michigan Avenue and 77 East Monroe Street, in the city of Chicago, in said State. The authorized capital stock of the company was originally \$50,000, consisting of 500 shares of \$100 par value each. The incorporators were Daniel G. Moore, Oak Park, Ill., Robert T. Mackey, and H. C. Sherman, Chicago, Ill., and said incorporators composed the first board of directors of the company. At a special meeting of the stockholders of the corporation held March 22, 1924, the articles of incorporation were amended, increasing the capitalization of the corporation to \$125,000, consisting of 1,250 shares of \$100 par value each. The amended certificate was filed in the office of the Secretary of State of Illinois on April 11, 1924. At a meeting of the stockholders of the corporation held November 18, 1924, the articles of incorporation were further amended so as to authorize the corporation "To maintain and operate for profit, Source Research Bureau, for the increase and diffusion of economic and scientific knowledge; and for the operation of business and trade forecasts and reviews, and such other matters as are pertinent thereto." The amended certificate was filed with the Secretary of State of Illinois, December 17, 1924. The stockholders of respondent as of March 22, 1924, were given as Frank J. Mackey, H. C. Sherman, E. P. Rucker, and R. T. Mackey. At the time of the hearings in this proceeding Frank J. Mackey owned 1 share of the capital stock; Robert T. Mackey, 120 shares; H. C. Sherman, 150 shares; and School Methods Publishing Co., 749 shares. These comprised all of the shares outstanding. School Methods Publishing Co. is a corporation engaged in publishing a set of books for school teachers, and respondent, Frank J. Mackey, is president of said corporation. The officers of respondent, Perpetual Encyclopedia Corporation, are Frank J. Mackey, president; Robert T. Mackey, treasurer; and H. C. Sherman, secretary.

Respondent, North American Publishing Co., Inc., is a corporation organized July 7, 1924, under the laws of the State of New York, having its principal office and place of business at 17 East Sixtieth Street, in the City of New York. It was incorporated by respondent William L. Priebe, now dead, who was president, and his wife, respondent Emma L. Priebe, who was and is secretary. A son, respondent Russell O. Priebe, was also connected with the company. The corporation was reported, in March, 1929, to be in liquidation, the claims of the company having been assigned to Emma L. Priebe for collection in settlement of William L. Priebe's estate. It was not engaged in the business of selling books, and had paid no taxes, but had not surrendered its charter. During the period of its activity

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the company was engaged in selling at retail the publication of respondent Perpetual Encyclopedia Corporation, under the title of "Home and School Reference Work."

Respondent Source Research Council, Inc., is a corporation organized December 9, 1927, and existing and doing business under the laws of the State of Illinois, having its principal office and place of business at No. 104 South Michigan Avenue and No. 77 East Monroe Street, in the city of Chicago, in said State. The incorporators are Leonard C. Maier, of LaGrange, Ill., Turney T. Culp, and John J. Hennessy, of Chicago, Ill. Respondent Source Research Council, Inc., was organized to manufacture, buy and sell books, and carry on business incidental thereto; "to maintain and operate for profit agencies and facilities for the preparation of business and trade forecasts", and for the establishment and maintenance of collection agencies. Such corporation was authorized to issue 2,000 shares of common stock of no par value. John J. Hennessy subscribed \$60,000 for 1,200 shares of the stock, and paid in \$30,000; Turney T. Culp subscribed \$20,000 for 400 shares of the stock, and paid in \$10,000; Leonard C. Maier subscribed \$20,000 for 400 shares of the stock, and paid in \$10,000. The entire amount of authorized capital stock was issued at once. Messrs. Turney T. Culp, Leonard C. Maier, and John J. Hennessy were the first board of directors. Articles of incorporation of respondent Source Research Council, Inc., were amended February 3, 1928, so as to authorize the corporation to maintain and operate for profit a bureau of research, said amended articles being filed with the Secretary of State of Illinois, May 10, 1928. The first officers of respondent Source Research Council were Warren T. Davis, president; John J. Hennessy, vice president; T. T. Culp, secretary, and E. C. Gibson, treasurer. Later, Leonard C. Maier was made secretary and Turney T. Culp, treasurer. Warren T. Davis became the first president and manager of respondent Source Research Council, Inc., and turned over to it a contract which he had made with respondent Perpetual Encyclopedia Corporation. The stock certificate book of the corporation shows the following stockholders as of December 5, 1928: Warren T. Davis, 800 shares; John J. Hennessy, 520 shares; Turney T. Culp, 380 shares; Leonard C. Maier, 300 shares. By resolution of December 12, 1927, Robert T. Mackey was made auditor and was given absolute control of the funds of respondent Source Research Council, Inc. Mr. Mackey was not a stockholder nor an officer of such corporation.

Respondent Frank J. Mackey is a cofounder and president of respondent Perpetual Encyclopedia Corporation, is its active directing head, and is in full control of the general policies of the corpora-

tion. Before establishing respondent Perpetual Encyclopedia Corporation Mr. Mackey had spent all of his business life in the sale of books by the subscription method. He sold several different encyclopedias as a salesman, including the Home and School Reference Work, published at that time by H. M. Dixon, its compiler and publisher. He then became associated with W. F. Quarrie as a minority stockholder in the School Methods Co., and sold the set of books published by that company. In January, 1922, Mr. Mackey acquired all the rights to the sale of this set of books, and organized and became president of School Methods Publishing Co., which company published and sold said set of books, and more recently has been publishing and selling a set of books under the name of Class Room Teacher. In November, 1922, respondent Frank J. Mackey and Respondent H. C. Sherman purchased the plates of the Home and School Reference Work from H. M. Dixon, who had been publishing and selling the set of books for many years. H. M. Dixon had been selling said set of books under the trade name of Home and School Education Society, the use of which name was continued by respondent Mackey for some time after acquiring the plates. The concern was in fact a corporation and not a society of any kind or character. About the time of the purchase of the plates from H. M. Dixon, as aforesaid, respondents Frank J. Mackey and H. C. Sherman organized respondent Perpetual Encyclopedia Corporation to handle the purchase and sale of the encyclopedia, as set forth hereinbefore. Respondent Frank J. Mackey is also president of the Woodrow Wilson Institute, a company engaged in selling books and services, and president of the Home and School Education Society, Ltd., of Toronto, Canada, which company is engaged in selling the publications of respondent Perpetual Encyclopedia Corporation in the Dominion of Canada.

Respondent H. F. McGee was a vice president of respondent Perpetual Encyclopedia Corporation until he left the company in 1927. He was an employee of respondent Perpetual Encyclopedia Corporation from February, 1924, to October 15, 1927, and during that period had charge of salesmen, and general control of sales methods for the company. Upon severing his connection with respondent Perpetual Encyclopedia Corporation, respondent McGee became connected with the Standard Historical Society of Cincinnati, where he is now engaged in publishing and selling a set of books under the title "Standard History of the World."

Respondent Harold C. Sherman is vice president of, a stockholder in, and an incorporator of respondent Perpetual Encyclopedia Corporation. Respondent Sherman was interested with respondent F. J.

Mackey in the purchase of plates of the Home and School Reference Work from Mr. Dixon, and he was also interested as financial backer in the organization of respondent Source Research Council, Inc., having advanced the money to several of the stockholders of that company with which they bought their stock.

Respondent Robert T. Mackey, a brother of respondent Frank J. Mackey, is an incorporator of respondent Perpetual Encyclopedia Corporation, and a stockholder and treasurer of said respondent. He is also treasurer of School Methods Publishing Co., and is auditor of respondent Source Research Council, Inc., and in control of its funds.

Respondent Edmund P. Rucker was a vice president of, and a stockholder in, respondent Perpetual Encyclopedia Corporation, and was in charge of a retail sales department of that respondent. He also was active in obtaining and training salesmen to sell its publications at retail. At the time of the hearings in this proceeding respondent Rucker was in charge of the field sales force of respondent Source Research Council, Inc., as traveling sales manager. He was engaged also in obtaining and training salesmen and saleswomen to sell that respondent's set of books at retail.

Respondent Warren T. Davis was vice president and manager for 4 years of the Canadian business of respondent Perpetual Encyclopedia Corporation, which was conducted in the name of Home and School Education Society, Ltd., with headquarters at Toronto, Canada. He sold in Canada respondent Perpetual Encyclopedia Corporation's books, Home and School Reference Work and its Source Book. He had sold these books for said respondent previously in the United States, in 1923. He worked for School Methods Publishing Co., selling Public School Methods to school teachers, during 1924. He then became connected with Home and School Education Society, Ltd., as sales manager, later becoming vice president of the company. In 1927 respondent Davis came to Chicago to make a contract with respondent Perpetual Encyclopedia Corporation to sell its books at retail in the United States. Respondent Davis became president of respondent Source Research Council, Inc., which company he claims to have "instigated", and managed its activities.

Respondent John J. Hennessy was the sales manager of respondent Perpetual Encyclopedia Corporation in 1926 and 1927, and was an incorporator of, and stockholder in, respondent Source Research Council, Inc., as well as vice president and sales manager. Prior to 1926 respondent Hennessy was sales manager and vice president of School Methods Publishing Co. for about 3 years. He has been connected with the sale of books, with various companies since 1910.

Respondent Leonard C. Maier had been employed as collection manager for respondent Perpetual Encyclopedia Corporation before becoming one of the incorporators of, and a stockholder and officer in, respondent Source Research Council, Inc. He also is in charge of some of the salesmen for that respondent, and has charge of correspondence with field sales managers and salesmen.

Respondent Turney T. Culp was an accountant until becoming an incorporator of and stockholder and officer in respondent Source Research Council, Inc.

Respondent Russell O. Priebe is the son of respondents W. L. Priebe and Emma L. Priebe, and was an officer of respondent North American Publishing Co., Inc., prior to 1928 and engaged in the sale of the publication of respondent Perpetual Encyclopedia Corporation under the title "Home and School Reference Work." His whereabouts was unknown at the time of the hearings in this proceeding. Prior to the formation of respondent North American Publishing Co., Inc., respondent Russell O. Priebe was in California and associated with either H. M. Dixon or respondent Walter H. Gorham, both of whom were engaged in selling the Home and School Reference Work at retail.

Respondent Mrs. Emma L. Priebe was secretary and office manager of respondent North American Publishing Co., Inc., of New York City, prior to the death of her husband, W. L. Priebe in 1926. She is now living in St. Paul, Minn., and in a general way looks after collections for books sold prior to suspension of business by respondent North American Publishing Co., Inc., of New York City.

The Federal Trade Commission issued its amended complaint in this proceeding against Walter H. Gorham, trading under the name and style of North American Publishing Co., in which amended complaint said Walter H. Gorham was inadvertently named as William H. Gorham. Upon service upon him of the amended complaint said Walter H. Gorham entered his general appearance and filed his answer to the amended complaint as Walter H. Gorham by his attorneys; appeared by his said attorneys at hearings in this proceeding, and said attorneys cross-examined witnesses who testified in support of allegations of the amended complaint; and throughout the entire proceedings raised no objections that he had been misnamed in the amended complaint. By reason of all of which he submitted himself to the jurisdiction of the Commission under the aforesaid amended complaint. Respondent Walter H. Gorham under the trade name of North American Publishing Co., operated a business in Chicago, Ill., selling the publication of respondent Perpetual Encyclopedia Corporation under the name American Reference

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Library. His business address was first at 104 South Michigan Avenue, in the same building in which respondent Perpetual Encyclopedia Corporation had its offices. He later moved to 844 Rush Street, in said city. For some time respondent Gorham operated under the trade name above stated, but later a corporation was organized under the name North American Publishing Co., under the laws of the State of Illinois. Respondent Gorham was unable to furnish the date of incorporation or articles of incorporation of the corporation. Some time in 1928 respondent Gorham surrendered the charter of North American Publishing Co., and ceased selling the American Reference Library. There was no connection of any kind between respondent North American Publishing Co., Inc., of New York City, and respondent Gorham's North American Publishing Co. Respondent Walter H. Gorham has been in the subscription book business for many years. In 1921 he was engaged in California in selling the Home and School Reference Work, at that time published by H. M. Dixon, from whom he purchased the books. He moved to Chicago some time later and continued selling said publication after it had been acquired by respondent Frank J. Mackey and his associates. In 1924, for a short period, he was engaged in the sale of a business course under the name of Business Extension Institute. In the latter part of 1924, or early part of 1925, he again began the sale of the set of books published by respondent Perpetual Encyclopedia Corporation, under the name American Reference Library. At the time of the hearings in this proceeding respondent Gorham was operating a company under the name of Personal Analysis Bureau in the city of Chicago, selling a set of books and service on psychology, the plates of which he purchased from the Woodrow Wilson Institute, of which latter company respondent Frank J. Mackey was president.

Respondent George A. Seiler was for some time under contract as manager of the Pacific coast office of respondent Perpetual Encyclopedia Corporation, with his offices in the Hearst Building, in the city of San Francisco, State of California. Since prior to 1923 respondent Seiler has been engaged in selling the publication of respondent Perpetual Encyclopedia Corporation under the names Home and School Reference Work and Source Book. His territory consisted of the States of California, Oregon, Washington, Nevada, Arizona, Idaho, and Utah. Up until about May 1, 1928, all collections of his accounts were made by respondent Perpetual Encyclopedia Corporation, and later by respondent Source Research Council, Inc. Respondent Seiler, under the trade name National Bureau of Research, Western Division, sold the publication of respondent Per-

petual Encyclopedia Corporation, which he bought from that respondent. Since the organization of respondent Source Research Council, Inc., respondent Seiler has bought the Source Book from that respondent. At the time of the hearings herein respondent Seiler was operating under the name National Bureau of Research, and selling said publication at retail. Respondent Seiler has been in the subscription book industry practically all his business life, having worked for several different companies in that industry.

PAR. 2. Respondent Perpetual Encyclopedia Corporation, since November, 1922, has been engaged in the sale of its encyclopedia under the names hereinafter set forth, at wholesale and retail, throughout the several States of the United States, to purchasers thereof located at various points in said States, and has caused the said encyclopedias so sold to be transported from its place of business in the city of Chicago, State of Illinois, through and into the several States of the United States to the purchasers thereof at their respective points of location.

All other respondents herein, including the North American Publishing Co., Inc.; Source Research Council, Inc.; Frank J. Mackey, individually and as president of Perpetual Encyclopedia Corporation; H. F. McGee, individually and as vice president of Perpetual Encyclopedia Corporation; Harold C. Sherman, individually and as secretary of Perpetual Encyclopedia Corporation; Robert T. Mackey, individually and as treasurer of Perpetual Encyclopedia Corporation; Edmund P. Rucker, individually and as vice president of Perpetual Encyclopedia Corporation; Warren T. Davis, individually and as president of Source Research Council, Inc.; John J. Hennessy, individually and as vice president of Source Research Council, Inc.; Leonard C. Maier, individually and as secretary of Source Research Council, Inc.; Turney T. Culp, individually and as treasurer of Source Research Council, Inc.; Russell O. Priebe and Emma L. Priebe, individually and as officers of North American Publishing Co., Inc.; Walter H. Gorham, trading under the name and style of North American Publishing Co., and George A. Seiler, individually and as Pacific coast manager or agent of Perpetual Encyclopedia Corporation and sales manager or agent of Source Research Council, Inc., are now, or since 1924 have been at some time, engaged in the sale of respondent Perpetual Encyclopedia Corporation's encyclopedia, either independently or as officers or employees of respondent Perpetual Encyclopedia Corporation, or respondent Source Research Council, Inc., throughout the several States of the United States, and have caused said encyclopedias so sold to be transported from their respective places of business through and into

the several States of the United States, to the purchasers thereof at their respective points of location.

In the course and conduct of their respective businesses, as aforesaid, respondents have been, and each of them has been, engaged in competition with other individuals, partnerships, and corporations engaged in the sale in interstate commerce of encyclopedias and other books.

PAR. 3. One H. M. Dixon has been in the subscription book business for many years, publishing and selling several different reference works and encyclopedias. In 1910 he began the compilation of an encyclopedia which he named Home and School Reference Work. To assist in its preparation he employed 4 or 5 persons who were connected with educational institutions, or who had experience in writing, to whom were assigned the duties of writing articles on various subjects for inclusion in the encyclopedia. Among those employed to assist in the preparation of the encyclopedia was respondent Edmund P. Rucker, who had formerly been engaged in newspaper work.

The method of securing the information to be included in the encyclopedia was to send inquiries requesting literature regarding their cities, schools or colleges to chambers of commerce, superintendents of schools, heads of colleges and universities, and by gathering information from all other available sources, including encyclopedias. Upon receipt of the requested information, articles would be prepared incorporating said information, and said articles would be submitted to those who had supplied the original information for their review. Upon return of the article it would be included in the encyclopedia. The work of compilation continued for about 3 years, and in the latter part of 1913 the completed encyclopedia was ready to be sold to the public.

Said encyclopedia was first sold to the public about the beginning of 1914, and its sale was continued under the title "Home and School Reference Work" by H. M. Dixon, doing business under the trade names of "Dixon-Rucker Company" and "Home and School Education Society," until 1922, throughout the United States.

PAR. 4. Under date of November 22, 1922, respondents Frank J. Mackey and H. C. Sherman, as parties of the second part, entered into a contract in writing with H. M. Dixon, as party of the first part, theretofore publisher of the Home and School Reference Work, by which the parties of the second part purchased for \$25,000 cash and additional deferred payments aggregating \$100,000 plus interest, the copyrights and plates for printing and publishing the Home and School Reference Work, illustrations, good will, field

organizations, selling contracts, stocks of paper, books and selling supplies, name lists and selling paraphernalia, and letters of recommendation. Deferred payments were extended over 48 months at \$2,000 a month, and at \$3,000 a month at times. Parties of the second part also agreed to pay the rent of Mr. Dixon's office at No. 431 South Dearborn Street, Chicago, Ill. Respondents Mackey and Sherman agreed not to use the plates or material for any other publication, nor to permit such use, nor to have duplicates made; they further agreed to meet Mr. Dixon's obligations to his subscribers as to Year Books and the answering of research questions, to continue the sale of the publication for a year under the name Home and School Reference Work; and not make radical changes in the work to interfere with sales. The contract was, in terms, binding upon the assigns of respondents Mackey and Sherman, and was carried out by respondent Perpetual Encyclopedia Corporation under their direction. For the year immediately following November 22, 1922, Clarence Dixon, nephew of H. M. Dixon, was manager of respondent Perpetual Encyclopedia Corporation. Immediately upon acquisition of the plates of the encyclopedia respondents Frank J. Mackey and H. C. Sherman caused respondent Perpetual Encyclopedia Corporation to be organized, as set forth in paragraph 1 herein, and said respondent corporation began the sale of said encyclopedia, both at wholesale and retail, throughout the United States.

In addition to selling its encyclopedia at retail to the general public, respondent Perpetual Encyclopedia Corporation also sold said publication at wholesale to jobbers, who resold the encyclopedia at retail to the public. Among the jobbers to whom respondent Perpetual Encyclopedia Corporation sold its encyclopedia were respondent North American Publishing Co., Inc., of New York, and respondent Walter H. Gorham trading under the name and style of North American Publishing Co., of Chicago, Ill.

PAR. 5. Respondent Perpetual Encyclopedia Corporation entered into a contract with William L. Priebe, formerly president of respondent North American Publishing Co., Inc., of New York, since deceased, under date of April 20, 1923, under which it agreed to sell Priebe 10 volumes of the Home and School Reference Work in three different bindings at specified prices; to furnish him with binders, loose-leaf service, prospectuses, supplies, and such circular matter as he cared to use; to furnish him membership bond certificates entitling his subscribers to the privilege of the extension service and research bureau, at an additional price per set; and to grant him the privilege (not exclusive) of selling said Home and School Reference Work to

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teachers, parents, and business men in the State of New York, and in the New England States. Priebe agreed, among other things, to devote all of his time to the sale of said publication in the territory assigned to him; not to sell any other set of books; to fulfill all contractual obligations entered into with subscribers relative to furnishing binders and loose-leaf service for a period of 10 years; to maintain the established retail selling prices of the set of books; and to keep the terms of the contract confidential. This term of contract was 1 year.

On May 12, 1924, another contract was entered into between the same parties which differs in that the prices to be paid by Priebe for the set of books were increased; respondent Perpetual Encyclopedia Corporation excluded furnishing Priebe with membership certificates in the Research Bureau, and required him to pay 24 cents each for coupon bonds entitling subscribers to the loose-leaf supplements; and did not agree to furnish him with binders, prospectuses, supplies, and circular matter. The rest of the terms of the contract were the same as in the first contract. The term of the contract was for 12 months, and as long thereafter as is mutually satisfactory.

Under these two contracts respondent North American Publishing Co., Inc., of New York, obtained the encyclopedia published by respondent Perpetual Encyclopedia Corporation, which it resold to the public at retail under the title "Home and School Reference Work."

PAR. 6. Respondent Perpetual Encyclopedia Corporation entered into a contract with respondent Walter H. Gorham under date of January 1, 1923, under which it agreed to sell Gorham its set of books under the title "Home and School Reference Work" in three different bindings at specified prices; to sell him at actual wholesale manufacturing cost all supplies necessary to the sale of the books, such as selling material, prospectuses, stretchers, and advertising literature; to allow him to sell said set of books throughout the United States and Canada, except the States of New Jersey, Delaware, Maryland, Pennsylvania, and the District of Columbia, with the understanding that he is to specialize and concentrate his sales in the business men's field, and not to sell in other fields without the approval of respondent Perpetual Encyclopedia Corporation; and to provide him with office space at a rental proportionate to the space occupied. Respondent Gorham agreed, among other things, to devote all his time to the sale of Home and School Reference Work, and to sell no other encyclopedia during the life of the contract; to be responsible for the promises, agreements, and conduct of his subagents; to fulfill all contracts or agreements made with

subscribers relative to furnishing binders and loose-leaf service during the term of the contract, and for 10 years thereafter; and to keep the terms of the contract confidential. The term of the contract was for a period of 4 years. The contract was signed on behalf of respondent Perpetual Encyclopedia Corporation by respondents Frank J. Mackey and Edmund P. Rucker.

On November 19, 1926, respondent Perpetual Encyclopedia Corporation entered into another contract with respondent Walter H. Gorham under which it states that it is selling an encyclopedia under the name Home and School Reference Work, Source Book, and American Reference Library, and agrees that Gorham shall sell said encyclopedia under the title "American Reference Library", unless Perpetual Encyclopedia Corporation should decide to use only one name for its publication, in which event Gorham will sell under that name. It is further agreed that Gorham shall pay a specified price for 10 volumes of the encyclopedia and 1 loose-leaf binder; that Gorham will devote all his time and attention to the sale of the particular encyclopedia and will not directly or indirectly become interested or associated in any way in the promotion or sale of any other encyclopedia; that Perpetual Encyclopedia Corporation will furnish Gorham prospectuses and stretchers at cost price, and semi-annual loose-leaf extension service at a cost of 24 cents each; that neither party will hire any agent employed by the other party without written consent. The term of the contract is 3 years.

Under the above contracts respondent Walter H. Gorham obtained the encyclopedia published by respondent Perpetual Encyclopedia Corporation which he resold to the public at retail at different times under the titles "Home and School Reference Library" and "American Reference Library."

PAR. 7. The connection between respondent Perpetual Encyclopedia Corporation and respondent George A. Seiler was different from that with respondents North American Publishing Co., Inc., of New York, and Walter H. Gorham. Respondent Seiler was manager of the Pacific coast office of respondent Perpetual Encyclopedia Corporation, and while he employed a sales organization of his own, he was an employee of said Perpetual Encyclopedia Corporation. Respondent Perpetual Encyclopedia Corporation did all the collecting from subscribers sold by respondent Seiler until December 1, 1927, after which date collections from such subscribers were made by respondent Source Research Council, Inc., up to May 1, 1928. While there were previous contracts between the parties, the first one introduced in evidence was dated August 5, 1927, and was for a term

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of 1 year from December 1, 1927. By the provisions of said contract, respondent Perpetual Encyclopedia Corporation agreed, among other things, to pay a specified commission to respondent Seiler on all acceptable orders secured by him and his sales force under certain conditions set forth in the contract; to advance Seiler a certain percentage of the sale price on accepted orders, and to maintain a deposit in a San Francisco bank of a sufficient sum to cover said advance each week; to prepay the freight or express charges on all shipments in lots of books from Chicago to the Pacific coast, with certain provisos; to render statements of account monthly to Seiler and pay accrued commissions when due, and to list the names of sales people taking the orders and the name of the subscriber on said monthly statements; to furnish necessary selling supplies without cost; to assign Seiler exclusive selling rights, except to theological students, in the States of California, Oregon, Washington, Idaho, Nevada, Utah, and Arizona, under certain specified conditions; and to pay a specified sum weekly toward office expense of Seiler under certain conditions. Seiler agreed to various provisions regarding living of salesmen, payment to them of commissions, reports to be made to Perpetual Encyclopedia Corporation, and other like matters. He also agreed to hold all goods shipped to him in a judiciary capacity, ownership of books and supplies being vested in Perpetual Encyclopedia Corporation until paid for by bona fide subscribers. Mention is made in the contract of a previous contract between the same parties, dated December 1, 1925, copy of which was not available.

Under the above contract, and the contract dated December 1, 1925, respondent George A. Seiler sold to the public the encyclopedia published by respondent Perpetual Encyclopedia Corporation under the titles Home and School Reference Work and Source Book.

PAR. 8. At the time of the purchase of the plates of the encyclopedia from H. M. Dixon, respondents Frank J. Mackey and H. C. Sherman also acquired about 20,000 sets of the encyclopedia bound under the title Home and School Reference Work, which was the name under which said Dixon had been selling the publication from the time he first put it on the market. Respondent Perpetual Encyclopedia Corporation sold said sets of the encyclopedia under that title. Said respondent continued to sell said encyclopedia under the title Home and School Reference Work to retail purchasers throughout the United States during the years 1923 and 1924.

Upon the completion of the sale of the 20,000 sets of Home and School Reference Work, the name of the encyclopedia was changed in the spring of 1923 to Source Book, and respondent Perpetual

Encyclopedia Corporation continued the sale of said encyclopedia at retail to the general public under that title until December 1, 1927.

Respondent Perpetual Encyclopedia Corporation has sold its encyclopedia from the date of its organization and beginning of business at wholesale to jobbers throughout the United States, as set forth in paragraphs 4, 5, and 6 herein, which jobbers resell said encyclopedia to the public at retail. To and including December 1, 1927, said respondent sold its encyclopedia to jobbers bound under the title Home and School Reference Work, and to at least one jobber bound under the title American Reference Library. Since December 1, 1927, said respondent has been selling its encyclopedia at wholesale to jobbers under the title Source Book.

Respondent Perpetual Encyclopedia Corporation, from the date of its organization, to December 1, 1927, sold the encyclopedia published by it at retail to the public throughout the United States under the titles Source Book and Home and School Reference Work simultaneously, and during the same period sold said encyclopedia at wholesale to jobbers, with the knowledge that said jobbers were selling said encyclopedia at retail to the general public, under the titles Home and School Reference Work and American Reference Library. The text and content material included in said set of books sold by respondent Perpetual Encyclopedia Corporation under the titles Home and School Reference Work, Source Book, and American Reference Library, are identical, the only difference between said sets of books being the titles. Said respondent claimed that subsequent to December 1, 1927, its encyclopedia was sold by it at wholesale and retail under only one title, namely, Source Book, but evidence in the record shows that in at least one instance in February, 1928, 50 sets of the encyclopedia were sold by respondent Perpetual Encyclopedia Corporation to L. A. Belline, a jobber, bound under the title American Reference Library.

In August, 1925, a salesman representing respondent Perpetual Encyclopedia Corporation sold a set of the Source Book to a school teacher in Portland, Oreg., at a price of \$79.50. When the books were delivered she found that they were identical with a set of Home and School Reference Work which she had purchased in 1923 from respondent Walter H. Gorham's company. At the time of the solicitation by the salesman of respondent Perpetual Encyclopedia Corporation she showed him the set of Home and School Reference Work, and he assured her the Source Book was a better encyclopedia. Immediately after determining that the two sets of books were identical, she notified respondent Perpetual Encyclopedia Corporation of the fact and returned the encyclopedia to that respondent.

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Said respondent refused to accept them and insisted upon payment under the terms of the contract she had signed. Respondent also claimed that she was not entitled to the loose-leaf service and research bureau privilege with the Home and School Reference Work, which was not true, and suggested that she sell that encyclopedia for a "nominal sum" and apply the proceeds to paying for the Source Book. Continued efforts to collect the price of the encyclopedia were made by respondent Perpetual Encyclopedia Corporation, and it was not until the teacher had taken the matter up with the Better Business Bureau of Portland, Oreg., that the contract was canceled. She did not receive a refund of the initial payment of \$5 she made, nor was she reimbursed for the expense of returning the books on two occasions to respondent, amounting to approximately an additional \$5.

In November, 1927, a physician in a hospital at Worthington, Ohio, was solicited by a salesman of respondent Perpetual Encyclopedia Corporation on behalf of the Source Book. The salesman offered to give the physician a set of the encyclopedia free if it was kept in the hospital for reference in a later sales campaign. The physician's father (also a physician) had some time previously bought a set of encyclopedia and the salesman was asked if it might not be the same publication, but assured the physician that that was not possible, because the Source Book was an entirely new encyclopedia, never before on sale. The physician subscribed for the encyclopedia and upon receipt of the books compared them with the encyclopedia purchased by his father, with whom he lived. He found the Source Book to be identical with the American Reference Library purchased by his father from respondent Walter H. Gorham's company. He immediately wrote respondent Perpetual Encyclopedia Corporation advising said respondent of the misrepresentations of its agent, but respondent continued its efforts to collect from him the price of the encyclopedia, and wrote him numerous threatening letters.

The sale by respondent Perpetual Encyclopedia Corporation of a set of books under three different titles at the same time, the text and content material of which are identical, with the knowledge that said set of books is to be resold to the public under said different titles, is unfair and misleading to the public and to respondent's competitors, and has the tendency and capacity to mislead and deceive the purchasing public and causes members of the public to purchase the said set of books under two or more of said titles in the belief that they are separate, different, and distinct sets of books.

PAR. 9. The original Home and School Reference Work was prepared by Mr. H. M. Dixon especially for teachers, parents, and

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boys and girls in school. When first offered for sale to the public it consisted of 6 volumes, 5 of them containing material alphabetically arranged, and 1 containing material of miscellaneous character not so arranged. The 5 volumes of encyclopedic material contained 3,200 pages of text, and volume 6 contained 594 pages of miscellaneous material, together with 85 pages of topical index. The encyclopedia was later expanded to 10 volumes, 7 of them being alphabetically arranged, and 3 not so arranged, containing miscellaneous material in the nature of study guides. The text of the first 7 volumes of the enlarged edition, containing encyclopedic material alphabetically arranged, was basically identical with the text of the first 5 volumes of the original 1913 edition. These 7 volumes contained 3,200 pages of text, and volumes 8, 9, and 10 of miscellaneous material contained approximately 1,476 pages, together with the 85 pages of topical index in the original edition.

Before Mr. Dixon sold the plates of the encyclopedia to respondents Frank J. Mackey and H. C. Sherman he had made revisions in the work. There were in evidence a complete set of the original edition of Home and School Reference Work published in 1913, and volume 1 of the 1922 edition, both published by H. M. Dixon; volume 1 of the 1923 edition, the first one published by respondent Perpetual Encyclopedia Corporation, volume 1 of the 1924 edition, and a complete set of the 1929 edition, the two latter editions being published by respondent Perpetual Encyclopedia Corporation under the title Source Book.

A comparison of volume 1 of the 1922 edition with volume 1 of the original 1913 edition, both published by H. M. Dixon, shows about 28 substantial revisions in 488 pages of reading matter, covering about 1,380 topics; or, approximately 2 percent of the articles were revised. In addition, the 1920 census figures of population were substituted where necessary. Only one volume of the 1922 edition was in evidence, so no further comparison was possible.

Shortly after respondents Frank J. Mackey and H. C. Sherman purchased the plates of the encyclopedia an edition was published in 1923 under the title Home and School Reference Work by respondent Perpetual Encyclopedia Corporation. Comparison of volume 1 of the 1923 edition with volume 1 of the 1922 edition published by Dixon shows substantial changes in five articles of the 1,380 topics contained in the volume, amounting to a revision of about seven twentieths of 1 percent. The revised articles were long articles, dealing with Canadian topics, so that more than 1 percent of the material in the 488 pages contained in the volume, measured in inches, was rewritten. In addition, there were 25 sheets of maps,

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color plates, and illustrations in the 1923 edition as against 11 sheets in the 1922 edition.

Comparing volume 1 of the 1924 edition published by respondent Perpetual Encyclopedia Corporation under the title Source Book with volume 1 of the 1923 edition published by said respondent under the title Home and School Reference Work, shows revisions of about one half of 1 percent in the 1,380 topics, together with 28 color plates, maps, and illustrations, an increase of 3. A comparison of volume 1 of the 1924 edition with volume 1 of the original 1913 edition shows a revision in 40 articles of the 1,380 contained in the volumes, or about 2.9 percent.

The only complete set of the encyclopedia as published by respondent Perpetual Encyclopedia Corporation introduced in evidence was the edition published in 1929. It comprises 10 volumes, the first 7 being encyclopedic material, alphabetically arranged, and consisting of 3,200 pages, as did the original 1913 edition published by Dixon. The last 3 volumes contain miscellaneous material consisting of 1,476 pages, together with the 85 pages of topical index included in the original 1913 edition and an alphabetical index of about 50 pages added by respondent Perpetual Encyclopedia Corporation. The number of volumes and the pagination in the 1929 edition is identical with that of the 1922 edition published by H. M. Dixon.

A comparison of volume 1 of the 1929 edition with volume 1 of the 1924 edition, both published by respondent Perpetual Encyclopedia Corporation, showed 21 revisions in the 1,380 topics, or about 1½ percent. The 1929 edition in addition had 33 sheets of maps, illustrations and color plates as compared with 28 in the 1924 edition. The revisions were in longer articles so the revised space in inches was greater in percentage than that of number of articles. As compared with the original 1913 edition, there was a revision of about 4.4 percent of the articles in the 1929 edition, as shown by a comparison of the first volumes of each set.

The above comparisons were all of the first volume of the various editions, containing 488 pages out of a total of 3,200 pages of encyclopedic material contained in the encyclopedia. Two complete sets of the work were introduced in evidence, the original 1913 edition, published by Dixon, and the 1929 edition published by respondent Perpetual Encyclopedia Corporation, and volumes 5 and 6 of these two editions, covering pages 1,897 to 2,824, a total of 928 pages, were compared. There were found to be about 80 revisions in approximately 2,470 topics included in the two volumes, or a revision of about 3 percent in number of articles. The revisions all

were made in the longer articles. There were about six new articles included in the 1929 edition, and 62 pages of color plates, maps, and illustrations, as compared with 14 in the two volumes of the 1913 edition. In addition, the 1920 census figures were inserted in place of the 1910 figures where required. The pagination of the encyclopedic material in the two sets is identical.

The nonencyclopedic material has been entirely rewritten as compared with the original 1913 edition. In that edition it was contained in volume 6, and comprised 678 pages, running from 3,201 to 3,879; in the 1924 and 1929 editions it appears in volumes 8, 9, and 10, and comprises 1,476 pages, from page 3,201 to 4,696B. The rewriting and enlargement of the nonencyclopedic material was done by H. M. Dixon, in the 1922 edition. This material appears in the identical words and illustrations in the 1924 edition as it does in the 1929 edition. The material includes a wide variety of topics, arranged in no particular order.

There was practically no revision of the encyclopedia in the editions published from 1924 to 1929. Respondent Perpetual Encyclopedia Corporation printed the encyclopedia in editions of 20,000 volumes, and there were a number of editions printed during that period, including one dated 1924, and one dated 1926. While the revisions in the 1922 edition, published by Mr. Dixon, and the 1929 edition, published by respondent Perpetual Encyclopedia Corporation, might be called substantial, inasmuch as they involved considerable work in bringing population figures up-to-date, and noted changes brought about by the war, they are far from a complete revision. Testimony of witnesses who owned sets issued subsequent to 1924 called attention to articles which obviously had not been changed since the 1913 edition, such as the article on automobiles.

The revisions made by respondent Perpetual Encyclopedia Corporation in the text and content material of the Home and School Reference Work subsequent to the acquisition of the plates of said encyclopedia in 1922 from H. M. Dixon, did not constitute a complete revision of the publication, and were not such revisions as to make it an up-to-date encyclopedia.

PAR. 10. Respondent Perpetual Encyclopedia Corporation was engaged in the sale of its encyclopedia at retail to subscribers throughout the United States from the date of its organization in 1922 to December 1, 1927, and has been, and is now, selling said encyclopedia at wholesale to jobbers who resell it to the public at retail. Sales at retail by respondent Perpetual Encyclopedia Corporation during the years 1924, 1925, and 1926 were approximately \$1,500,000 per year, a total of \$4,500,000 for the 3 years. Retail sales for the years

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1923 and 1927 were not available. Sales at wholesale to jobbers by respondent Perpetual Encyclopedia Corporation during the years 1924, 1925, and 1926 amounted to approximately 25,000 sets per year. While the prices charged the various jobbers for the encyclopedia differed during these years, the average wholesale price for the publication bound in buckram was \$11.44, amounting to \$286,000 per year, or \$858,000 for the 3 years for which figures are available. No figures were available for the years 1923 and 1927. Thus, during the years 1924, 1925, and 1926, total sales of respondent Perpetual Encyclopedia Corporation exceeded \$5,000,000, to which should be added the wholesale and retail sales for the years 1923 and 1927. During the years 1924 and 1925 the encyclopedia was being printed in editions of 20,000 sets each.

Branch offices for the sale of its encyclopedia were maintained by respondent Perpetual Encyclopedia Corporation in Denver, Colo.; New York, N.Y.; San Francisco and Los Angeles, Calif. Said respondent also had a subsidiary company operating in Canada under the name Home and School Education Society, Ltd., with headquarters in Toronto, Canada, of which company respondents Frank J. Mackey, Warren T. Davis, Robert T. Mackey, and Harold C. Sherman were president, vice president, treasurer and secretary, respectively. The Canadian company formerly sold the encyclopedia under the name Home and School Reference Work, and at the time of the hearings in this proceeding sold it under the name of Source Book. The stockholdings of respondent Perpetual Encyclopedia Corporation were sold to respondent Source Research Council, Inc., on December 21, 1927.

Under a contract with respondent Source Research Council, Inc., respondent Perpetual Encyclopedia Corporation is guaranteed the sale of not less than 10,000 sets of the Source Book per year, at a royalty of \$4 per set, or \$40,000 a year, in addition to its sales to jobbers.

Respondent Frank J. Mackey testified that on December 1, 1927, respondent Perpetual Encyclopedia Corporation ceased selling its encyclopedia at retail, and since that date had been selling only at wholesale to jobbers; that respondent Source Research Council, Inc., was organized for the purpose of selling the Source Book at retail; and that there was no connection of any kind, fiduciary or otherwise, between himself and respondent Source Research Council, Inc., or between respondent Perpetual Encyclopedia Corporation and respondent Source Research Council, Inc., other than that of vendor and vendee of the encyclopedia. The facts relative to the organization of respondent Source Research Council, Inc., are as follows:

Respondent Perpetual Encyclopedia Corporation on November 14, 1927, entered into a contract with respondent Warren T. Davis, by

which respondent Davis agreed "to organize a distributing company to carry on the sale of said publication (Source Book) and to assign the contract to the company when fully organized, * * * said distributing company to perform all the obligations set forth in this contract." The company was to be capitalized at \$100,000. The company to which the contract was assigned was respondent Source Research Council, Inc. The date of incorporation of respondent Source Research Council, Inc., was November 30, 1927. Mr. Davis and his assignee agreed to buy 10,000 sets of the Source Book each year from respondent Perpetual Encyclopedia Corporation, and to market them at retail outside the territory occupied by the wholesalers who may be then connected with respondent Perpetual Encyclopedia Corporation. These wholesalers had territory in Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia. A royalty of \$4 a set was to be paid by the distributor to respondent Perpetual Encyclopedia Corporation on 10,000 sets a year. The distributor contracted to buy at cost respondent Perpetual Encyclopedia Corporation's sales equipment on hand November 30, 1927; to fill contracts of respondent Perpetual Encyclopedia Corporation with subscribers for binders, loose-leaf service and research service; to take over the office space leases as surrendered from time to time by respondent Perpetual Encyclopedia Corporation; to purchase extension service pages from respondent Perpetual Encyclopedia Corporation, exclusively. On its part respondent Perpetual Encyclopedia Corporation gave the distributor exclusive right to sell except as to territory occupied by wholesalers doing business with such respondent November 30, 1927; to sell to the distributors all Source Book sets ordered from time to time; to revise the publication from time to time as the distributor recommended; to maintain a research department, and to give such service to the distributor at cost; to edit and print, for more than 10 years beyond the life of the contract, a loose-leaf service of 96 pages or more, of merit equal to that of such service formerly maintained; to sell such loose-leaf service to distributor at 24 cents a copy; to let distributor pick all he cared to from the sales force and field force employees of the company and to verify their records; to give President and Manager Davis advice and counsel as to how best to conduct the business; to furnish sales samples at cost. Each party to the contract agreed to assist the other in carrying out the contract. The contract was made for five years. This contract was ratified and accepted by respondent Source Research Council, Inc., December 20, 1927.

Respondent Perpetual Encyclopedia Corporation's holdings in School Methods Publishing Co., Ltd., of Canada, have been sold to respondent Source Research Council, Inc.

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Respondent Perpetual Encyclopedia Corporation and respondent Source Research Council, Inc., are closely connected, in addition to the aforesaid contract. Respondent Source Research Council, Inc., buys its books and loose-leaf supplements from respondent Perpetual Encyclopedia Corporation; used the latter company's research bureau for the first year, and then took it over completely; took over all office employees necessary when it began business, and has taken over additional ones since; took over practically the entire sales force; agrees to answer any inquiries to research bureau by subscribers of Perpetual Encyclopedia Corporation and agrees to fulfill all contractual obligations of latter company with its subscribers; took over lease of office space occupied by Perpetual Encyclopedia Corporation; took over and used all sales equipment, including advertising material, booklets, and testimonial letters; and reprinted and used all "broadsides", contract forms and other similar material which bore the name of Perpetual Encyclopedia Corporation. The two companies consult together as to the content material of the loose-leaf service and revisions of the encyclopedia, and respondent Frank J. Mackey is an adviser of respondent Source Research Council, Inc., as to the best method of conducting the business.

For the first year of its existence respondent Perpetual Encyclopedia Corporation did all the collecting of accounts for respondent Source Research Council, Inc., the latter respondent not assuming the collections until December 1, 1928. No money can be withdrawn from the bank by respondent Source Research Council, Inc., unless authorized by respondent Robert T. Mackey, who is auditor of respondent Source Research Council, Inc., and treasurer of respondent Perpetual Encyclopedia Corporation. All the officers, directors, and incorporators of respondent Source Research Council, Inc., were employees of respondent Perpetual Encyclopedia Corporation at the time respondent Source Research Council, Inc., was organized, and respondent Harold C. Sherman, secretary and financial backer of respondent Perpetual Encyclopedia Corporation, loaned the money to respondent Warren T. Davis, president, and respondent John J. Hennessy, vice president, to enable them to buy the stock standing in their names on the books of respondent Source Research Council, Inc. Respondent Sherman held said stock as collateral for the loans. Other than an obligation to buy a minimum of 10,000 sets of encyclopedia each year, and pay a royalty of \$4 per set, a total of \$40,000 per year, there was no consideration of any kind paid by respondent Source Research Council, over to respondent Perpetual Encyclopedia Corporation for the retail business of the latter respondent, amounting to approximately \$1,500,000 per year, or for any of the other

benefits under the contract received by respondent Source Research Council, Inc.

Respondent Frank J. Mackey attended practically all of the hearings in this proceeding throughout the United States and showed a thorough familiarity with the business of respondent Source Research Council, Inc., answering any questions arising as to that respondent's activities, and on one occasion acting for said respondent in an attempt to appease a dissatisfied customer of said respondent who had testified.

From the above facts, the Commission finds that respondent Source Research Council, Inc., is controlled by respondents Perpetual Encyclopedia Corporation and Frank J. Mackey, and follows the policies dictated by said respondents.

PAR. 11. Respondent Perpetual Encyclopedia Corporation includes with its encyclopedia when sold to the public a loose-leaf extension service which is sent every 6 months to the subscribers under certain conditions, and a certificate of membership in a research bureau maintained by respondent.

The loose-leaf extension service is prepared by employees of the respondent and is dated January 1 and July 1 of each year. The purpose of the semiannual supplements is to keep the encyclopedia up to date. It contains approximately 125 pages per issue, and the material contained therein consists principally of clippings of current events taken from newspapers and magazines, and photographs which are purchased from companies which make a specialty of supplying photographs of events of current interest throughout the world. It is sold as part of the encyclopedia.

In order to receive the loose-leaf supplements it is necessary for a subscriber to send in a coupon twice a year, together with a sum of money. Formerly a charge of 50 cents or 24 cents was made for each supplement, and in many instances subscribers paying the same price for the encyclopedia were charged different prices for the supplements. Thus, one subscriber paying \$69.50 for the encyclopedia paid 50 cents each for the supplements, and another subscriber in the same year paying \$69.50 for the encyclopedia only paid 24 cents for the supplements; one subscriber paying \$49.50 for the encyclopedia paid 50 cents for the supplements, as did another subscriber in the same month who paid \$69.50 for the encyclopedia. In recent years the price of the supplements has been 24 cents per issue. In some instances, where subscribers objected that the supplements were represented as being free, respondent canceled the extra payments and sent the supplements without extra charge. In no instance was this done except after vigorous protest on the part of the subscriber.

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Books of 20 coupons, covering ten years, are supplied by respondent to subscribers for their use in sending for the loose-leaf supplements, and the subscriber has to write his name and address on the coupon and send it to respondent, together with the additional money, in order to receive the supplement. Respondent represented that the additional charge was to cover "wrapping and mailing." Officers of respondent were unable to tell how much it cost to prepare one issue of the supplements, and they were sent to subscribers through the mail, at a cost of 4 cents each. The coupon books are not received by the subscriber until he receives the set of encyclopedia, and sometimes even after that.

At the time of solicitation respondent's salesmen do not inform the subscriber that there will be an additional amount to be paid to receive the loose-leaf supplements, but represent said supplements to be part of the service rendered by respondent at the price paid in the contract. Said salesmen represent that the subscribers are paying only for the loose-leaf supplements, or research bureau privileges, and that the encyclopedia is free. In fact, the subscriber, in order to obtain the loose-leaf supplements, has to pay either \$1 a year, or 48 cents a year extra, making a total of \$10 or \$4.80 respectively, over the 10-year period, above the price set forth in the contract, which is represented as the total price for the said services. Said representations by respondent's salesmen and representatives are made with the knowledge and approval of respondent, and are false, deceptive, and misleading.

The certificate of membership in the research bureau given to subscribers to its encyclopedia by respondent entitles the subscriber to send in one question a week to a research bureau maintained by respondent, and have it answered. Many subscribers availed themselves of this privilege and received satisfactory replies. Some complaints of the service rendered by the research bureau were made, but it is found that the research bureau service is adequate.

Respondent Source Research Bureau, Inc., furnishes loose-leaf supplements, which it buys from respondent perpetual Encyclopedia Corporation, and research bureau service to its subscribers in the same way as does respondent Perpetual Encyclopedia Corporation, but charges only 24 cents for each supplement. Its salesmen and representatives make the same false, deceptive, and misleading statements to subscribers regarding the loose-leaf supplement service as do salesmen for respondent Perpetual Encyclopedia Corporation.

Respondent North American Publishing Co., Inc., sold loose-leaf supplements and research bureau privileges to its subscribers in the same way and manner as did respondent Perpetual Encyclopedia

Corporation. It purchased its loose-leaf supplements from respondent Perpetual Encyclopedia Corporation under contract, and charged its subscribers 24 cents for each supplement. The representations made by its salesmen to subscribers regarding the loose-leaf supplements were similar to those made by the salesmen of the two respondents referred to above, and were false, deceptive, and misleading.

Respondent Walter H. Gorham sold loose-leaf supplements and research bureau privileges to its subscribers with the encyclopedia. Said respondent purchased the loose-leaf supplements from respondent Perpetual Encyclopedia Corporation under contract. Up until a short time before respondent Walter H. Gorham ceased business he charged subscribers 24 cents apiece for the supplements, but at that time, and until he went out of business, he supplied the loose-leaf supplements to subscribers without charge, upon receipt of a coupon. Said respondent's salesmen made the same false, deceptive, and misleading statements to subscribers regarding the loose-leaf supplement service as did salesmen for respondent Perpetual Encyclopedia Corporation.

Respondent Source Research Council, Inc., has taken over and is operating the research bureau formerly operated by respondent Perpetual Encyclopedia Corporation, and the finding of the Commission as to said research bureau as maintained by respondent Perpetual Encyclopedia Corporation is made as to respondent Source Research Council, Inc. While respondent North American Publishing Co., Inc., sold research bureau privileges with the encyclopedia, as did the other corporation respondents herein, there is no evidence in the record that it actually maintained any research bureau. Respondent Walter H. Gorham sold research bureau privileges to his subscribers, with the encyclopedia. Said respondent testified that he bought his research bureau service from an editor in New York City, when necessary.

Making subscribers pay an additional sum of money to obtain copies of the loose-leaf supplements, as is done by respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., North American Publishing Co., Inc., and as was formerly done by respondent Walter H. Gorham, when said loose-leaf supplement service for a period of 10 years is included in the contract price paid by said subscribers, and is represented as one of the services to be received under the contract, is unfair to said subscribers, and to respondents' competitors who do not furnish such loose-leaf supplement service, or who do furnish such service without additional cost.

PAR. 12. Respondents Perpetual Encyclopedia Corporation (from November, 1922, to December 1, 1927), Source Research Council,

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Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., sell the encyclopedia published by respondent Perpetual Encyclopedia Corporation, at retail to the public by salesmen, on the subscription plan. Said salesmen traveled throughout the various States of the United States calling upon all classes of the public soliciting the sale of the encyclopedia. The salesmen were obtained through advertisements in the daily papers of various cities and towns, by employment from other subscription book companies, and by other means. Many of the said salesmen were men who had spent practically all their business lives in the sale of subscription books, and were not restricted by respondents in their sales methods. The latter class of salesmen were called "salesmanagers" or "crew managers", and were given authority by respondents Perpetual Encyclopedia Corporation and Source Research Council, Inc., to employ other salesmen and reinstruct them in the method of selling the encyclopedia. Said salesmanagers also had authority to send out "lead letters" in their own names, or names of fictitious companies or organizations. Respondent Edmund P. Rucker was a salesmanager of this type, and when he worked for respondent Perpetual Encyclopedia Corporation hired and trained men and women to sell the encyclopedia, and at the time of the hearings in this proceeding was doing the same for respondent Source Research Council, Inc. Such salesmanagers and crew managers receive an extra commission on the sales made by the salesmen employed by them. Respondent Rucker advertised for salesmen or saleswomen in the Chicago Tribune and in newspapers of other cities, and those answering the advertisements would be given a printed or typewritten sales talk to learn, and a course of training in sales methods by respondent Rucker. They were also required to sign a contract with respondents Perpetual Encyclopedia Corporation or Source Research Council, Inc. All salesmen were supplied by respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., with a sales kit and instructed in the use of the various articles contained therein.

The sales kits supplied salesmen by respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., and Walter H. Gorham contained a prospectus, containing specimen pages and illustrations from the encyclopedia; a "stretcher", which is a folding board showing the backs of the 10 volumes of the set and a loose-leaf binder, and the bindings in which the encyclopedia is sold; forms of printed contracts at various prices for the different

bindings, including a form of contract in full leather at a price of \$130; a "broadside", which is a large 4-page advertising folder; other advertising literature about the encyclopedia, including copies of many testimonial letters, without dates, photographs of a billboard advertisement of the encyclopedia, and a blueprint describing the research bureau service; a binder containing copies of many letters sent to the research bureau and the replies thereto; a form of certificate in the research bureau; a copy of the monthly business forecast sent to subscribers; a copy of the monthly project bulletin sent to parents and teachers; and sample pages of the semiannual loose-leaf extension service.

The sales talks taught salesmen and representatives of the respondents instructed them in the use of the various articles in the sales kits, and said salesmen and representatives repeated said sales talks and exhibited the articles in the sales kits to prospective subscribers in soliciting the sale of respondents' encyclopedia. If a prospective customer became a subscriber, the salesman required him to sign a contract or order in duplicate and left a copy of the contract or order with the subscriber. The salesman collected a cash payment from the subscriber which he sent with the original contract to the particular respondent for whom the salesman was working. The respondent shipped the encyclopedia by parcel post or express from its place of business in Chicago, in the case of respondents Perpetual Encyclopedia Corporation and Source Research Council, Inc., and Walter H. Gorham, or New York City, in the case of North American Publishing Co., Inc., to the subscriber, at the subscribers expense, and proceeded to collect the deferred payments provided for in the contract or order.

PAR. 13. During the time that respondent Perpetual Encyclopedia Corporation was selling its encyclopedia at retail it used several different forms of contracts, or order forms. Certain of these contracts, or order forms, were for use with teachers, and others for use with other classes of subscribers. The contract, or order form, used with teachers contained a proviso that in the event that the subscriber did not teach school during the year it would be cancelled. The form of the contract, or order form, generally used by said respondent up until it ceased selling at retail, was as follows:

GENTLEMEN: Please deliver to any common carrier, transportation charges collect, addressed to me:

1. One set of the Source Book, comprising ten (10) volumes in Cameo Binding, a replica of the Fine Arts Bindings of the Twelfth and Thirteenth Centuries.

2. Enroll my name as a subscriber of the Perpetual Pictured Semi-Annual Loose-Leaf Extension Service for Ten Years, as provided in the coupons.

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3. Enroll my name as a subscriber of the Source Bureau of Research Privilege for Ten Years in accordance with Registered Certificate of Membership.

4. It is also understood that I am to receive the 12 monthly Business Forecast Bulletins.

For which I promise to pay to your order as follows: ----- with order and ----- each thirty days thereafter until I have paid the full sum of \$69.50 which covers the total cost of all benefits described above.

It is agreed that this contract, when accepted by the publishers, is unconditional and becomes due and payable in full upon non-fulfillment of any of its conditions. Receipt of a copy of this agreement is hereby acknowledged.

This contract is not subject to cancellation and will not be affected by any agreement not endorsed hereon.

Name-----Residence address-----
 Business position-----Town-----State-----
 Firm name-----Business address-----

The Perpetual Pictured Semi-Annual Loose-Leaf Extension Service and Research Privileges may be obtained after the 10-year period at a cost of \$12 per year, payable in advance. Dated-----.

During the years 1923, 1924, and 1926 respondent Perpetual Encyclopedia Corporation used the above contract or order forms, with the name of its encyclopedia printed in some of the contracts, or order forms, as Source Book, and in others as Home and School Reference Work. Said respondent, during the years 1923 and 1924, also used contracts, or order forms printed in the name of Home and School Education Society for its encyclopedia under the title Home and School Reference Work. Another form of contract used by respondent during the year 1924 was in the name of Home and School Education Society, 104 South Michigan Avenue, Chicago, Illinois, and had printed in heavy black type at the top of the contract the words "Publicity Department—Special Account." The latter form of contract did not give the subscriber a membership in the Bureau of Research, as did the other forms of contract used that same year, and did not give the monthly bulletins. The price charged for the Cameo binding in this form of contract was also higher than for said binding in the form of contract set forth above.

The prices charged by respondent Perpetual Encyclopedia Corporation for its encyclopedia were not uniform to different subscribers in the same year for the same bindings. Thus, in the year 1924, some subscribers paid \$79.50 for the Source Book bound in "Full Artcraft Binding, a replica of the Fine Arts Bindings of the Twelfth and Thirteenth Centuries", while other subscribers paid only \$69.50 for the same binding; in the same year the "Cameo Binding, a replica of the Fine Arts Bindings of the Twelfth and Thirteenth Centuries" was sold to some subscribers at \$69.50 per set, to other subscribers at \$79, and to still others at \$79.50; in the year 1925, the same "Full

Arctcraft" binding was sold to subscribers at \$69.50 and \$79.50; in the year 1926, the "Full Arctcraft" binding was sold to different subscribers at \$79.50 and \$89.50 per set, and the "Medallion Binding, a replica of the Fine Bindings of the Middle Ages", was sold to some subscribers at \$69.50 per set, while others only had to pay \$59.50; in the year 1927, the "Full Arctcraft" binding was sold to some subscribers at \$79.50 per set, while others only had to pay \$69.50 for the same binding. The different prices for the same binding as set forth above were being charged different subscribers at the same time by said respondent.

The form of contract set forth above, and supplied to and used by salesmen and representatives of respondent Perpetual Encyclopedia Corporation, had printed thereon in red ink immediately after the price, the words "which covers the total cost of all benefits described above." This statement is false, deceptive, and misleading, because the price set forth in the contract is not the total cost, because in order to obtain the semiannual loose-leaf extension service the subscriber has to send in a coupon, together with either 50 cents or 24 cents for each issue, making this service cost him an additional \$10 or \$4.80 over the 10-year period. Respondent attempts to justify said additional charge by stating in the contract that the loose-leaf service will be supplied "as provided in the coupons", and that the coupons have printed on them the additional sum to be remitted. The fact is that salesmen of respondent do not advise subscribers of the additional sum, and the coupons are not shown to subscribers, but are received days after the contract is signed, sometimes with the encyclopedia and sometimes even after the books have been received by the subscriber.

The form of contract supplied to and used by salesmen of respondent Perpetual Encyclopedia Corporation bearing the words "Publicity Department—Special Contract" is false, deceptive, and misleading, because the purpose of the contract, as used by salesmen of respondent to prospective subscribers was to lead said subscribers to believe that they were being given a special, low price for the encyclopedia as a means of advertising, when in truth and in fact said subscribers paid \$79 for the encyclopedia under this form of contract, whereas other subscribers were paying only \$69.50 for the said encyclopedia in the same binding at the same time.

Respondent Perpetual Encyclopedia Corporation also had a form of contract in which the price of the encyclopedia in "Full Flexible Morocco Binding Full Gilt Edges" is \$130. Under this contract the loose-leaf extension service and the research bureau service is only given for one year, and the subscriber is given the "privilege of

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renewing" his membership for these services at "\$12 per year, payable in advance." Every salesman and representative of said respondent was given copies of this contract, or order form, in his sales kit, and instructed in the use thereof. The sales talk which all salesmen had to learn provided that this form of contract should be first shown the prospect, with the statement that \$130 was the regular price of the encyclopedia, and \$120 was the regular price of the two services, and that later on the encyclopedia and services would be sold for \$250. The use of this form of contract by respondent is false, deceptive, and misleading, because \$130 is not the regular price of said encyclopedia, and, in fact, respondent Frank J. Mackey, president of respondent Perpetual Encyclopedia Corporation, testified that his company had never made any sales of its encyclopedia at the price of \$130 per set; and said respondent has never sold the loose-leaf and research bureau services at \$12 per year, nor has it ever sold said services separately from the set of books to any subscribers or others.

In none of the forms of contracts, or order forms, used by respondent Perpetual Encyclopedia Corporation, is there any description given of what its encyclopedia consists of or contains, nor is there any description on the contract of what the loose-leaf extension service or research bureau privilege consists of, and a prospective subscriber has to rely on the statements and representations made to him by respondent's salesmen in order to be advised of what he is purchasing.

PAR. 14. The contracts, or order forms supplied to and used by salesmen of respondent Source Research Council, Inc., were the same as those generally used by respondent Perpetual Encyclopedia Corporation, copy of which is included in the preceding paragraph, with a change in wording referred to below. Said respondent also used a contract, or order form, especially for teachers, containing a provision cancelling the contract if the teacher did not obtain a teaching position during the year.

Under the contracts or order forms used by respondent Source Research Council, Inc., the prices charged for the encyclopedia are not uniform to different subscribers in the same year for the same binding. One of the contracts in the year 1928 provide for the Source Book in "Cameo binding, a replica of the Fine Arts Bindings of the Twelfth and Thirteenth Centuries" at a price of \$69.50. Another contract in the same year provides for the encyclopedia in "Arctcraft Binding, a replica of the Fine Arts Bindings of the Twelfth and Thirteenth Centuries" at a price of \$79.50. In the upper right-hand corner of each of these contracts is a description

of the binding, which said description is identical on both contracts. Another contract used in 1928 provides for the "Medallion binding, a replica of the Fine Arts Bindings of the French Kings", also at a price of \$69.50.

The forms of contract used by respondent Source Research Council, Inc., lists the four items which are included in the contract and underneath these items provides "For which I promise to pay to your order as follows: _____ with order and _____ every thirty days thereafter until I have paid the full sum of _____." This statement is false, deceptive and misleading, because the price set forth in the contract is not the total cost, because in order to obtain the semi-annual loose-leaf service a subscriber has to send in a coupon, together with 24 cents for each issue, making this service cost him an additional \$4.80 over the 10-year period. Respondent attempts to justify said additional charge by stating in the contract that the loose-leaf service will be supplied "as provided in the coupons", and that the coupons have printed on them the additional sum to be remitted. The fact is that salesmen of respondent do not advise subscribers of the additional sum, and the coupons are not shown to subscribers, but are received days after the contract is signed, sometimes with the encyclopedia and sometimes even after the books have been received by the subscriber.

Respondent Source Research Council, Inc., also uses a form of contract in which the price of the encyclopedia in "Full Flexible Morocco Binding Full Gilt Edges" is \$130. This form of contract is identical with the \$130 contract used by respondent Perpetual Encyclopedia Corporation. Every salesman and representative of respondent Source Research Council, Inc., was supplied with copies of this contract, or order form, and instructed in the use thereof. The sales talk which all salesmen had to learn provided that this form of contract should be first shown the prospect, with the statement that \$130 was the regular price of the encyclopedia, and \$120 was the regular price of the two services, and that later on the encyclopedia and services would be sold for \$250. The same finding is made by the Commission regarding the use of this form of contract by respondent Source Research Council, Inc., as is made in paragraph 13 with reference to the use by respondent Perpetual Encyclopedia Corporation of this same form of contract.

In none of the forms of contracts, or order forms, used by respondent Source Research Council, Inc., is there any description given of what the encyclopedia it sells consists of or contains, nor is there any description on the contract of what the loose-leaf extension service or research bureau privilege consists of, and a prospective subscriber

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has to rely on the statements and representations made to him by respondent's salesmen in order to be advised of what he is purchasing.

PAR. 15. Respondent Walter H. Gorham, trading under the name and style of North American Publishing Co., supplied to his salesmen several different contracts, or order forms, for their use in selling the encyclopedia published by respondent Perpetual Encyclopedia Corporation, both under the title "Home and School Reference Work" and "American Reference Library." One form of contract was similar to that generally used by respondent Perpetual Encyclopedia Corporation, and included in paragraph 13 herein.

Respondent Walter H. Gorham also supplied to his salesmen during the time he was in business contracts which were similar to the contract described above, but which included the following wording:

GENTLEMEN: Express charges collect, I will accept a complimentary set (10 volumes Art Keratol Binding, designs and lettering in gold) of The American Reference Library Encyclopedia, and agree that after delivery and examination, will give my unbiased opinion of the work.

Said contracts were used by said salesmen in securing orders for the said encyclopedia, in connection with the sales talk which promised the subscriber that the encyclopedia would be given to him free of charge in return for an opinion of the encyclopedia and the purchase of the loose-leaf supplement service. The use of such contracts is false, deceptive, and misleading, because respondent Gorham did not give the subscriber a set of the American Reference Library free, nor did he ever give any sets away free, but the encyclopedia is sold by said respondent in connection with the loose-leaf supplement service and research bureau service and the price set forth in the contract is for the books and services, but principally for the books, because said encyclopedia is, in fact, the only tangible article of value received by the subscriber, as the receipt of the services is entirely contingent upon some further action by the subscriber.

Said respondent Walter H. Gorham also supplied to his salesmen, for use by them in soliciting orders for said encyclopedia under the title "Home and School Reference Work", contracts, or order forms, with a price printed thereon of \$165, which said price was crossed out and the price of \$59 printed in red ink in its place. At the same time said respondent also supplied some of his salesmen with similar contracts, or order forms, with a price printed thereon of \$209, which said price was crossed out and the price of \$49 printed in red ink in its place. Both of these contracts had printed across the top margin the words "Advertising Department—Special Contract." In the former contract the binding of the encyclopedia is described as "Half Morocco Leather", and in the latter contract the binding is described as "Full Keratol Morocco Grain." The purpose of

said contracts, or order forms, was to lead the prospective subscriber to believe that the regular and usual price of the encyclopedia was the price printed on the contract, through which a line was drawn, and that the price substituted therefor was a special, reduced price. Salesmen of respondent used said contracts to procure orders for the encyclopedia sold by said respondent. The use of said order forms was false, deceptive, and misleading, because respondent Walter H. Gorham never sold the Home and School Reference Work for prices of \$165 or \$209, and never intended to sell said encyclopedia at those prices; said contracts were not special contracts used only for advertising purposes, but were the forms of contracts regularly supplied to and used by salesmen of said respondent; and said encyclopedia was not bound in Morocco leather.

Respondent Walter H. Gorham also supplied to his salesmen contracts, or order forms, in which the price of the encyclopedia, under the title "American Reference Library" was given as \$130, and other forms in which the price was given as \$110. Said contracts describe the bindings as being "Full Flexible Morocco Full Gilt Edges." The encyclopedia as sold by said respondent was not bound in Morocco leather, and it was never sold for \$130 and \$110, and was never intended to be sold at such prices by respondent. Said contracts, or order forms, were used by salesmen of said respondent in the same way and manner, and for the same purposes, as were similar contracts used by salesmen of respondents Perpetual Encyclopedia Corporation and Source Research Council, Inc., described in the paragraphs immediately preceding, and the use of said contracts by respondent Walter H. Gorham was false, deceptive, and misleading for the reasons therein set forth.

PAR. 16. Respondent North American Publishing Co., Inc., supplied to its salesmen a contract, or order form, to be used in soliciting sales of the encyclopedia sold by it under the title "Home and School Reference Work", which included the encyclopedia, loose-leaf extension and research bureau services. The encyclopedia was described as being bound in "Full Artcraft Leather." A price of \$255 was printed on said contracts, which said price was crossed out and the price of \$74 printed in red ink in its place. Across the top margin of the contract was printed the words "Advertising Department—Special Advertising Contract." The encyclopedia as sold by said respondent was not bound in leather, and it was never sold for \$255, and was never intended to be sold for such a price. The price of \$74 was the regular and usual price at which said respondent always sold the encyclopedia. Salesmen of said respondent used said contracts to procure orders for the encyclopedia. Said contracts were used by salesmen of said respondent in the same way and manner, and for

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the same purposes, as were similar contracts used by salesmen of respondent Walter H. Gorham, described in the preceding paragraph, and the use of said contracts by respondent North American Publishing Co., Inc., was false, deceptive, and misleading for the reasons set forth therein.

Said contracts were also false, deceptive, and misleading because the price of \$74 set forth therein as the price of the books and services was not the total price to be paid by the subscriber, because it was necessary for a subscriber to remit additional sums of money every 6 months for a period of 10 years in order to receive the loose-leaf supplements, which are represented in the contract, and by respondent's salesmen, to be included in the contract price.

PAR. 17. Respondent Perpetual Encyclopedia Corporation, Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., obtained names of prospective subscribers by means of "lead letters" which were, and are, sent by them to lists of names throughout the United States. Enclosed with said lead letters was a post card, to be initialed or signed by the addressee and returned to respondents. The post cards are then given to salesmen of said respondents who call upon such persons and solicit the sale of the encyclopedia. The purpose of the lead letters used by all the respondents was to make the recipient believe that he would be given the encyclopedia free. The language in the lead letters used by the various respondents differed slightly, but was the same in meaning conveyed. Respondent Perpetual Encyclopedia Corporation authorized its sales managers or crew managers to send out such letters themselves, in addition to the letters which it distributed. A lead letter used by a salesman of said respondent, and which is typical of the lead letters used by other salesmen of said respondents, and by respondents themselves, is as follows:

DEAR SIR: This organization has been engaged to make up diversified lists of well-connected business and professional men, as Original Owner's lists of a recently completed reference library that covers the entire range of human knowledge, giving full credit to things American in bold contrast to 95 percent of the encyclopedias being sold in the United States today which are of English origin.

Your interest considered, we are authorized to present you with a complete, fully bound set of this new work, full Artcraft Edition, a replica of the fine art bindings of the XII and XIII centuries, with the compliments of the publishers, and understand us, please, there are no strings attached to this presentation, such as trying to trade you a set of the work for a letter of endorsement or anything of that kind.

The above is an advertising procedure prior to general publicity and is known as "planting" in the subscription book publishing business.

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Kindly initial and mail the enclosed card, confirming the correctness of address (or make corrections) and the writer will see that you are supplied with the complete details, without cost or obligation.

Please treat the foregoing as personal.

The above letter is on a letterhead of Ralph S. Hill and associates, executive service, Monroe Building, Chicago. Ralph S. Hill was a salesman employed by respondent Perpetual Encyclopedia Corporation. Said Hill also used another form of lead letter, making an offer of a complimentary set of the encyclopedia, on a letterhead bearing the name United Press Syndicate—Publicity—Chicago office, Monroe Building—National Advertising and Publicity Campaigns Planned and Executed.

Another salesman of respondent Perpetual Encyclopedia Corporation used a lead letter similar in general wording to the one set forth above, and offering to present to the recipient a complete set of the encyclopedia "with the compliments of the publishers." This letter bore the heading "National Publicity Service, Expert Introductory Service in all Lines, St. Joseph, Mo." It was signed by J. A. Nixon, who was a salesman for said respondent, and later was employed as a salesman by respondent Source Research Council, Inc.

D. D. Dawes, another salesman for respondent Perpetual Encyclopedia Corporation, used a lead letter employing the same general language as those heretofore referred to, bearing the heading "The National Press Syndicate, Consulting Specialists, Chicago Office, 521 Monroe Building—D. D. Dawes, Director of Publishers' Publicity." This letter refers to the encyclopedia as having been edited, reviewed, and revised by America's most learned men—specialists and educators—The Syndicate Brains of America.

Respondent Perpetual Encyclopedia Corporation, under the name "Source Research Bureau", distributed many lead letters which offered to present a copy of the semiannual service without cost.

Respondent Source Research Council, Inc., distributed lead letters stating that the writer is making up an

original owners' list of a recently printed encyclopedia which, with the research facilities, covers the entire range of human knowledge, events, and achievements to date. * * * Our loose-leaf extension keeps the work constantly up to date, * * * For advertising purposes, I am authorized to present you with the latest edition with the compliments of the publishers for the privilege of placing your name on our local list. This is a plan which I am using prior to general publicity.

This offer is based on modern approved business exchange. Your opinion for local reference is valuable to us.

The addressee is asked to treat the letter as "personal and confidential", and it is signed by T. H. Ives, publicity director. Other

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similar letters are signed by R. L. Stice, publicity director, and F. G. Knight. Mr. Ives and Miss Stice are employees in the advertising department of respondent Source Research Council, Inc., and Miss F. G. Knight is director of the research bureau of respondents Perpetual Encyclopedia Corporation and Source Research Council, Inc. A lead letter practically identical in wording with the one used by Ralph S. Hill, but offering to give a "complete section of this work with the compliments of the publishers" was distributed by respondent Source Research Council, Inc., and was signed E. Corbett, manager, advertising department. The address of respondent Source Research Council, Inc., is given as 220 Franklin Street, Buffalo, N.Y. These letters were printed at the direction of R. Wilson, sales manager of Home and School Education Society, Ltd., of Toronto, Canada, a subsidiary of respondent Perpetual Encyclopedia Corporation. The printer in Buffalo, N.Y., printed and mailed from 10,000 to 15,000 of these letters to names selected at the direction of Mr. Wilson. Wilson paid for the printing of said letters, and provided a signature cut bearing the name of E. Corbett to be used by the printer.

Respondent North American Publishing Co., Inc., distributed lead letters which were very similar in wording to those used by Ralph S. Hill and J. A. Nixon, salesmen for respondent Perpetual Encyclopedia Corporation, and offered to present the recipient with the complete set of the encyclopedia with the compliments of the publishers. In addition, the lead letter stated that the encyclopedia had been compiled by "over 200 of the foremost educators of the United States", and included the names of the presidents of Yale, Dartmouth, Johns Hopkins, Boston University, and Massachusetts Institute of Technology. Enclosed with said letters were return slips to be signed by the addressee, stating "I will accept one of your complimentary sets of Home and School Reference Work on your advertising offer" and give an unbiased opinion of the work. These lead letters were signed by W. L. Priebe, president of said respondent (now deceased), and respondent E. L. Priebe.

Respondent Walter H. Gorham, trading under the name and style of North American Publishing Co., used similar lead letters to those heretofore described, offering to present a complimentary set of the encyclopedia. These letters are on the letterhead of American Bureau of Research, 844 Rush Street, Chicago, and are signed H. J. Monroe, manager, advertising department. Another lead letter used by respondent Gorham is on the letterhead of N. N. Gorham, advertising representative, America Fore Building, Chicago, and offers to present a fully bound Keratol de luxe edition of the encyclopedia.

N. N. Gorham is the brother of respondent Walter H. Gorham. Other lead letters used by said respondent were on the letterhead of Bureau of Research Department, 844 Rush Street, Chicago, and signed by W. H. Gorham. Another form of lead letter used by respondent Walter H. Gorham was similar in language to those heretofore referred to, and on the letterhead of North American Publicity Service, 521 Monroe Building, 104 South Michigan Avenue, Chicago, Ill., and signed E. J. Nicholas. It stated that the encyclopedia was endorsed by the American Library Association, and had been "adopted, authorized, and approved by 24 State Bureaus of Education." Neither statement was true. The letter offered to present a copy of the encyclopedia with the compliments of the publishers. The name of E. J. Nicholas appears on the letterhead as manager, Eastern States. This letter was used at the time respondent Gorham had his offices with those of respondent Frank J. Mackey, in the Monroe Building in Chicago. Enclosed with all of these lead letters were cards to be initialed and returned. In some instances they were ordinary post cards, and in others were cards addressed to North American Publishing Co., stating "I will accept one of your complimentary sets of Home and School Reference Work on your advertising offer", and agreeing to give an unbiased opinion of the value of the encyclopedia.

Respondent Perpetual Encyclopedia Corporation also enclosed cards in some of its lead letters stating "I will accept one of your complimentary sets of the Source Book Encyclopedia", and agreeing to give an unbiased opinion of it.

Said lead letters described above are false, deceptive, and misleading in that the letters represent to those receiving them, and they are intended to convey the meaning, that the respondent distributing said letter will present the recipients with a set of the encyclopedia free of cost as an advertising feature in exchange for their opinion of said encyclopedia, and the addresses of said letters initial and return the enclosed card in that belief. In fact, respondents do not, and did not, give away any sets of said encyclopedia free as an advertising feature, and do not, and did not, give any sets of its encyclopedia free to anyone who received such letters, but said encyclopedia was, and is, sold by said respondents in the manner hereinbefore described. Said letters are used solely and intentionally by said respondents for the purpose of obtaining the names of prospects upon whom respondents' salesmen can call for the purpose of soliciting the sale of the encyclopedia. The various names used on the letterheads distributed by said respondents and respondents' salesmen, such as National Publicity Syndicate, United Press Syndicate, and

others, are fictitious names adopted by said respondents and their salesmen to conceal the fact that they are selling books, and there is in fact no organization or service of any kind maintained or existing under such names.

PAR. 18. Respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., supplied to their salesmen as part of their sales kits, and for use in soliciting sales of the encyclopedia, advertising sheets describing the encyclopedia. These advertising sheets were furnished for the purpose of enabling the salesmen to represent to the prospective subscriber that the encyclopedia was to be sold at a greatly increased price at a later date. Salesmen represented the advertising sheets to be reproductions of advertisements which had appeared in the Saturday Evening Post. The sales talks which salesmen were required to learn indicated the point at which these advertising sheets were to be displayed, and instructed the salesmen as to what to say regarding them. To enable the salesmen to show that the encyclopedia was usually sold at a much higher price these advertising sheets had printed on them different prices at which it was claimed the encyclopedia was to be sold at a later date. Thus, one of the advertising sheets used by respondents Perpetual Encyclopedia Corporation and Source Research Council, Inc., gave the price of the encyclopedia as \$130, and the price of the loose-leaf service and research bureau privilege at \$12 per year for 10 years, or a total for the books and service of \$250.

The advertising sheets used by respondent Walter H. Gorham described the publication as Home and School Reference Work, and as American Reference Library. In the latter advertising sheet the 10 volumes of the encyclopedia are priced at \$90, and the services at \$8 per year; one of the former advertising sheets gave the price of the encyclopedia as \$130, and the services at \$7.50 per year for 10 years, \$75, or a total of \$205 for the complete subscription; another one of the advertising sheets priced the encyclopedia at \$90, the loose-leaf service for 10 years at \$75, and the bureau of research service for 10 years at \$40, making the total cost \$205; and still another advertising sheet priced the encyclopedia at \$90 and the loose-leaf service and the bureau of research privilege at \$75 for the 10-year period, making a total of \$165.

These advertising sheets are false, misleading, and deceptive, because the said encyclopedia never sold for the prices printed in said advertising sheets, and it was never sold separately from the services; the services were never sold for the prices set forth in said advertis-

ing sheets, and were never sold separately from the encyclopedia. The statements and representations made by salesmen for the said respondents that said advertising sheets were reproductions of advertisements which had appeared in the Saturday Evening Post were deliberately false statements and representations, because none of said respondents ever advertised in the Saturday Evening Post. Said advertising sheets were supplied to salesmen by said respondents for the purpose of making false and misleading statements to prospective subscribers regarding the books and services, and the prices at which they were sold, and to be used as part of the sales talks supplied by said respondents to their said salesmen, and with the knowledge that the salesmen would use the said advertising sheets in the way and manner described.

PAR. 19. Respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., supplied to their salesmen, for use in selling their encyclopedia, large 4-page advertising folders, called broadsides. These broadsides were printed by respondent Perpetual Encyclopedia Corporation and sold by them to the other respondents. On the first page appears the name of Source Research Bureau, in the case of those used by respondent Perpetual Encyclopedia Corporation; Source Research Council, in the case of those used by respondent Source Research Council, Inc.; and The American Reference Library, in the case of those used by respondent Walter H. Gorham. Practically the whole of the first page is taken up with a list of about 125 names of prominent educators, public men and other prominent men. These names appear under the heading The Service Staff in the broadsides used by respondent Perpetual Encyclopedia Corporation; Editorial Staff in the ones used by respondent Source Research Council, Inc.; and Partial Staff List in the ones used by respondent Walter H. Gorham. The names appearing on the broadsides are taken from a list of names of prominent men and educators appearing in the front of the first volume of the encyclopedia. As different issues of the broadsides were printed many of the names were changed, some being eliminated and others added. These names are referred to by the salesmen as the names of men who contributed articles to the encyclopedia, and who were members of the research bureau staff. The said statements of salesmen are false, deceptive and misleading, because none of the men whose names appear on the broadsides contributed any articles to the encyclopedia, and none of them were members of any staff maintained by the research bureaus of said respondents to whom questions

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could be referred by subscribers for answer, and no questions were ever referred to them by respondents.

Another page of the broadsides makes the statement "Service by 200 specialists", followed by the representation that "the world's best-known scientists, men of letters, and other experts in specialized knowledge" had contributed directly to the work, or had been consulted in its preparation. The further statement is made "Authority: Every important article written by a specialist." All of these statements and representations are false, deceptive, and misleading, because in fact respondents do not maintain 200 specialists, or any specialists, to render service to their subscribers; the articles contained in the encyclopedia were not contributed by leading scientists, men of letters, and other experts; and the important articles were not written by specialists, as the encyclopedia was prepared by a few compilers who wrote all the articles, as described heretofore in paragraph 3, and the articles which were sent to authorities of cities, colleges, or other institutions, to be reviewed were prepared in advance by one of the said compilers, and in many instances were not read by the person to whom they were referred for revision.

The semiannual loose-leaf extension service is described in said broadsides as consisting of "papers prepared in answer to important economic and scientific questions sent in by the cooperative members", and as "an authoritative résumé of all important events." These statements are false, deceptive, and misleading, because the semiannual loose-leaf supplements consist practically entirely of articles clipped from daily newspapers and magazines, together with pictures, and they do not contain articles prepared by authorities, but are compiled by clerks in the offices of respondent Perpetual Encyclopedia Corporation. Said supplements do not contain papers prepared in answer to questions sent in by cooperative members pertaining to important economic and scientific questions.

Salesmen were instructed in the use of said broadsides by said respondents, and were supplied with copies of the broadsides to use in soliciting sales to prospective subscribers. At a certain point in the sales talk, which salesmen were required to learn, they were instructed to show the broadsides to the prospect, and call attention to the various statements and representations contained therein. Said broadsides were used in the way and manner indicated by said salesmen.

PAR. 20. Respondent Perpetual Encyclopedia Corporation printed in the front part of the first volume of its encyclopedia, which it sold at retail under the names Source Book and Home and School Reference Work, and which it sold at wholesale to respondents North

American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., under the titles Home and School Reference Work and American Reference Library a list of about 200 names of distinguished persons, comprising principally college and university presidents, State and city superintendents of schools, and prominent men and women in official and other walks of life. These names appeared under the heading "Contributors, Reviewers and Revisors." The salesmen for respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., were instructed to call the attention of subscribers and prospective subscribers to the names of said prominent men and women, and to state that said men and women had contributed articles to the encyclopedia, or had reviewed and revised articles included in said encyclopedia, and the sales talks prepared for and supplied to said salesmen included such references to said men and women.

Among the names appearing in said encyclopedia were those of Miss Jane Addams, social settlement worker, Hull House, Chicago, Ill.; David P. Barrows, president of the University of California, Berkeley, Calif.; Dr. W. W. Campbell, director of the Lick Observatory, University of California; Mr. Hamilton, California, also a former president of the University of California; Rev. John W. Cavanaugh, former president of University of Notre Dame, South Bend, Ind.; Lotus D. Coffman, president of the University of Minnesota, Minneapolis, Minn.; O. L. Elliott, registrar, Leland Stanford University, Palo Alto, Calif.; S. O. Hartwell, superintendent of schools, St. Paul, Minn.; Forrest R. Moulton, professor of astronomy, University of Chicago, Chicago, Ill.; Orville C. Pratt, superintendent of schools, Spokane, Wash.; H. M. Raymond, president Armour School of Technology, Chicago, Ill.; Walter Dill Scott, president Northwestern University, Evanston, Ill.; William Howard Taft, Chief Justice of the United States, Washington, D.C.; P. C. Tanning, deputy State commissioner of education, St. Paul, Minn.; William A. Wirt, superintendent of schools, Gary, Ind.; Rufus B. Von Kleinschmid, president University of Arizona, Tucson, Ariz.; Ernest H. Lindley, president University of Kansas, Lawrence, Kans.; Charles Evans Hughes, Chief Justice of the United States, Washington, D.C.; and P. C. Harris, Adjutant General of the United States, Washington, D.C. With the exception of the late Chief Justice Taft, Chief Justice Hughes, and Gen. Harris, the other individuals whose names are listed herein appeared as witnesses in this proceeding, and testified on behalf of the Commission.

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Each one of these men and women were specifically asked whether they had prepared any articles for inclusion in the encyclopedia under the names Source Book, Home and School Reference Work or American Reference Library; whether they had reviewed or revised any articles for said encyclopedia under any of the titles under which it was sold; whether they were on any editorial or other staff maintained by said respondents to answer questions sent in to them; and whether their names were being used in the said encyclopedia with their consent, or whether they objected to the use of their names. In every instance the persons who appeared and testified stated that they had not prepared any articles for the said encyclopedia under any name; that they were not, and never had been, members of any editorial or other staff maintained by respondent Perpetual Encyclopedia Corporation, and had not answered any questions referred to them by said respondent, and that no questions had ever been referred to them; that they had not authorized the use of their names by said respondent, and, in fact, did not know that their names were being used in this way, and most of said persons objected to the said use of their names by said respondent.

In some instances these witnesses testified that articles concerning the institution or city with which they were connected had been sent to them at some time in the past for revision, and that such articles had been referred to their secretaries or other persons for revision. In only four instances did the witness recall having received and checked any article submitted by respondent Perpetual Encyclopedia Corporation, and in each of these cases the witness did not consider that the correcting of statistical figures appearing in the articles made them contributors, reviewers and revisors of the encyclopedia, and they had not given permission to use their names in this way. Miss Jane Addams stated that she did O.K. a biographical sketch of herself which was sent to her already prepared; Rev. Mathew J. Walsh, C.S.C., afterward president of Notre Dame University, prepared some articles upon Catholic subjects by direction of Rev. John W. Cavanaugh, president of Notre Dame University, but did not authorize the use of his name and did not know it was being used until 1925. Prof. P. C. Tonning checked some figures in an article submitted by H. M. Dixon, but gave no authority to use his name, and Prof. O. C. Pratt checked and corrected some figures in an article relating to the city of Spokane, but gave no authorization to use his name, and did not know it was being so used.

As before stated, when the encyclopedia was being compiled by H. M. Dixon, articles were prepared and sent to various persons throughout the country connected with institutions or cities con-

taining information regarding said institutions or cities, with the request that the person to whom addressed look over the material and correct any inaccuracy in it. The articles submitted consisted entirely of biographical sketches and articles concerning the city, State, or institution with which the person was connected, and were not scientific or articles of similar character. Accompanying the prepared article was a letter making the request that the article be corrected, and in an obscure paragraph would be a request that the name of the person could be used by the publishers in their encyclopedia. This request, however, was only made of the more prominent persons addressed. Unless that specific request was answered and the person made an objection to the use of his name, the name was printed by respondent Perpetual Encyclopedia Corporation as a contributor, reviewer, and reviser. If no reply to such request was made, the name was used provided the individual was of sufficient prominence to appeal to the publisher as of advantage to his publication. At the time the encyclopedia was first prepared in 1912 to 1914, and again at the time of the revision made in 1922, such articles and letters were sent to various individuals whose names appeared in the encyclopedia. Clarence Dixon, who is a nephew of H. M. Dixon, the original compiler of the encyclopedia, and who was retained by respondent Frank J. Mackey for sometime in the employ of the respondent Perpetual Encyclopedia Corporation, testified to this method of preparing the encyclopedia.

With few exceptions the names of prominent educators and others used in the encyclopedia were those of men who were distinguished and well known as writers and teachers of particular subjects, such as Dr. Walter Dill Scott, who is well known as a writer and teacher of psychology; Dr. Forrest R. Moulton, who is known as a writer and teacher of astronomy; Dr. Ernest H. Lindley, well known for his work on psychology; Dr. Lotus D. Coffman, an expert on education; Dr. David P. Barrows, a distinguished writer and teacher of political science; Dr. Rufus B. Von Kleinschmid, a recognized writer and teacher on psychology, and many others. Many of the witnesses who testified for the Commission stated that they did not answer the request that their names be used, and did not know that such use was being made of their names until their attention was called to it. In a few instances they wrote to respondent Perpetual Encyclopedia Corporation specifically objecting to the use of their names, and usually in such cases said respondent removed the name of the person objecting from the list which appeared in the next issue of the encyclopedia. Unless such specific objection was made, however, the use of the names was continued. In the edition pub-

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lished by respondent Perpetual Encyclopedia Corporation in 1929, many changes were made in the list of names appearing in the front of volume 1 of the encyclopedia. This edition of the encyclopedia was issued after the beginning of the hearings in this proceeding.

In replying to a letter written by Prof. H. M. Raymond, president of the Armour Institute of Technology, relating to a controversy as to what Prof. Raymond had written for the encyclopedia, the secretary of respondent Frank J. Mackey wrote:

In our examination we have not to date been able to find where Mr. Dixon found the name of a single educator among the editors, contributors, and reviewers who has not actually contributed an article.

Respondent Frank J. Mackey was fully informed at the time he acquired the plates of said encyclopedia from H. M. Dixon as to the manner in which the lists of contributors, reviewers, and revisers had been obtained, and the letter above quoted was dated subsequent to the beginning of the investigation in this proceeding, and at a time that said respondent Mackey had been informed of the questioning by the Commission of the use of these names.

The names of the late Chief Justice William Howard Taft and of Chief Justice Charles Evans Hughes were used without asking the consent of either of said jurists, and such use was attempted to be justified because short biographical sketches were mailed to them by H. M. Dixon and returned after some corrections had been made by their secretaries. No permission has ever been received by said respondent for the use of the name of Adj. Gen. P. C. Harris, and such use was based on an article regarding the Army of the United States which had been sent to his office.

The correcting of a statistical or biographical article, or an article relating to an institution, city, or State, does not make the one doing it a contributor to the publication in which it is used, and in the opinion of the witnesses called by the Commission does not make such person a reviewer or reviser of said publication. Before including the names of any individuals in a publication, specific consent, therefore, should be obtained, and the lack of such consent renders the use of such names unauthorized. The witnesses called by the Commission were from widely separated parts of the country, and were chosen at random from the names published in the encyclopedia. Their testimony is considered representative of the parties whose names appear in said encyclopedia, and the Commission finds that the use of the names set forth in volume 1 of the encyclopedia published by respondent Perpetual Encyclopedia Corporation is false, deceptive, and misleading, because in fact said parties did not contribute any articles to the said encyclopedia, and were not reviewers

or revisors of said encyclopedia, and the use of their names by said respondent was for the purpose of misleading and deceiving the public into believing that such prominent persons were in fact persons who wrote articles relating to the special subjects which said prominent persons were identified with, which were included in said encyclopedia, or who revised and reviewed articles included in the encyclopedia.

Respondents Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., used the names of said persons in the same way and manner as did respondent Perpetual Encyclopedia Corporation, and salesmen for the said respondents made the same use of the said names as did salesmen for respondent Perpetual Encyclopedia Corporation.

PAR. 21. Respondents Perpetual Encyclopedia Corporation and Source Research Council, Inc., prepared and supplied to their salesmen sales talks which said salesmen were required to memorize and repeat to the representative of the respondents who employed them. After learning the sales talks said salesmen were instructed to repeat it to prospective subscribers in soliciting sales of the encyclopedia sold by respondents. Said respondents employed many salesmen who had long experience in selling subscription books, and these salesmen were allowed in many instances to use sales talks which they had used in selling other subscription books. The sales talks supplied to salesmen by representatives of said respondents were in printed, mimeograph, or typewritten form, but were practically identical in wording. One of these sales talks, for use in sales to parents, is as follows:

Are you Mrs. A. D. Miller?

I am Miss Smith and I am calling on you at the suggestion of the teachers of the Longfellow School. I am informed that you are president of the P.T.A. of the Longfellow School, that you take an active interest in the school work, that you are well known in this community, and that your name would be helpful to us in a campaign (don't say sales campaign) to be put on here next fall.

I represent the Source Research Council; next November they will put on sale here a new encyclopedia, and I am in Zenith today in advance of the sales campaign to do a little preliminary advertising. My visit to you is not one of salesmanship, but of explanation.

I have been instructed to arrange for placing in Zenith 20 complimentary sets of this new work for advertising purposes, in order to get the work known. Naturally they expect me to place these advance sets with influential families. I don't know who's who in the community. I am in the city today only, and so we get the schools to select those who are to receive these complimentary sets. The teachers spoke very highly of you. They said you have two chil-

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dren in Longfellow School, one just entering high school, that you are an unusually intelligent and thoughtful mother, one who would appreciate and use an encyclopedia. (Adapt this, of course, to the actual data you have. Obviously in calling on another type of prospect, your approach must be modified. For example, in calling on a club woman without children, you say you are calling at the suggestion of the president of the club, or whoever did suggest the prospect).

I am here to explain just what you are to receive and just how we hope to profit by giving you an encyclopedia. (You probably have been invited in before this point has been reached. As soon as you enter the home, take a look at the books. If you observe any loose-leaf encyclopedia or any other encyclopedia that looks new, cut short your interview. Time is money. Don't waste it. Go on to another prospect). Of course it is not philanthropy; we ask that you grant us permission to use your name as an owner of the encyclopedia. I will show you just how we wish to use your name. (Produce reference sheet at this point—not one second sooner.)

(1) OWNERS REFERENCE SHEET

Up here (indicate) we will put the names of Zenith owners, and down here (indicate) we will publish their opinions. We will use this to circularize the city before the sale starts. Now we don't ask you to commit yourself in advance to an endorsement—all we ask is your unbiased opinion after you have used the set several months.

Over here (turn page) you see who is responsible for this big undertaking—such eminent scholars as (indicate four nationally known men). Over 200 educators of this standing have been working for 5 years and there has been invested \$2,000,000 in bringing out a new American-edited encyclopedia—one that would give full credit to things American, in contrast with most encyclopedias which, as you know, are of British origin.

In addition to the encyclopedia (turn page) these scholars maintain (point as you read) the Source Research Council (point as you read) “an economic and scientific consulting service” for (point to each word) “Business executives, business and professional men, parents, teachers, club women and children.” They answer questions, offer suggestions, help solve problems, prepare club papers, speeches and debates.

When this encyclopedia came on the market a few months ago, the publishers tried to market it by magazine and billboard advertising.

(2) PRODUCE AD SHEET

You may have noticed this ad in the Post recently. But they found this advertising very expensive. I wonder if you have any idea what a single page in the Post costs for one insertion? (Give prospect a chance to comment.) I think you will be surprised when I tell you it costs \$7,000. And then its not direct selling. All they got back was this coupon of inquiry (point). They had to send out a salesman to close the sale, and the salesman found himself up against this difficulty; everyone said, “we never heard of this encyclopedia; we know of the Britannica; we know of the New International, but we don't know of this one. Who's got it that we know and what do they think of it?” So they decided to discontinue this expensive magazine advertising after they had invested half a million dollars that way, and in place of it to appropriate a sum to place a few complimentary sets in each community for advertising purposes about 4 to 6 months before the regular sale starts.

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(You now have had ample opportunity to measure your prospect, to study her general attitude and comments. If her failure to react favorably leaves you in doubt you might at this point try a question "Mrs. Miller, do you have any recent encyclopedia?" If she is coming your way she will usually tell you that she has not. This commits her and settles one important fact for you. You might follow this question with: "Do you expect to continue to live in Zenith? You see we are required to place these complimentary sets only with those who will live here." Either or both of these questions can be omitted. Judgment must be used, but in four cases out of five they will be found helpful.)

Next January we are going to begin in Zenith a house-to-house campaign and—

(3) PRODUCE STRETCHER

this encyclopedia will go on sale at that time at \$130. It contains 100,000 subjects, 3,000 illustrations, a complete record of everything man has done or thought down to 1928. This is a Keratol binding. It is not leather. It is called the duco finish. It is a new method of bookbinding that has been treated by a recently discovered process that makes it impervious to moisture, insects or mice. The manufacturers claim it could be left on the floor of a damp basement for a year without injury.

One valid complaint against every encyclopedia hitherto published is that it gets out of date. It's not too much to say that, at the rate the world moves today, an encyclopedia depreciates in value at least 10 percent a year, so that at the end of 10 years, it's like an old city directory—obsolete and of no value. But this encyclopedia is not permitted to get out of date. Every 6 months owners receive additional loose-leaf pages, a pictured review of important events. These new pages are sent perforated so they fit into the extra binders. This is the way it works:

(4) PRODUCE PROSPECTUS

All you have to do is to give a turn of these thumb screws (place thumb nails in groove), remove the screws, pull back this flap (indicate), there are two posts underneath. The new, perforated pages are fitted over the posts, and the encyclopedia is right up to the minute.

I want to take just a minute to call you attention to one or two of the wonderful features of this great work. I simply must finish in Zenith today as I have to leave this afternoon for Kalamazoo. (Open prospectus to page of type opposite illustration, The Thinker.)

(5) PROSPECTUS TALK

For the first time in the history of encyclopedia making, consideration has been given the eyes of the reader. This type and the spacing have been scientifically adjusted by a group of eye specialists. They claim this could be read all day without eyestrain or fatigue. Mrs. Babbit with whom I placed a set yesterday, remarked that a monument should be erected to the man who sponsored this idea.

I placed one of these sets yesterday with Mrs. Gotrocks and she asked me to show her a complete article so that she might judge how much space is devoted to a given subject. I think that's a fair question. This article on Central America is complete beginning here (turn all the pages and indicate) and ending down here.

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Now in addition to the encyclopedia they maintain the Source Research Council. (Sit back relaxed with nothing in your hand). This is something new in the history of civilization. The idea originated 6 years ago with President Burton of Zenith University. He was seeking some method whereby the knowledge and inspiration of our great universities could be placed at the disposal of the general public. He invited over 200 of the leading scholars of the country to cooperate with him. For 5 years they have been helping people and I want to show you some of the ways they have been of service.

Next January this big new encyclopedia will be put on sale in Zenith at \$130 and there will be a crew of salesmen here making a house-to-house canvass.

(6) PRODUCE WHITE CONTRACT

I want you to know the terms under which the sale will then be conducted. In fact I want you to see the contract that our salesmen will use at that time. Now you have nothing whatever to do with this contract, but I think it only fair to you to show you exactly what we propose to do.

First (indicate), they will sell the encyclopedia, Second (indicate), they will agree to keep it up to date for 1 year, Third (indicate), they will furnish the research service for 1 year. Fourth (indicate), they will give the monthly forecast of business for 1 year. All of which will be offered at \$130 (indicate).

Then (pick up ad sheet and indicate at bottom) for the loose-leaf service a charge will be made of \$10 a year and for the research service (indicate) \$12 yearly. This makes a total of \$22 for all the services that go with the encyclopedia, and this is where the company hopes to make its profit, as there is no further selling expense after the books are once placed in a home.

But for you, Mrs. Miller, and for two others in this school district (pick up owners reference sheet showing names of owners) I am authorized to make this special confidential advertising proposition. If you are willing for us to list your name as an owner and be willing to give a 30 or 40 word letter of opinion, they will present you with this encyclopedia immediately—that is you will receive it within a week or 10 days—they mark your bill paid, and then they will offer you this special confidential inducement to keep it up to date by the loose leaf extension at the wholesale cost of production. Our auditors have figured this up to the penny and it is just five-ninety-five a year. In other words, they give you the books and give you the research service, and ask you to pay just the actual manufacturing cost of assembling, writing, editing, illustrating, printing, and binding the additional yearly pages to keep your work up to date.

(7) PRODUCE RESEARCH CERTIFICATE

Each subscriber receives a certificate for the research service. You are assigned a number (indicate) and when you write in for any information or advice, you simply give your name and number and the information comes back to you by return mail. This privilege is not transferable outside of your own family. Any member of your household may use it during the 10-year period. The only limit placed on you is 500 questions during the 10 years, an average of one question a week.

(8) PRODUCE COUPON BOOK

You also receive a coupon book for the loose-leaf extension. There are 20 coupons, one for each 6 months during the 10-year period. All you have to do every 6 months is to write your name and address here, tear off the coupon and

mail it to the Source Research Council. They will send you the new loose-leaf pages and the extra binders as needed. The reason they require you to send in a coupon each 6 months is because so many families move about in 10 years they can't afford, on these special terms, to keep a record of the changes.

(9) OPEN TO CURRENT EVENTS

I would like to show you a few of the up-to-date features of the work. (Thoroughly familiarize yourself with the current events pages and be prepared to point out at least 10 new articles.)

(10) PRODUCE TWO BLUE CONTRACTS

Here is the special advertising contract I am authorized to make with you and two other families in this community, in order to get the use of your name and to get our work known. If you are willing for us to use your name as an owner and agree to give a 30 or 40 word letter of opinion within 4 months, they will, first (indicate), give you the encyclopedia immediately—that is you will receive it within a week or 10 days—with your bill marked paid (point down to stretcher on the floor). Second (indicate), they bind themselves to furnish you the loose-leaf extension service for 10 years, keeping your encyclopedia up to date for 10 years, sending you a pictured review of current events every 6 months.

Third, they bind themselves to give you the research service—the consultation privilege—for 10 years.

Fourth, they send you the monthly business forecast for 1 year.

All of this figures up for the whole 10-year period at five ninety-five a year. Only fifty nine fifty for everything, the encyclopedia, the 10 years of loose leaf extension, the 10 years of research privilege and monthly business forecast.

In other words, Mrs. Miller, you pay nothing for the encyclopedia, nothing for the research or consultation service, nothing for the monthly business forecast, and only the actual, mechanical, wholesale cost of production of the extra loose-leaf extension pages, which has been found to be only fifty nine fifty for the entire 10 years.

This contract you see (indicate) covers the period from 1928 to 1938. We make it in duplicate. You keep a copy and I send a copy to the company. The contract shows just what you are to receive and just what you pay. (Hand contracts to prospect.)

Now you don't have to liquidate this little service charge in advance. You can take care of it in any way that suits your convenience—just name your own terms, just fill in the terms of the contract (indicate) any way you wish.

(11) PRODUCE DUPLICATES OF PREVIOUS SALES

I can show you how some of the others have been taking it. Rev. Gentry said he would pay it in six months (show contract with \$10 attached). He gave me \$10 and said he would pay \$10 a month. (Show 6 to 12 duplicates with money attached. None of the contracts should show monthly payments of less than \$5 a month. Except on rare instances don't take orders calling for less than \$5 initial payment and \$5 monthly. The company will accept payments of \$4 monthly occasionally—about 1 in 10. But if you are confining your work to the representative and most influential people, as we expect you to do, there will be no difficulty in keeping the monthly payments up to at least \$5.)

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(12) PRODUCE BLUE PRINT

This will serve to visualize for you the scope of this research service. This is such a big thing it is not always easy for one to fully grasp its size and importance. Every department of human knowledge from accounting (indicate) through (let pen indicate up and down the various columns) to travel. Why they even offer suggestions of an educational nature if you make a tour of Europe or this country. They will even plan the trip. (Point and read.) Special outline for club papers, speeches and debates. Any question or problem which you or any member of your family has for 10 years can be submitted to the foremost authority in the world in that field, and be answered promptly.

(Don't press your prospect for an order. Let the sale make itself. Of course, if the prospect is ready to sign, don't delay getting signature, but in most cases, the prospect wants to weigh the matter before signing. At such times, you should show some additional feature of the prospectus as the American History charts, the president's administration graphs, the silk feature, or astronomy. If there are young children in the home show the below-school-age features. You can also show additional research material and tell of some of the practical ways in which the research service has helped people. You can show the billboard photos, the letters of endorsement, the monthly business forecast. Don't repeat. Show something new each time. Tell something new.)

The above sales talk was used by salesmen of respondents Perpetual Encyclopedia Corporation and Source Research Council, Inc., in soliciting sales of the encyclopedia sold by them. In one of the printed copies of sales talks used by salesmen of respondent Perpetual Encyclopedia Corporation the statement is made that the salesman represents the Source Research Bureau. This bureau was incorporated by respondent Perpetual Encyclopedia Corporation, and was a part of the organization of said respondent. Lead letters were sent out in that name, and many of the contract forms used by that respondent bore the name Source Research Bureau. In the typewritten and mimeographed sales talks used by respondent Source Research Council, Inc., the statement is made that the salesman represents Source Research Council.

Respondent Edmund P. Rucker, formerly vice president of respondent Perpetual Encyclopedia Corporation, and now and at the time of the hearings in this proceeding a traveling sales manager in charge of a field sales force for respondent Source Research Council, Inc., advertised for salesmen and saleswomen for said latter respondent in various cities in the United States, and supplied applicants who were accepted with copies of the above quoted sales talk, required them to memorize it and repeat it to him, and then directed them to use said sales talk in soliciting sales of the encyclopedia.

Another sales talk in evidence was for use in soliciting sales to business and professional men. A typewritten copy of this sales talk was given to a new salesman in Kansas City, Mo., by respondent Warren T. Davis, president of respondent Source Research Council,

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Inc., who also supplied him with a sales kit, and instructed him in the use of the sales talk and sales kit. This sales talk, among other things, states that the encyclopedia is being given away free, that the regular price of it is \$130, and that it will "answer any question pertaining to any subject either for a business or professional man." Respondent Davis instructed the salesman to show the prospective subscriber the \$130 contract form, but to have him sign the \$69.50 which he stated was an advertising offer, and to state that the semi-annual loose-leaf extension service and research bureau privilege would cost \$12 a year after the first year, to "other people", and that the books were therefore worth \$238. Respondent Davis also supplied him with a number of post cards which had been sent in by persons who received the lead letters. The salesman spent several weeks calling on prospects and attempting to sell the Source Book, using said sales talk, and then left the employ of respondent Source Research Council, Inc.

Copies of a different printed sales talk used by respondent Perpetual Encyclopedia Corporation in soliciting sales to parents are in evidence. This sales talk gives the salesmen instructions as to how to present the encyclopedia. Included in the sales talk is the following:

AT THE DOOR

(Never call at a home without knowing the names and grades of the children, also the school the children attend and the school principal.)

Good morning, is this the home of Walter Jones who attends Longfellow School?

It is.

Are you Walter's mother?

Yes.

I am Miss Brown and I am calling on the mothers.

(If prospect insists on knowing something of the nature of your business, say: It is in regard to the school project work.)

Mrs. Smith, the mothers are being visited at this time in a movement to make the school work more effective under the new methods of teaching.

About 200 teachers were chosen to prepare lessons in all the grades from the kindergarten to the last year of high school. They have worked out a wonderful chart plan which is proving a blessing to mothers, teachers, and pupils. Under this new plan, the pupils get their research work quickly, effectively, and lastingly. It has proven such a splendid success that we want every mother to know about it.

YOUNG MOTHER TALK

Mothers of children below school age are being visited at this time in a movement to improve the school work by enlisting the mother's cooperation in laying the proper educational foundation before the child enters school.

First, the teachers have provided for the young mothers a discussion in plain language entitled (point) "Before School Life Begins."

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CURRENT EVENTS

A staff of editors, writers, photographers, and illustrators is maintained in every part of the world. Every 6 months they prepare a review of current events, highly picturized, and this review is sent to you on pages that are perforated to fit your loose-leaf binders.

PAR. 22. Respondent Walter H. Gorham, trading under the name and style of North American Publishing Co., supplied to his salesman sales talks similar to those described above, and instructed them to use such sales talks in soliciting sales of the encyclopedia under the titles "Home and School Reference Work" and "American Reference Library." Raymond Harbaugh, of St. Louis, Mo., worked for said respondent selling the encyclopedia throughout the Western States. He was told by respondent Walter H. Gorham, and by said respondent's brother Norton Gorham, to state to the prospective subscriber that sets of the encyclopedia were being given free to a few people in the city in exchange for a letter of recommendation; to show the \$130 contract to the prospect, but to have him sign an advertising contract for \$59.50; to show the broadsides and advertising sheets, and to make the same representations about them as were made in the sales talks used by respondents Perpetual Encyclopedia Corporation and Source Research Council, Inc.; and to make many other representations which are made in the sales talks hereinbefore described. Said Harbaugh made sales to subscribers by means of said sales talks in various States of the United States.

Prior to the time he worked for respondent Walter H. Gorham, said Harbaugh worked for respondent Perpetual Encyclopedia Corporation selling the encyclopedia under the title Home and School Reference Work, and made similar representations to prospective subscribers as those set forth above. Correspondence between Harbaugh and respondent H. F. McGee, at that time vice president of respondent Perpetual Encyclopedia Corporation is in the record.

PAR. 23. Respondent North American Publishing Co., Inc., instructed its salesmen and representatives in the use of similar sales talks as those hereinbefore described, and said salesmen and representatives made such statements and representations to prospective subscribers in soliciting and selling the encyclopedia under the title Home and School Reference Work. A number of witnesses who had purchased the encyclopedia believing in the truth of such statements and representations testified in this proceeding.

PAR. 24. The statements and representations made in the sales talks described in the three preceding paragraphs are false, deceptive, and misleading. The general method of sale of the encyclopedia followed by all of the respondents, as is shown in the above-described sales talks and in the lead letters heretofore referred to, is to make

subscribers and prospective subscribers believe that they are to be given a set of the encyclopedia free, in exchange for a letter of recommendation, and that it will only be necessary for them to pay for the loose-leaf supplements which keep the encyclopedia up to date. In truth and in fact, respondents do not give and never have given any set of the encyclopedia away free for advertising purposes, or in exchange for a letter of recommendation, or because the person solicited was prominent in the community; do not return and never have returned to the subscriber a bill for the books marked "paid" when the books are delivered; do not ask and never have asked for any opinions of the encyclopedia from such subscribers; do not intend to have and never have had a sales campaign in various communities at a later date to sell the encyclopedia to the general public other than the sales made by their salesmen and representatives at the time the sales talks are being given; and said price of \$59.50 is not intended to only cover the cost of the loose-leaf extension service, but is principally for the books, and also covers the additional items included in the contract or order form, as set forth in paragraph 13 herein. In another respect said statements and representations with reference to the cost are false, deceptive, and misleading, because the cost of \$59.50 is not the total cost the subscriber has to pay if he desires all of the items set forth in the contract, because he must pay \$4.80 additional in order to receive the loose-leaf supplements for ten years, as hereinbefore described.

The statements and representations with reference to the giving away free of the encyclopedia made by their salesmen and representatives, as set forth herein, are the regular method of sale by which respondents sell the encyclopedia under its several titles throughout the United States, and when subscribers call to respondents' attention the aforesaid false, deceptive, and misleading statements and representations made to them by their salesmen and representatives as a means of inducing them to subscribe and pay for said encyclopedia, respondents refuse to cancel said orders and return the purchase price to said subscribers.

PAR. 25. The sales talks described in paragraphs 21, 22, and 23 herein are false, deceptive, and misleading in many other respects, as follows:

The salesmen do not call on the prospective subscriber at the suggestion of the teacher of the school which her child attends, and as a rule do not secure the names of parents of school children from the schools;

The salesmen are not making a preliminary advertising campaign in advance of a sales campaign to be put on later, and are not calling only on two or three prominent persons in the community, but are in-

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structed to call upon and sell as many persons as they can, and there are not any sales campaigns put on at a later date in these cities;

The encyclopedia is not a "brand new encyclopedia", but, as has been heretofore shown in these findings, was prepared in about 1911, and has had only one thorough revision since that time;

The salesman is not calling for the purpose of explaining the encyclopedia, but is there for the purpose of making a sale;

There were not 200 prominent scholars and authorities "responsible for this great work" who have been working five years preparing it at the expense of more than \$2,000,000, because the encyclopedia was prepared, as shown hereinbefore, by H. M. Dixon and a few educators in his employ, and it did not take five years for the compiling of the said work;

There is no "economic and scientific consulting service" maintained by the 200 prominent scholars and authorities whose names are printed in the encyclopedia, the fact being that none of these persons whose names are used answer any questions of subscribers to the encyclopedia, as heretofore pointed out, and the research bureau is composed of a director and one or two assistants who answer as many questions as they can, and where the information is not readily available refer the question to certain other parties who are, however, not those whose names are referred to by the salesman;

The encyclopedia has never been advertised in the Post (intended to mean the Saturday Evening Post) at a cost of \$7,000 per page, because none of these respondents has ever advertised the encyclopedia in the Saturday Evening Post, and such magazine advertising as has been used was in a few school magazines; and no billboard advertising has generally been indulged in by said respondents, although at one time for an indefinite period a billboard advertisement was maintained in Chicago by respondent Perpetual Encyclopedia Corporation. The company never spent \$500,000 for magazine and billboard advertising;

No house-to-house canvass was intended to be made in the city, and the encyclopedia was never intended to be, and in fact never was, sold for \$130;

The encyclopedia is not a complete record of "everything man has done or thought down to 1928", but is in fact out of date in many of its articles;

The type and spacing of the reading matter was not scientifically adjusted by a group of eye specialists;

The idea of a research bureau did not originate with Dr. Dewitt Burton, formerly president of Chicago University, nor did Dr. Burton have anything to do with the preparation of the encyclopedia;

nor did he invite any distinguished editors to assist him in organizing the Source Research Bureau;

The price of \$59.50 is not the cost of production of the loose-leaf extension pages, but in fact is the price for the encyclopedia, and in order to obtain the loose-leaf supplements it is necessary to send additional money to respondents;

The \$59.50 cannot be paid \$5.95 per year for 10 years, but must be paid within a period of 1 year. In order to obtain loose-leaf supplements subscribers must not only send in the coupon, but an additional 24 cents for each issue. The article on Central America is not typical of the length of articles in the encyclopedia, but, in fact, is probably the longest article in the set, being 10 pages, whereas the average length of articles is one-half page;

The salesman does not intend to leave the city the same day, but stays there until all sets possible have been sold.

The sales talk, part of which is set forth in paragraph 21, where the salesman states he is calling with reference to school work, is false, deceptive and misleading, because the salesman is not interested in the school work of the children, but is endeavoring to sell the encyclopedia. The statements in said sales talk with reference to a staff of editors, writers, photographers, and illustrators, as being maintained in every part of the world, is false, because in fact no staff of any kind is maintained for the purpose of compiling and publishing the loose-leaf supplements, the work being done by a few employees in the office of respondent Perpetual Encyclopedia Corporation, as hereinbefore set forth.

PAR. 26. Respondent Edmund P. Rucker employed salesmen to sell the Source Book for respondent Source Research Council, Inc. His general method of obtaining salesmen was to insert an advertisement in the local newspapers a few days in advance of his visit, stating that men or women were wanted for a traveling position, paying \$50 a week, and giving a local hotel address. The applicants would go to the room indicated in the hotel where respondent Rucker would address them, and explain the work to them. Those who desired to take the position would be required to return the next day, at which time respondent Rucker would supply them with a copy of the sales talk and require them to memorize it and repeat it to him, and also supply them with, and instruct them in the use of, a sales kit.

Six women testified in this proceeding that they had answered such advertisements in their local newspapers, and had met respondent Rucker, been supplied with copies of the sales talk quoted in paragraph 21, and instructed in the method of selling the encyclo-

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pedia, and some of them entered the employ of respondent Source Research Council, Inc., and sold the encyclopedia. One of these women was from Indianapolis, Ind., one from Muncie, Ind., two from Toledo, Ohio, and two from Buffalo, N.Y. They were instructed by respondent Rucker to follow the sales talk as written, and to make all of the false, deceptive and misleading statements and representations contained therein. They all testified that they believed the representations made in the sales talk, and also the representations made to them by respondent Rucker, and one of his assistants, Mrs. Thornburgh, regarding the encyclopedia. One woman testified that she was instructed by respondent Rucker to make the representations in the sales talk, and to state to prospective subscribers that she represented the Source Research Bureau, and that the encyclopedia was published by respondent Perpetual Encyclopedia Corporation.

Respondent Warren T. Davis, president of respondent Source Research Council, Inc., advertised for salesmen in the newspapers in Kansas City, Mo., and supplied those who answered with a sales talk intended for use with business and professional men, and told them to memorize it. One man testified that he was given a sales kit, together with two contract forms, one for \$130 and the other for \$69.50, and that respondent Davis told him to sell the encyclopedia for \$69.50, but to show the \$130 contract and represent that that was the regular price of the set. In the sales kit supplied to him was the advertising sheet to be represented as from the *Saturday Evening Post*, a photograph of a billboard advertisement of respondent Perpetual Encyclopedia Corporation, and other material. Respondent Davis instructed him to represent to prospective subscribers that they were being given the encyclopedia free of charge and paying only for the loose-leaf extension service.

In securing prospects upon whom to call in soliciting the sale of the Source Book, respondent Edmund P. Rucker in some instances visited the public library of a city and secured the names of club women and presidents of parent-teachers associations from the city directory. He also visited the several banks in the city and secured blank checks from them, which he filled out in the name of respondent Source Research Council, Inc., and signed the names of the women which he had secured from the city directory to said checks, and filled in the names of said women to blank contract forms, then gave the contracts and checks to his saleswomen with instructions that the contracts and checks were to be shown prospective subscribers upon whom they called, and represented as being contracts signed by, and checks given by, said women for subscriptions to the encyclopedia.

Said saleswomen to whom these contracts and checks were given were further instructed that if the prospective subscribers became suspicious, they were to get out of the house as soon as possible.

Respondent Edmund P. Rucker had been vice president and sales manager of respondent Perpetual Encyclopedia Corporation, and was in the employ of that company for a number of years, and was well known to respondent Frank J. Mackey. His methods of selling the encyclopedia were known to respondent Mackey and to respondent Warren T. Davis, vice president of respondent Source Research Council, Inc., and they permitted him to use such methods as he saw fit in the sale of the encyclopedia, and approved his said methods by accepting and trying to enforce collection of contracts secured by such means.

PAR. 27. Salesmen employed by respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., with the knowledge and approval of said respondents, in soliciting the sale of and selling the encyclopedia published by respondent Perpetual Encyclopedia Corporation under the titles Home and School Reference Work, Source Book, and American Reference Library, made the false, deceptive, and misleading statements and representations contained in the sales talk set forth in paragraph 21 and in the other sales talks described in paragraphs 21 and 22 to subscribers and prospective subscribers of said encyclopedia, and said subscribers purchased the said encyclopedia in the belief that the said statements and representations were true.

Salesmen and representatives of respondent North American Publishing Co., Inc., with the knowledge and approval of said respondent, in soliciting the sale of and selling the encyclopedia under the title Home and School Reference Work, made similar statements to those contained in the aforesaid sales talks, especially the statements and representations to the effect that the said encyclopedia was being given away free in return for a letter of recommendation of the work, and the statements and representations with reference to the prominent men who are contributors to the encyclopedia and members of the research bureau, to subscribers and prospective subscribers of said encyclopedia, and said subscribers purchased the said encyclopedia in the belief that the said statements and representations were true.

Respondent George A. Seiler employed salesmen under his direction on the Pacific coast and in the Western States to sell the encyclopedia under the titles Home and School Reference Work and Source Book, and said salesmen made the false, deceptive, and mis-

leading statements and representations contained in the aforesaid sales talks to subscribers and prospective subscribers of said encyclopedia and said subscribers and prospective subscribers purchased the said encyclopedia in the belief that the said statements and representations were true.

PAR. 28. Salesmen employed by respondent Perpetual Encyclopedia Corporation procured the signatures of subscribers to the encyclopedia published by that respondent by means of various subterfuges, tricks, and artifices, in addition to the ones heretofore referred to, by means of which subterfuges, tricks, and artifices the subscriber signed a contract or other obligation to purchase the encyclopedia without knowing that the paper which he or she signed was such an obligation.

In one instance a salesman of respondent Perpetual Encyclopedia Corporation called at the home of a school teacher in Idaho and solicited the sale of the encyclopedia. He obtained her signature to a small slip of paper which he stated was not a contract for the encyclopedia, but which was merely to get her name in order that material concerning the books could be sent to her. She never received any material concerning the books, but did later receive a set of the encyclopedia which she immediately returned to the respondent, with a letter advising said respondent of the circumstances under which she signed the contract. Respondent continued to endeavor to collect the contract price of the encyclopedia.

A school teacher in the State of Washington was called upon by a salesman of respondent Perpetual Encyclopedia Corporation at her school, and said salesman made a sales talk endeavoring to sell her the encyclopedia, and asked her to sign a slip of paper which she did not have an opportunity of reading because of lack of time, but which she found upon a more careful reading to be a contract. The salesman represented that it was a memorandum which he could send to the Los Angeles office of said respondent. The teacher immediately wrote to the company stating she would not accept the books because of the misrepresentation made by the agent, but respondent sent the books and endeavored to collect the contract price. In addition, said respondent wrote two letters to the superintendent of schools of the city in which the teacher was employed, advising him that she had broken her contract with the company.

A salesman of respondent Perpetual Encyclopedia Corporation called upon a business man in Kansas City, Mo., and advised him that he was to be given a set of the encyclopedia free. After signing the order blank the salesman informed him that he would have to pay something for the 10-year service, whereupon the prospective sub-

scriber wrote the word " canceled " across the face of the contract and returned it to the salesman, who stated it would have to be sent in to the company. A short time later a set of the encyclopedia was received by the business man who refused to accept them. Respondent Perpetual Encyclopedia Corporation continued efforts to collect the amount of the contract.

A salesman of respondent Perpetual Encyclopedia Corporation named Freeson, called upon a high-school teacher in Tacoma, Wash., and made many misrepresentations regarding the encyclopedia, and induced her to sign a contract with the understanding it was to insure her getting the encyclopedia free of charge. She made no initial payment, but the agent stated he would send a check for her. The same night she wrote to the company and explained the matter, stating that the proposition had been misrepresented to her, and that she would not accept the books. After receiving her letter said respondent sent the books to her, which she refused to accept, and endeavored to collect the contract.

The same salesman Freeson called upon a school teacher in Tacoma, Wash., soliciting the sale of the encyclopedia. He advised the teacher that if she would sign a card saying she would take the books and use them for a certain length of time, and write a letter of recommendation, he would have the books sent to her. He endeavored to have her sign a contract for the books which she refused to do, and upon her requesting a return of the card she had signed he refused to give it to her. A few days later he called at her home while she was away and persuaded her mother to sign the teacher's name on a contract. The teacher refused to pay for the books, and explained the matter fully to respondent Perpetual Encyclopedia Corporation, but said respondent continued to endeavor to collect the contract.

A salesman named Green called upon a business man of Toledo, Ohio, and solicited a subscription to the encyclopedia, and offered to give it to him free. He asked the prospective subscriber to sign his name on a card giving his name and address, stating that it was not a contract. Later the books arrived and the business man wrote a letter to the company advising them of the circumstances, and refused to pay for the books. Respondent Perpetual Encyclopedia Corporation made continued efforts to collect the contract.

A salesman named R. E. Hodges, representing respondent Perpetual Encyclopedia Corporation, called upon an old lady of 83 years, in Long Beach, Calif., who had been an invalid for many years. He represented that he was selling the New International Encyclopedia, published by Dodd-Mead & Co. The lady had previ-

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ously written to Dodd-Mead & Co. making inquiries regarding the New International Encyclopedia. Salesman Hodges was at the time selling both the Source book for respondent Perpetual Encyclopedia Corporation, and New International Encyclopedia for Dodd-Mead & Co. After finding out that she had purchased the encyclopedia published by respondent herein she wrote a letter to said respondent advising it of the circumstances, and also took the matter up with Dodd-Mead & Co. The salesman for the said respondent sold its encyclopedia to this subscriber by representing that he was selling the New International Encyclopedia.

In many instances representatives of respondent Perpetual Encyclopedia Corporation and respondent Source Research Council, Inc., secured the signature of subscribers to contracts by representing that the books would be sent on approval and could be returned if not satisfactory; by representing that the encyclopedia was particularly fitted for use in the profession to which the prospective subscriber belonged, whether engineering, banking, medical or legal; and by changing the terms of the contract after it had been signed by the subscriber, and by other devices.

In the sale to the secretary of a Young Women's Christian Association in the State of Washington, she wrote across the face of the contract the word "approval" in accordance with an understanding with the salesman that it would be necessary to secure the approval of the chairman of the education committee of the association before the books could be purchased. In spite of said understanding the books were delivered by respondent Perpetual Encyclopedia Corporation, which respondent made strenuous efforts to collect the account after being advised of the circumstances under which the contract was signed.

Salesman for respondent Perpetual Encyclopedia Corporation represented to a physician in Minneapolis, Minn., that the encyclopedia was particularly valuable in the medical profession; to certain professors connected with the University of California that the encyclopedia was a medical encyclopedia, published by Thomas Nelson & Sons, who were publishers of a loose-leaf medical encyclopedia; to a chemist that the books would be particularly helpful to him in laboratory work; to a landscape artist that they were especially adapted to that profession; to an engineer that the encyclopedia contained technical information in structural steel work; to the principal of a junior high school that it was the best encyclopedia that could be had for junior and senior high-school work; to a constructor of airplanes, that it covered aeronautical engineering, with special data on liberty motors; to a number of investment brokers in

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Portland, Oreg., that the services accompanying the books were financial services, including Brookmire's, Poor's, Moody's, Babson's, and other nationally known services; to a radio engineer that the encyclopedia contained detailed scientific data in connection with radio; and other similar statements to other subscribers in various occupations.

The use of false, deceptive, and misleading sales talks and lead letters, and the use of contracts in which an exaggerated price is printed, which said price is crossed out and a much lower price inserted, together with the use of advertising sheets showing exaggerated prices for the encyclopedia and services, as was done by salesmen for respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., constitute subterfuges, tricks and artifices in the sale of the encyclopedia, as do also these specific misrepresentations referred to heretofore in this paragraph, and respondents knew that their salesmen were using such methods and authorized and approved the use of such subterfuges, tricks and artifices in selling the encyclopedia published by respondent Perpetual Encyclopedia Corporation.

PAR. 29. Many other false, deceptive, and misleading statements and representations were made by salesmen for the said respondents to induce the sale of the encyclopedia sold by them, among them being representations that the encyclopedia was approved and recommended by the superintendent of schools, when in fact it was not so approved or recommended; that friends of the prospective subscriber had bought the encyclopedia when in fact such statements were not true; and that the encyclopedia was sponsored by the parent-teachers association, when in fact it was not so sponsored. Salesmen for the said respondents made such representations, no matter how false and misleading they might have been, which would enable them to make a sale to the person being solicited, and after attention of the said respondents was called to the misrepresentations of their said salesmen by the subscriber, said respondents refused to cancel the contracts and return the initial payment, but made continued efforts to collect the account, and threatened to bring legal proceedings against said subscribers.

PAR. 30. In many instances salesmen for respondent Perpetual Encyclopedia Corporation changed the terms of the contract or order form after it had been signed by the subscriber, or wrote the name of a person on the contract or order form who had not in fact signed said contract. In the case of the wife of a dentist in Indian-

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apolis, Ind., a salesman for said respondent stated that the encyclopedia could be paid for annually, but when his attention was called to the contract stating it must be paid every 30 days, he stated that he would cross out these words and insert the word "annually". He did cross out the said printed words and added other words, but after he had left, the subscriber found that he had written in pencil on the contract "30 days" over the same printed words, so that the contract required payment every 30 days. In this case also the subscriber did not sign the contract, but the agent wrote her husband's name on the face of the contract and sent it in. Immediately upon receipt of the books full explanation was written to respondent, but efforts were made to collect the account.

In the case of a physician in Toledo, Ohio, the salesman agreed that the payment should be made for the services \$6 annually, but the amount to be paid was left blank on the contract when signed by the subscriber. The salesman filled it out so that the payments were monthly, instead of annually. Respondent was advised of the facts, but made efforts to collect the account.

In a case in Lansing, Mich., respondent Perpetual Encyclopedia Corporation delivered a set of the encyclopedia to a dead man. The books were refused. Respondent thereupon addressed a letter to the dead man, enclosing a copy of a contract filled out in the name of the deceased, and claimed that the contract had been signed by him. As a matter of fact, the date of the contract was two days after the death of the man, the occupation given had never been his occupation, and the name given as the name of his employer was that of a company which did not exist. When advised by the family of these facts respondent Perpetual Encyclopedia Corporation and respondent Source Research Council, Inc., which had taken over the business of the former respondent after December 1, 1927, wrote many letters endeavoring to collect the amount claimed to be due, drew a draft in the name of the deceased through a bank in the city, and wrote letters in the name of an attorney threatening to bring suit.

PAR. 31. Respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., represented in the lead letters sent out by them, in the advertising material supplied to salesmen, in the sales talks supplied to salesmen, and by statements and representations made by their salesmen and authorized and approved by them, that the encyclopedia sold by said respondents was a new, completely revised, and up-to-date encyclopedia, giving a complete record of "everything man has done or thought down to 1928".

The encyclopedia published by respondent Perpetual Encyclopedia Corporation, and sold by that respondent and respondents Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., under the titles "Home and School Reference Work", "Source Book", and "American Reference Library", is not a new and up-to-date encyclopedia, and is not a completely revised encyclopedia. The facts with reference to the original compiling of the encyclopedia and the revisions which it has had have been heretofore fully set forth in these findings. The encyclopedia, in fact, is a publication giving more or less superficial summaries as to information upon the topics treated. To represent said encyclopedia as a new and completely revised, up-to-date publication giving a complete record of man's thoughts and actions down to 1928, is false, deceptive, and misleading, and causes the public to subscribe to said encyclopedia in the mistaken belief that such representations are true.

PAR. 32. In endeavoring to collect the sums of money claimed to be owing to it from subscribers who have purchased its encyclopedia in the belief that the statements and representations made by salesmen, and set forth hereinbefore, are true, respondent Perpetual Encyclopedia Corporation has employed the names of attorneys, and the names of fictitious collection agencies purporting to be independent organizations for collection of credit information and the collection of accounts, and through these names, and by other means, has threatened and coerced said subscribers into paying part or all of the money due on contracts secured by fraudulent, misleading, and deceitful statements and representations of said respondent and its salesmen, and has threatened to make known to third parties the claimed indebtedness by advertising in the local newspapers of the city in which the subscriber lives, and by drawing drafts on said subscribers through the banks of their cities.

Said respondent used the name H. M. Madden, attorney at law, 521 Monroe Building, Chicago, Ill., and had many form letters printed in said name, and also wrote original letters on letterheads bearing said name, which letters were sent to delinquent subscribers. The signature of the letter was in the name of the attorney, and was put on the letters by an employee in the collection department of said respondent. There is, or was, an attorney by the name of H. M. Madden, but he was not engaged in the practice of law in the city of Chicago at the time of the hearings in this proceeding, and no information regarding him could be had. Respondent Frank J. Mackey claimed to have authority from H. M. Madden to use his name in collecting his accounts, and to print letters and legal forms in his

name, but was unable to produce any such authority, written or oral. The address used on the letters was that of the offices occupied by respondent Perpetual Encyclopedia Corporation, but was given as a room in the building instead of the address of said building as printed on the stationery of said respondent. The purpose was to conceal the fact that the subscriber was in fact writing to respondent's offices, and to make him believe he was corresponding with an attorney at law.

More recently said respondent has been using in a similar way the name S. M. Smith, attorney at law, 521 Monroe Building. Said S. M. Smith is a woman employee in the collection department of said respondent, who is a member of the bar, but not engaged in the practice of law.

Respondent Perpetual Encyclopedia Corporation used the names of two collection agencies in collecting its accounts. One was Merchants Credit Reporting Association, and the other was International Collection and Adjustment Bureau. Both organizations were fictitious, and did not exist in fact. The letters were all sent out by the collection department of respondent, and all replies to letters were received by said respondent. The letterhead of the Merchants Credit Reporting Association bears the statement that it has offices in the principal cities of the world, that it is not a collection agency, and that its purpose is to gather and report credit information regarding individuals which was to be published in a credit rating book to be distributed to merchants and business organizations. A letter on the letterhead of this fictitious organization would be sent to delinquent subscribers inquiring why the subscriber did not pay the account of respondent. No matter what statements were sent in by the subscribers regarding misrepresentations of salesmen of respondent, no consideration was ever given them by respondent. The purpose of the use of such fictitious name was to coerce the subscriber into paying the account to avoid being listed in a credit rating book as a delinquent creditor, and to make the subscriber believe he was corresponding with an independent collection agency.

The name International Collection and Adjustment Bureau was used by respondent in collecting its delinquent accounts, and the said fictitious collection agency was represented as being a wholly independent and reputable agency engaged in the business of collecting accounts. Correspondence was carried on with all delinquent subscribers in the name, and on the letterheads, of said fictitious organization. In many instances when a subscriber failed to make payments, a letter would be sent to him on the letterhead of respondent Perpetual Encyclopedia Corporation, advising that the original

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of the enclosed carbon copy of a letter had been sent to the said International Collection and Adjustment Bureau or to S. M. Smith, attorney. The purported letter, of which copy was enclosed, was as follows:

We are anxious to know his holdings of real estate and personal property, including household effects and all items of attachable value. Also report on his bank account and general credit rating.

We are particularly interested in getting a complete report as this has been an especially aggravated case and we are determined to press it to the limit. Enclosed is a copy of a letter we are sending to the debtor today.

The purpose of said letters was to coerce, threaten, and frighten a subscriber into paying his account.

In some instances letters were sent to delinquent subscribers on the letterhead of the said fictitious collection agency stating that the claim of said respondent had been sold, assigned, and transferred to said fictitious collection agency, and that if payment was not immediately made the claim would be advertised for sale in the local newspaper of the city or town in which the subscriber lived, as follows:

FOR SALE AT A BARGAIN

Promissory note dated December 8, 1924, in the sum of \$79 given in payment of a set of Home and School Reference Work, 10 years' membership in the Bureau of Research, 10 years' Loose Leaf Extension Service and 12 monthly Service Bulletins. There is a balance of \$72 unpaid on this account. This note signed by (the subscriber's name was inserted here). His business address is ——. For further particulars write the International Collection and Adjustment Bureau, 614 Monroe Building, Chicago, Ill.

The use of such letters to collect money due on contracts obtained by false, deceptive and misleading statements and representations, is highly improper, and constitutes coercion and threats amounting practically to blackmail.

Another method used by said respondent to collect its delinquent accounts was to prepare communications in the form of a legal summons, entitled "Final Notice Before Suit." Said documents were phrased in legal language, and bore the name of the State of Illinois, County of Cook, at the top, with a space for docket number, the names of creditor and debtor, with the name of H. M. Madden, attorney, at the bottom. Many of said documents were sent to delinquent subscribers by respondent. The purpose of the use of such documents was to make the subscriber believe that he was receiving a summons to court and to frighten him into paying the account and said documents did have such effect. Under the laws of the State of Illinois, in which State respondent corporation was organized and is doing business, the use of documents simulating or intended to simulate a summons, writ, or other process, is a misde-

meanor, and punishable by a fine of not less than \$10, or more than \$300, or imprisonment for not more than 6 months, or both.

Another method of collection customarily used by respondent Perpetual Encyclopedia Corporation was to draw a draft on delinquent subscribers through one or more of the banks in the city in which he resides.

When subscribers who purchased the encyclopedia from respondent Perpetual Encyclopedia Corporation found that the statements and representations made to them by salesmen of said respondent were false and misleading, and that the encyclopedia and services had been misrepresented to them, they would write letters to said respondent, advising it of the misrepresentations of its salesmen, and canceling their orders. Respondent in no instance would cancel the order and return the initial payment, but would write to the subscriber calling attention to the clause on the contract that it was uncancellable, and insist on payment. In many instances respondent would deny that the salesmen had made the representations claimed by the subscriber, without consulting the said salesmen, and would claim that it had been put to great expense in paying the salesmen's commissions and enrolling the name of the subscriber in the research bureau. In no instance was it shown that respondent returned the initial deposit paid by the subscriber. Several hundred letters passing between respondent and its subscribers are included in this record as exhibits. The policy of respondent Perpetual Encyclopedia Corporation in all controversies with its subscribers was that the salesman was right and the subscriber was wrong.

The use by respondent Perpetual Encyclopedia Corporation of methods of collection of its delinquent accounts from subscribers who purchased its encyclopedia believing that statements and representations made to them by salesmen of said respondent were true, and who advised respondent of such false, misleading and deceptive statements and representations, which said methods of collection do and are intended to threaten, coerce and frighten said respondents into paying accounts obtained under such circumstances, is reprehensible and improper, and is unfair to said subscribers.

PAR. 33. Respondents Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, doing business under the name and style of North American Publishing Co., used the names of attorneys at law to collect their accounts, and had form letters printed in said names, and also wrote original letters on letterheads bearing said names, which letters were sent to delinquent subscribers. Said letters were signed by employees in the collection departments of the said respondents, and no authority to use such names was shown, and there was nothing in the record to indicate

that such authority was given said respondents. Respondent Source Research Council, Inc., used the name of S. M. Smith, attorney at law; respondent North American Publishing Co., Inc., used the name of Claudius A. Hand, counsellor at law, and respondent Walter H. Gorham used the name William A. Peterson, 42 Pearson Street, Chicago, Ill. The names of said attorneys were used by said respondents in the same way and manner and for the same purposes as were the names of the attorneys used by respondent Perpetual Encyclopedia Corporation.

PAR. 34. Respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., used various fictitious trade names for the purpose of securing subscriptions to the encyclopedia sold by them, and some of the experienced salesmen employed by said respondents also used certain fictitious trade names with the approval of said respondent. Among such names were United Press Syndicate, North American Publicity Service, American Bureau of Research, Source Research Bureau, Business Extension Institute, The Perpetual Research Bureau, International News Service, Home and School Education Society, Woodrow Wilson Institute, and National Press Syndicate. The purpose in using said fictitious trade names was to conceal the fact from the prospective subscriber that he was being solicited by a book salesman to purchase an encyclopedia.

PAR. 35. Respondent Perpetual Encyclopedia Corporation used late copyright dates in the encyclopedia published by it, and left out the dates of previous copyrights which had been obtained by said respondent. In some instances said respondent published a copyright date in its encyclopedia when in fact no copyright had been obtained during said year. The purpose of publishing only the latest copyright date, and neglecting to print previous copyright dates in said encyclopedia, was to lead the subscribers to believe that said encyclopedia was a new publication which had been published as of the year the date of which was printed in said encyclopedia. The copyright laws of the United States require that a publication shall bear the dates of all copyrights of the material contained in it. The use of such late copyright dates by said respondent was false, deceptive, and misleading to subscribers and the public.

PAR. 36. Respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., employed salesmen to sell the encyclopedia being distributed by them, which salesmen said respondents knew used false and misleading sales talks, and continued to employ

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said salesmen after their use of said false, misleading, and deceptive sales talks had been brought to the attention of said respondents. Many of the salesmen employed by said respondents were men long experienced in the sale of subscription books, and had worked for competitors of respondents, and in some instances had worked for said respondents in previous years, and their methods of sale were well known to said respondents.

Respondents authorized and approved the use by their salesmen of false, misleading and deceptive statements and representations to prospective subscribers with reference to the encyclopedia, and authorized and approved the use by salesmen of false, deceptive, and misleading lead letters sent out by said salesmen to obtain names of prospective subscribers to said encyclopedia.

PAR. 37. Respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., and respondents Frank J. Mackey, H. F. McGee, Harold C. Sherman, Robert T. Mackey, Edmund P. Rucker, Warren T. Davis, John J. Hennessy, Leonard C. Maier, Turney T. Culp, Russell O. Priebe, Emma L. Priebe, Walter H. Gorham, and George A. Seiler, individually, and as officers or agents of the corporation respondents herein, had knowledge of, and participated in, the false, deceptive, and misleading sales methods employed by said corporation respondents in the sale of the encyclopedia published by respondent Perpetual Encyclopedia Corporation, and re-sold by them to the public at retail, as hereinbefore set out in detail.

There was a close connection between the individual respondents and the corporation respondents in this proceeding. Respondent Perpetual Encyclopedia Corporation published the encyclopedia and sold it to respondents North American Publishing Co., Inc., and respondent Russell O. Priebe and Emma L. Priebe, officers of said respondent corporation; respondent Source Research Council, Inc., and the individual respondents named herein as officers of said respondent corporation; and respondent Walter H. Gorham, trading under the name and style of North American Publishing Co. Respondent Perpetual Encyclopedia Corporation also printed and sold to said above named respondents the broadsides, advertising sheets and other selling supplies necessary to the sale of said encyclopedia. Respondents Frank J. Mackey and Edmund P. Rucker had been engaged in the sale of encyclopedias by the subscription plan for years before the formation of respondent Perpetual Encyclopedia Corporation, and had both been associated with H. M. Dixon in the sale of the encyclopedia under the name Home and

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School Reference Work. Respondent Walter H. Gorham had also sold the encyclopedia when it was published by H. M. Dixon, and in January, 1923, began buying the encyclopedia from respondent Perpetual Encyclopedia Corporation, and for more than a year thereafter occupied space in the offices of said respondent. Respondents Frank J. Mackey, Harold C. Sherman, Robert T. Mackey, and Edmund P. Rucker knew the sales methods previously used by respondent Walter H. Gorham when selling said encyclopedia, and sold said respondent Gorham the encyclopedia in the knowledge that said Gorham would use the same methods in reselling it to the public at retail. Respondents Frank J. Mackey, Harold C. Sherman, Robert T. Mackey, and Edmund P. Rucker sold the encyclopedia published by them to respondents North American Publishing Co., Inc., and Russell O. Priebe and Emma L. Priebe, with the knowledge that said respondents were using the methods set forth in these findings in reselling said encyclopedia to the public at retail. Respondent Warren T. Davis had been associated with respondent Frank J. Mackey in the latter's Canadian company for several years prior to his coming to Chicago, to become one of the organizers of respondent Source Research Council, Inc., and was brought to Chicago by said respondent Mackey for the purpose of forming said corporation and taking over the retail business of respondent Perpetual Encyclopedia Corporation. Respondents John J. Hennessy, Leonard C. Maier, and Turney T. Culp had all been employees of respondent Perpetual Encyclopedia Corporation for a number of years prior to the formation of respondent Source Research Council, Inc. Respondent George A. Seiler had been connected with respondent Perpetual Encyclopedia Corporation for a number of years as manager of said respondent's Pacific coast office, and respondent Frank J. Mackey authorized and approved of his methods of sale.

All of the individual respondents named herein were aware of, participated in, and approved of, as individuals and as officers of the respective respondents with which they were connected, the sales methods used by said corporation respondents in the sale of the encyclopedia published by respondent Perpetual Encyclopedia Corporation. All of said respondents are now, or since 1924 have been at some time engaged in the sale of said encyclopedia, either individually or as officers or employees of respondents Perpetual Encyclopedia Corporation, Source Research Council, Inc., or North American Publishing Co., Inc.

PAR. 38. There are competitors of respondents engaged in the sale and distribution of encyclopedias, and other books of reference, by the subscription method in interstate commerce who do not use the

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same or similar methods of sale of said encyclopedias or books of reference, as used by the respondents named herein and set forth hereinabove. The use by these respondents of the false, deceptive, and misleading methods of sale set forth in the preceding paragraphs did, and does, injuriously affect the business of competitors who do not use such methods.

CONCLUSION

The practices of respondents Perpetual Encyclopedia Corporation, and the other corporation and individual respondents named herein, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce. The use by respondents of the methods of sale hereinabove described in these findings has the capacity and tendency to, and does in fact, injure competitors who do not use such methods of sale because—

(1) It diverts to respondents from their competitors sales of encyclopedias and other reference works to persons who believe said false representations as made by respondents to be true, and who purchase respondents' encyclopedia in, and because of, such belief;

(2) It prejudices the public against the subscription book industry as a whole, and makes it difficult for respondents' competitors to obtain interviews for the purpose of soliciting the sale of their encyclopedia; and

(3) It causes the public to lose confidence in representations of competing publishers who do not use such methods, or make such representations.

The practices of said respondents under the conditions and circumstances described in the foregoing findings constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answers of the several respondents, and the testimony taken and briefs filed herein, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

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It is now ordered, That the respondents Perpetual Encyclopedia Corporation, North American Publishing Co., Inc., Source Research Council, Inc., Frank J. Mackey, individually and as president of Perpetual Encyclopedia Corporation, H. F. McGee, individually and as vice president of Perpetual Encyclopedia Corporation, Harold C. Sherman, individually and as secretary of Perpetual Encyclopedia Corporation, Robert T. Mackey, individually and as treasurer of Perpetual Encyclopedia Corporation, Edmund P. Rucker, individually and as vice president of respondent Perpetual Encyclopedia Corporation, Warren T. Davis, individually and as president of Source Research Council, Inc., John J. Hennessy, individually and as vice president of Source Research Council, Inc., Leonard C. Maier, individually and as secretary of Source Research Council, Inc., Turney T. Culp, individually and as treasurer of Source Research Council, Inc., Russell O. Priebe and Emma L. Priebe, individually and as officers of North American Publishing Co., Inc., Walter H. Gorham, trading under the name and style of North American Publishing Co., and George A. Seiler, individually and as Pacific coast manager of Perpetual Encyclopedia Corporation and Source Research Council, Inc., and each of them, their officers, agents, representatives, and employees, in connection with the offering for sale of any books, set of books, or publications in commerce among the several States of the United States, or in the District of Columbia, cease and desist from:

(1) Advertising, selling or offering for sale the set of books heretofore advertised, sold and offered for sale under the name or titles Home and School Reference Work, American Reference Library, and Source Book, under any other name or title than Source Book.

(2) Advertising or representing in any manner to purchasers or prospective purchasers that any books or sets of books offered for sale and sold by them will be given free of cost to said purchaser or prospective purchaser, when such is not the fact.

(3) Advertising or representing in any manner that a certain number of sets, or any set of books offered for sale or sold by them has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose, when such is not the fact.

(4) Advertising or representing in any manner that purchasers or prospective purchasers of the encyclopedia sold by them are only buying or paying for loose-leaf supplements intended to keep the set of books up to date, or that purchasers are only buying or paying for services to be rendered by a research or other bureau for a period of 10 years, when such is not the fact.

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(5) Requiring purchasers of the encyclopedia sold by them to pay additional sums of money in order to receive semiannual loose-leaf supplements intended to keep the encyclopedia up to date, when such supplements were sold to said purchasers as part of the contract of purchase of said encyclopedia.

(6) Advertising or representing in any manner that the semiannual loose-leaf extension service and the bureau of research privilege are sold separately to others than purchasers of the encyclopedia sold by them at a price of \$12 per year, or at any other price, when such is not the fact.

(7) Advertising or representing in any manner that the encyclopedia is regularly sold at a price of \$130, and that at a later date all purchasers of it will be required to pay said price.

(8) Advertising or representing in any manner to purchasers and prospective purchasers that the encyclopedia sold by them is to be put on sale at a later date at a price greatly in excess of the price at which said encyclopedia is then being sold or offered for sale.

(9) Using contract forms, or order blanks, which have printed thereon prices for the encyclopedia and additional services which are greatly in excess of the prices at which said encyclopedia and services are intended to be, and are customarily sold.

(10) Using contract forms, or order blanks, which do not fully and plainly inform purchasers and prospective purchasers of all charges to be paid for the encyclopedia and services sold in connection with it.

(11) Representing in any manner that the semiannual loose-leaf extension service, or the bureau of research privilege, or both, can be paid for at a rate of \$6.95 a year, or any other annual sum, when such is not the fact.

(12) Advertising or representing in any manner that any person is a contributor, reviewer or revisor of any encyclopedia, or other set of books, unless and until such person has actually contributed an article or articles to said publication, or has actually reviewed or revised an article or articles submitted to him, and shall have given permission to respondents to use his name as a contributor, reviewer or revisor.

(13) Advertising or representing in any manner that any persons are members of a consulting staff or any research or other bureau connected with any encyclopedia, or other set of books, sold by respondents, and that questions sent in by subscribers are referred to said persons for answer, unless and until said persons are actually retained by said research or other bureau for the purpose of answering questions of subscribers, or such questions are actually referred

to said persons, and said persons have consented that their names can be used for that purpose.

(14) Advertising or representing in any manner that their encyclopedia was edited and prepared by a society of 200 teachers, when such is not the fact.

(15) Advertising or representing in any manner that 200 or more eminent educators and scholars prepared and edited the encyclopedia sold by them when such is not the fact.

(16) Advertising or representing in any manner that the encyclopedia sold by them is a recently completed, new and up-to-date encyclopedia, when such is not the fact.

(17) Using the names of, or preparing letters or other communications in the names of attorneys at law, and sending out such letters or communications to delinquent purchasers, in order to collect its accounts, unless and until permission has been obtained from such attorneys to use their names in such a manner.

(18) Advertising or representing in any manner that the encyclopedia sold by them is superior to the Encyclopedia Britannica, and other well-known encyclopedias, when such is not the fact.

(19) Advertising or representing in any manner that the usual and customary selling price of the encyclopedia sold by them is higher than the price at which it is being offered to the particular purchaser or prospective purchaser, when such is not the fact.

(20) Using any false, deceptive, and misleading statements and representations in the sale of or offering for sale of, the encyclopedia sold by them.

It is further ordered, That respondents Perpetual Encyclopedia Corporation, North American Publishing Co., Inc., Source Research Council, Inc., Frank J. Mackey, individually and as president of Perpetual Encyclopedia Corporation, H. F. McGee, individually and as vice president of Perpetual Encyclopedia Corporation, Harold C. Sherman, individually and as secretary of Perpetual Encyclopedia Corporation, Robert T. Mackey, individually and as treasurer of Perpetual Encyclopedia Corporation, Edmund P. Rucker, individually and as vice president of Perpetual Encyclopedia Corporation, Warren T. Davis, individually and as president of Source Research Council, Inc., John J. Hennessy, individually and as vice president of Source Research Council, Inc., Leonard C. Maier, individually and as secretary of Source Research Council, Inc., Turney T. Culp, individually and as treasurer of Source Research Council, Inc., Walter H. Gorham, trading under the name and style of North American Publishing Co., and George A. Seiler, individually and as Pacific coast manager of Perpetual Encyclopedia Corporation and Source Research Council, Inc., and each of them, their

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officers, agents, representatives, and employees, in connection with the offering for sale of any books, or set of books, or publications in commerce among the several States of the United States, or in the District of Columbia, cease and desist from:

(1) Using advertising sheets upon which are printed prices for the encyclopedia and additional services which are greatly in excess of the prices at which said encyclopedia and additional services are intended to be, and are customarily sold.

(2) Representing in any manner that the advertising sheets carried by their salesmen are reproductions of advertisements in the Saturday Evening Post, or any other magazine or periodical, when such is not the fact.

(3) Advertising or representing in any manner that the encyclopedia sold by them was specially prepared for the use of teachers and pupils, when such is not the fact.

(4) Representing to purchasers or prospective purchasers that they are being called upon in connection with the school work of said purchasers' or prospective purchasers' children, or at the request of the teachers of the school which the said children attend, when such is not the fact.

(5) Using the names of, or representing that the encyclopedia or other set of books, sold by them has been purchased by any person or persons who have not actually bought said encyclopedia, or other set of books.

(6) Representing in any manner that the encyclopedia sold by them is prepared for and is of especial benefit to a person who is engaged in the profession or trade of the purchaser or prospective purchaser being solicited.

It is further ordered, That respondent Perpetual Encyclopedia Corporation, Frank J. Mackey, individually and as president of Perpetual Encyclopedia Corporation, H. F. McGee, individually and as vice president of Perpetual Encyclopedia Corporation, Harold C. Sherman, individually and as secretary of Perpetual Encyclopedia Corporation, Robert T. Mackey, individually and as treasurer of Perpetual Encyclopedia Corporation, Edmund P. Rucker, individually and as vice president of Perpetual Encyclopedia Corporation, and Walter H. Gorham, trading under the name and style of North American Publishing Co., and each of them, their officers, agents, representatives, and employees, in connection with the offering for sale of any books, set of books, or publications in commerce among the several States of the United States, or in the District of Columbia, cease and desist from:

(1) Using the names of fictitious firms or agencies on letters and other communications in order to obtain names of prospective pur-

chasers, and to conceal the fact that said communications are from companies or individuals engaged in selling books.

It is further ordered, That respondents Perpetual Encyclopedia Corporation, Frank J. Mackey, individually and as president of Perpetual Encyclopedia Corporation, H. F. McGee, individually and as vice president of Perpetual Encyclopedia Corporation, Harold C. Sherman, individually and as secretary of Perpetual Encyclopedia Corporation, Robert T. Mackey, individually and as treasurer of Perpetual Encyclopedia Corporation, and Edmund P. Rucker, individually and as vice president of Perpetual Encyclopedia Corporation, and each of them, their officers, agents, representatives and employees, in connection with the offering for sale of any books, set of books, or publications in commerce among the several States of the United States, or in the District of Columbia, cease and desist from:

(1) Selling or offering for sale, either at wholesale or retail, any encyclopedia or set of books of the same text and material under more than one name or title at the same time.

(2) Selling the text and content material of any encyclopedia or other set of books, in such a way or manner that said text and content material may be resold by any other person, firm or corporation under any other name or title than that being used by respondents for said text and content material.

(3) Including in any encyclopedia, or other set of books, the name of any person as a contributor, reviewer or revisor to said encyclopedia, or other set of books, unless and until such person has actually contributed an article or articles to said publication, or has actually reviewed or revised an article or articles submitted to him, and shall have given permission to respondents to use his name as a contributor, reviewer or revisor.

(4) Advertising or representing in any manner that a staff of editors, writers, photographers and illustrators, is maintained in every part of the world for the purpose of preparing the semi-annual loose-leaf supplements, when such is not the fact.

(5) Representing in any manner that the encyclopedia is sold on approval, and that the purchaser can cancel his subscription after an examination of the encyclopedia if not satisfied, when such is not the fact.

(6) Changing the terms of a contract, or order form, in any manner after it has been signed by the purchaser.

(7) Representing to the prospective purchaser that he or she is signing a memorandum, receipt, or other informal paper when in fact the paper being signed is a contract, or order form, for the encyclopedia.

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(8) Sending letters or other communications in their own names or in the names of fictitious collection agencies, threatening to publish the names of delinquent purchasers in the newspapers of the respective cities in which such purchasers live, or otherwise threatening action against said delinquent purchasers, when said purchasers have been induced and persuaded to sign a contract, or order form, for the encyclopedia, or other set of books, by false, deceptive and misleading statements and representations, and have informed respondents of said false, misleading, and deceptive statements and representations made to them.

(9) Using letters or other documents prepared in a manner to simulate, or intended to simulate summonses, writs or other legal processes, to collect their delinquent accounts.

(10) Representing in any manner that the encyclopedia sold by them is published by, or that its publisher is connected with, other publishers of recognized reference books, when such is not the fact.

(11) Representing in any manner that the purchaser of the encyclopedia sold by them will be furnished with well-known financial services, when such is not the fact.

(12) Printing in any encyclopedia or other set of books, published by them as copyright dates, years in which no copyrights were obtained; or printing in said publications any copyright dates unless all dates of years in which copyrights were obtained are also printed.

It is further ordered, That respondents North American Publishing Co., Inc., Russell O. Priebe and Emma L. Priebe, individually and as officers of North American Publishing Co., Inc., and Walter H. Gorham, trading under the name and style of North American Publishing Co., and each of them, their officers, agents, representatives, and employees, in connection with the offering for sale of any books, set of books, or publications, in commerce among the several States of the United States, or in the District of Columbia, cease and desist from:

(1) Using a contract, or order form, on which is printed a fictitious price, said price being crossed out and the price at which the encyclopedia is intended to be and is customarily sold printed in its place.

(2) Advertising or representing in any manner that the encyclopedia or other set of books, sold by them is bound in leather, when such is not the fact.

It is further ordered, That respondents shall within 60 days from the date of the service upon them of the order herein, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

Complaint

IN THE MATTER OF
BULOVA WATCH COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2043. Complaint, June 4, 1932—Order, July 15, 1932*

Consent order requiring respondent, its agents, etc., in connection with sale in interstate commerce of its watches, to cease and desist from representing same as (1) containing a designated number of jewels, unless actually containing stated number of jewels, each and every one of which serves "a mechanical purpose as a frictional bearing"; or (2) as "adjusted" or "adj.", unless actually adjusted by it "to heat, cold, isochronism and position", as generally understood from the term in the industry and by the purchasing public.

Mr. Richard P. Whiteley for the Commission.

Mr. Richard H. Wilmer, of Washington, D.C., for respondent.

COMPLAINT

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Bulova Watch Co., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Bulova Watch Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the City of New York, State of New York, and having factories and assembling plants located at Woodside, Long Island, N.Y., at Providence, R.I., and at Bienne, Switzerland. Respondent is now and for more than two years last past has been engaged in the business of manufacturing watches and watch parts and in the sale and distribution of watches in commerce between and among various States of the United States, and has caused said products, when sold, to be shipped from its place of business in the State of New York or from its factories in the States of New York and Rhode Island to purchasers thereof located in a State or States of the United States other than the States wherein said shipments originated. In the course and conduct of its business, respondent was at all times herein referred to in competition with other corporations, firms, individuals and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

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PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, Bulova Watch Co., respondent herein, for more than two years last past, in soliciting the sale of and selling its watches in interstate commerce between and among various States of the United States has caused and now causes the same to be advertised in circulars, catalogs, newspapers, magazines, and other publications having general circulation between and among the various States of the United States, and has also caused and now causes its watches to be advertised by means of broadcasts from a radio station located in the State of New York with hook-ups with other radio stations located in other States of the United States, in which said advertising matter respondent has represented that the said watches contained a designated number of jewels, such as "seventeen 17 jewels" or "nineteen 19 jewels" or "twenty one 21 jewels" or any other designated number of jewels, when in truth and in fact said watches did not contain the stated number of jewels, each and every one of which jewels served a mechanical purpose as a frictional bearing; and in which said advertising matter respondent has represented that the said watches are "adjusted" or "adj.", so as to import or imply that the said watches have been adjusted to heat, cold, isochronism and position, when in truth and in fact said watches or the movements thereof were not and had not been adjusted by respondent to heat, cold, isochronism and position, as the term "adjusted" or its abbreviation "adj." is generally understood in the industry and by the purchasing public.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, Bulova Watch Co., respondent herein, for more than two years last past, in soliciting the sale of and selling its watches in interstate commerce between and among various States of the United States has represented and now represents, upon the barrel bridges or upon other parts of the said watches so sold and distributed by it in commerce between and among the various States of the United States that the said watches contain a designated number of jewels, such as "seventeen 17 jewels" or "nineteen 19 jewels" or "twenty one 21 jewels" or any other designated number of jewels, when in truth and in fact said watches did not contain the stated number of jewels, each and every one of which jewels served a mechanical purpose as a frictional bearing; and respondent has represented and now represents, upon the barrel bridges or upon other parts of the said watches so sold and distributed by it in commerce between and among the various States of the United States that the said watches are "adjusted" or "adj.", so as to import or imply that the said watches have been adjusted to heat, cold,

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isochronism and position, when in truth and in fact said watches or the movements thereof were not and had not been adjusted by respondent to heat, cold, isochronism and position, as the term "adjusted" or its abbreviation "adj." is generally understood in the industry and by the purchasing public.

PAR. 4. The above and foregoing representations in statements of respondent by means of which it has offered for sale and sold or is selling its watches as set forth in this complaint, have had and have the capacity and tendency to mislead and deceive and have misled and deceived the purchasing public into the belief that the said representations are true, and have tended to induce, and have induced the purchase of respondent's watches in reliance upon such erroneous belief, and have tended to divert trade from, and have diverted trade from, and otherwise injured competitors of respondent.

PAR. 5. There are, among the competitors of respondent, those who are now and have been engaged for more than two years last past in the business of manufacturing watches and in the sale and distribution of the same in commerce between and among the various States of the United States, in competition with respondent, and who have not misrepresented the number of jewels contained in said watches serving a mechanical purpose as a frictional bearing, and who have not represented the watches so made as adjusted unless said watches were in fact adjusted to heat, cold, isochronism and position as the term "adjusted" is generally understood in the industry and by the purchasing public.

PAR. 6. The use by respondent of the false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth, constitute practices or methods of competition which tend to and do prejudice and injure the public, unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and operate as a restraint upon and a detriment to freedom of fair and legitimate competition.

PAR. 7. The above acts and things done by said respondent as aforesaid are unlawful and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its power and duties, and for other purposes", the Federal Trade Commission on the 4th day of June, 1932, issued

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its complaint against Bulova Watch Co., a corporation, respondent herein, and caused the same to be served upon said respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On July 6, 1932, respondent entered its appearance in this proceeding and filed its answer to said complaint formally, stating in writing that it desired to waive hearing on the charges set forth in the complaint and not to contest the proceeding, and consented that the Commission might make, enter and serve upon it an order to cease and desist from the violations of the law alleged in the complaint and more specifically enumerated in the following order. Respondent also requested in said answer that the Commission proceed to final disposition of this proceeding upon said answer pursuant to the provisions of paragraph 2 of rule III of the Commission's Rules of Practice and without further hearings.

The said answer of respondent was duly accepted and filed by the Commission, and thereupon this proceeding came on before the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, and the Commission being now fully advised in the premises:

It is now ordered, That respondent, Bulova Watch Co., a corporation, its agents, representatives, servants, employees, and successors in business, in connection with or in the course of the sale or distribution of watches in interstate commerce do cease and desist:

(1) From representing that the watches of respondent contain a designated number of jewels, such as "seventeen 17 jewels" or "nineteen 19 jewels" or "twenty one 21 jewels" or any other designated number of jewels, unless said watches actually contain the stated number of jewels, each and every one of which jewels serve a mechanical purpose as a frictional bearing;

(2) From representing that the said watches of respondent are "adjusted" or "adj." so as to import or imply that the said watches have been adjusted to heat, cold, isochronism and position unless said watches have actually been adjusted by respondent to heat, cold, isochronism and position as the term "adjusted" or its abbreviation "adj." is generally understood in the watchmaking industry and by the purchasing public.

It is further ordered, That said respondent, Bulova Watch Co., shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

ORDERS OF DISMISSAL

DIEL WATCH CASE Co., INC. Complaint, April 28, 1931. Order, January 7, 1932. (Docket 1944.)

Charge: Misbranding or mislabeling and advertising falsely or misleadingly as to composition or nature of manufacture of product; in connection with the manufacture and sale of watch cases and the assembling of watches.

Dismissed, after answer, by the following order:

This matter coming on for further hearing.

It is ordered, That the order to cease and desist heretofore entered herein¹ be and the same is hereby rescinded and the complaint dismissed.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Mr. Jacob M. Zinaman*, of New York City, for respondent.

I. M. BAGEDONOW, INC. Complaint, March 5, 1931. Order, January 12, 1932. (Docket 1923.)

Charge: Naming product misleadingly, advertising falsely or misleadingly and misbranding or mislabeling as to source or origin; in connection with the manufacture and sale of ladies' coats.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Robert H. Winn* for the Commission; *Mr. Jacob M. Zinaman*, of New York City, for respondent.

THE NITRAGIN Co., INC. Complaint, July 18, 1930. Order, January 29, 1932. (Docket 1859.)

Charge: Advertising falsely or misleadingly as to value of own and competitive products, and official tests, and misbranding or mislabeling as to value of product; in connection with development and sale of cultures of nitrogen-fixing bacteria for use in promoting growth of leguminous crops.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. PGad B. Morehouse* for the Commission; *McGovern, Curtis & Devos*, of Milwaukee, Wisc., for respondent.

RADIANT SPECIALTY Co., ET AL.² Complaint, December 10, 1929. Order, February 15, 1932. (Docket 1728.)

Charge: Misrepresenting business status or identity, and nature or results of product, offering deceptive inducements to purchase, secur-

¹ See 15 F. T. C. 176.

² In addition to the Radiant Specialty Co., respondents include Hyman, Rose, Benjamin, and Esther Fistel, and Benjamin Snyder, individually and as officers and agents of aforesaid company.

ing prospects signature to contract of sale through trickery, and abusing or using legal process improperly; in connection with the sale of electric lamp fixtures and parts thereof.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Golden & Golden*, of New York City, for respondents.

COHEN, GOLDMAN & Co., INC. Complaint, February 3, 1930. Order, February 17, 1932. (Docket 1754.)

Charge: Maintaining resale prices; in connection with the manufacture and sale of men's clothing.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Robert H. Winn* for the Commission; *Nordlinger & Riegelman*, of New York City, and *Mr. Dean Hill Stanley*, of Washington, D. C., for respondent.

CHASE & SANBORN, INC. Complaint, January 21, 1932. Order, March 10, 1932. (Docket 1998.)

Charge: Advertising falsely or misleadingly as to testimonials and indorsements; in connection with sale of coffee.

Dismissed for the reason that respondent has been dissolved.

Appearances: *Mr. Edward L. Smith* for the Commission.

D. T. BOHON Co., INC. Complaint, January 12, 1931. Order, March 16, 1932. (Docket 1893.)

Charge: Advertising falsely or misleadingly as to composition and quality of product and sale direct from factory to consumer; in connection with sale of paint by mail.

Dismissed, after answer, on memorandum of chief counsel and without prejudice.

Appearances: *Mr. E. J. Hornibrook* for the Commission.

CHARLES ATLAS. Complaint, May 15, 1931. Order, March 22, 1932. (Docket 1952.)

Charge: Advertising falsely or misleadingly as to nature and results of product and service, prices, products as free, and pretended special offers; in connection with sale of a correspondence course of instruction in science and art of physical culture.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Mr. Stephen A. Day* and *Mr. Eugene L. Culver* of Washington, D. C., for respondent.

AUTO SCIENCE ASSOCIATION, INC., ET AL. Complaint, April 6, 1931. Order, March 23, 1932. (Docket 1935.)

Charge: Advertising falsely or misleadingly as to nature and results of product or service; in connection with sale of a course of study and instruction called Practical Mind Science.

Dismissed, on the ground that the respondents are out of business. Appearances: *Mr. Edward E. Reardon* for the Commission.

E. B. HALL, TRADING AS E. W. HALL AND DR. E. W. HALL. Complaint, January 16, 1932. Order, March 25, 1932. (Docket 1994.)

Charge: Advertising falsely or misleadingly as to source or nature of manufacture of product, and properties or results thereof; in connection with the sale of a proprietary medicine under the name of "Texas Wonder."

Dismissed by the following order:

The above case coming on for consideration before the Commission on this 21st day of March, 1932, on a report presented by the special board of investigation tendering for consideration and action by the Commission a certain written stipulation executed by the respondent, E. B. Hall, an individual trading as E. W. Hall and Dr. E. W. Hall, and recommending that such stipulation be by the Commission accepted and approved and that, thereupon, the Commission make an order dismissing the complaint issued against said respondent, and the Commission being fully advised in the premises,

It is ordered, That the report of the special board of investigation be, and the same hereby is, approved; that the stipulation so executed by said respondent, E. B. Hall, trading as E. W. Hall and Dr. E. W. Hall, be, and the same hereby is, accepted and approved; that the complaint heretofore issued by the Commission against the said E. B. Hall, trading as E. W. Hall and Dr. E. W. Hall, be, and the same hereby is, dismissed.

Appearances: *Mr. E. J. Hornibrook* for the Commission; *Esch, Kerr, Woolley, Newton & Shipe* of Washington, D. C., for respondent.

ASSOCIATED KNITTING MILLS OUTLET Co., INC. Complaint, April 10, 1930. Order, April 1, 1932. (Docket 1783.)

Charge: Using misleading corporate name, misrepresenting business status and advertising falsely or misleadingly in regard thereto; in connection with the sale of hosiery, lingerie, sweaters, blankets, and other articles.

Dismissed, after answer, for the reason that "respondent has gone out of business."

Appearance: *Mr. G. Ed. Rowland* for the Commission; *Duffy & Duffy*, of Bay City, Mich., for respondent.

EMILE MEYER AND HENRY C. GOLDMAN, COPARTNERS, TRADING AS EMILE MEYER & Co., AND ALSO TRADING AS HASLIN MILLS; AND D. J. GROSS, AN INDIVIDUAL TRADING AS BELLMORE DRESS Co. Complaint, April 3, 1931. Order, April 20, 1932. (Docket 1934.)

Charge: Using misleading trade name, misrepresenting business status, naming product misleadingly, advertising falsely or misleadingly and misbranding or mislabeling as to composition of product; in connection with manufacture and sale of cotton piece goods which they cause to be converted or finished.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Robert H. Winn* for the Commission; *Mr. Henry Fluegelman*, of New York City, for respondents.

THOMAS WILLIAMS, THOMAS R. WILLIAMS, THOMAS BLAGDON, D. S. WILLIAMS, AND E. W. WILLIAMS, PARTNERS, TRADING AS ICHABOD T. WILLIAMS & SONS. Complaint, December 20, 1929. Order, May 3, 1932. (Docket 1746.)

Charge: Misrepresenting product as to composition and advertising falsely or misleadingly in regard thereto; in connection with sale of lumber and other wood products to lumber dealers and manufacturers of furniture, cabinet work and allied products.

Dismissed, after answer, by the following order:

The respondents herein having tendered this Commission the following stipulation:

Respondents hereby stipulate and agree, that in their sale, description, and advertisements of wood grown in Africa which they have heretofore usually described as "African mahogany", they will not employ the word "mahogany" alone or in connection with other words without the modifying word or adjective "African".

and the Commission having accepted the same;

It is hereby ordered, That the complaint herein be, and the same is hereby, dismissed.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Mr. Junius Parker*, of New York City, for respondents.

I. STEINBERG, TRADING AS PARISIAN MANICURE MANUFACTURING Co. Complaint, April 28, 1931. Order, May 9, 1932. (Docket 1943.)

Charge: Misbranding or mislabeling as to nature of product; in connection with the manufacture and sale of manicure sticks.

Dismissed, after answer, "for lack of interstate commerce."

Appearances: *Mr. James M. Brinson* for the Commission.

FRED F. SMITH, INDIVIDUALLY, AND DOING BUSINESS UNDER THE TRADE NAMES AND STYLES OF "THE NEWTON REMEDY Co.", "THE NEWTON HORSE REMEDY Co.", AND "THE NEWTON HORSE MEDICINE Co." Complaint, May 8, 1931. Order, May 12, 1932. (Docket 1948.)

Charge: Misrepresenting nature and results of product in connection with the manufacture and sale of a preparation or product for the care and treatment of horses, cattle, and hogs.

Dismissed, after answer, "for the reason that the respondent Fred F. Smith is dead."

Appearances: *Mr. Henry C. Lank* for the Commission; *Mr. Ralph Emery*, of Toledo, Ohio, for respondent.

GENERAL CIGAR CO., INC. Complaint, November 25, 1930. Order, May 21, 1932. (Docket 1879.)

Charge: Selling and distributing products on exclusive and non-competitive basis; in connection with manufacture and sale of cigars.

Dismissed, after answer, stipulation and trial, without assignment of reasons, Commissioner McCulloch dissenting in following memorandum:

Dissenting opinion by Commissioner McCulloch

The facts of this case were brought into the record by stipulation and are therefore undisputed.

Respondent is a manufacturer and distributor of cigars, and its products include several well-established, popular brands. Its gross output has reached as high as 812,977,000 cigars per annum, of the sales value of \$37,946,655. It has adopted and maintained the plan of selling to independent wholesalers in restricted territory, who in turn resell to subwholesalers and also to retailers. There are 46 of such distributors, and respondent also operates 17 of its own sales agencies in restricted territory. The distributors, both independents and company branches, are restricted in making sales to assigned territory. Respondent also sells to a list of chain stores.

There is no formal contract between respondent and its customers with respect to restricted territory, but respondent sends a letter to a distributor assigning territory when the business begins between them or when changes are to be made in the assignments. The assignments are accepted by the distributors and there is complete cooperation between respondent and each distributor to enforce the plan by preventing a distributor from making resales outside the limits of the assigned territory. The subwholesalers are also included in the plan. Numerous instances are shown in the agreed statement of facts of the cooperative methods of enforcing the plan.

The arrangement is described in the agreed statement as being one to provide "that the distributors will cooperate with each other and with respondent to the end that the activities of the distributors in respect to specified brands will be confined to the area or territory assigned to each, that is to say, that none of them will attempt to sell respondent's products outside of the area or territory assigned to each."

This sales plan established by respondent covers all of the territory through which it does business and it obviously and completely eliminates any possibility of competition in the resale of its products at wholesale.

Does this constitute a violation of the Sherman Antitrust Law? If so, it constitutes a violation of section 5 of the Federal Trade Commission statute, and the practice should be restrained. *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 141.

Of course, a manufacturer has the legal right to choose his customers and to limit them in numbers, but he has not the legal right, by exacted promises or by cooperative or coercive methods, to restrain his customers from making resales outside of allotted territory.

It is well settled that restraints on the alienation of chattels are obnoxious to public policy, and when amounting to a restraint of trade they offend against the antitrust laws. *Dr. Miles Medical Company v. Park & Sons Company*, 220 U. S. 373. *Strauss v. Victor Talking Machine Company*, 243 U. S. 490.

The Supreme Court decided in *Addyston Pipe & Steel Company v. United States*, 175 U. S. 211 that an agreement between competing manufacturers to divide sales territory constitutes a violation of the Sherman Law. If such an agreement entered into between the distributors themselves be unlawful, it necessarily follows that the activity of a manufacturer who joins with the distributors in negotiating and enforcing such agreement falls under the ban of the law. The manufacturer thus becomes "the head and front of the offending". In the *Dr. Miles* case, *supra*, the court said that "the complainant can fare no better with its plan of identical contracts than could the dealers themselves if they formed a combination and endeavored to use the same restrictions, and thus to achieve the same results by agreement with each other."

The principle is the same in division of sales territory arrangements as in direct resale price maintenance, for the former completely eliminates price competition—and, even though there would otherwise remain a degree of competition between dealers who sell respondent's line of cigars and dealers in other lines of cigars, the restraint is unlawful. The popularity of respondent's line would render the competition substantial, if unrestrained.

The evil of resale price maintenance has been judicially appraised. *Federal Trade Commission v. Beech-Nut Packing Co.*, *supra*.

There is no need to discuss the degree of suppressed competition involved in the present case, for all competition in the resale of respondent's line of cigars is eliminated by the regional restriction.

Nor is it important that there still remains an opportunity for competition between retail dealers. *Federal Trade Commission v.*

Oppenheim, 5 F. (2d) 574. *United States v. Schrader's Son, Inc.*, 252 U. S. 85. They all buy from the same source and at the same price. The regional distributor fixes his own price at will and the absence of competition necessarily affects the price at which the retailer purchases his supply. And if it be discovered that the distributor, without competition, fixes a reasonable price, that fact would be still less important, for if the distributor may fix a reasonable price, it is within his power to fix an exorbitant one.

The "Rule of Reason" is not applicable to price fixing for any system or practice which necessarily results in stabilization of price by exclusion of competition is unlawful. *United States v. Trenton Potteries Co.*, 273 U. S. 392. In that case the court said: "The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices."

I should add in conclusion that while respondent has the legal right to restrict the sales territory of its 17 branch sales departments, that feature of its plan can not escape attention as the completion of a system which operates as a total exclusion of all competition in the distribution of its products.

I dissent, therefore, from the action of the majority in dismissing the complaint against respondent.

Appearances: *Mr. Robert H. Winn* for the Commission; *Rushmore, Bisbee & Stern*, of New York City, for respondent.

DOERNBECHER MANUFACTURING Co. Complaint, June 12, 1931. Order, May 21, 1932. (Docket 1957.)

Charge: Maintaining resale prices; in connection with the manufacture and sale of different kinds of furniture.

Dismissed, after answer, "for the reason that the respondent is not engaged in interstate commerce."

Appearances: *Mr. Ellis DeBruler* for the Commission; *Mr. O. A. Neal*, of Portland, Oreg., for respondent.

McKESSON & ROBBINS, INC. Complaint, August 27, 1929.¹ Order, June 30, 1932. (Docket 1689.)

Charge: Acquisition of stock in competitors in violation of section 7 of the Clayton Act; in connection with the manufacture and wholesale of drugs, proprietary medicines and other articles usual to the drug business.

Dismissed, after answer, by the following order:

The respondent herein having moved this Commission to dismiss the amended and supplemental complaint in the above designated proceeding; and the Commission having heard argument of counsel for the respondent in support of such motion and argument

¹Amended and supplemental complaint, February 26, 1932.

of counsel for the Commission in opposition thereto; and the Commission having considered a brief of counsel for the respondent in support of such motion, a memorandum by counsel for the Commission in opposition thereto, and reply memorandum by counsel for the respondent; and the Commission being fully advised in the premises;

It is hereby ordered, That the said motion be and the same is hereby granted, and that the said amended and supplemental complaint and the original complaint in this proceeding be and the same are hereby dismissed.

Appearances: *Mr. Edward L. Smith* for the Commission. *Mr. Abram F. Myers* and *Mr. David A. Pine*, of Washington, D.C., and *Root, Clark & Buckner*, of New York City, for respondent.

TEXTILE BAG MANUFACTURERS' ASS'N, its officers and members, et al.¹ Complaint, February 26, 1930. Order, July 7, 1932. (Docket 1765.)

Charge: Combining or conspiring to restrict and suppress competition; in connection with the sale of flour, meal and feed bags.

Dismissed, after answer, stipulation and trial, "for the reason that the respondents have abandoned the practices charged in the complaint."

Appearances: *Mr. Everett F. Haycraft* for the Commission; *Sanders, Childs, Bobb & Wescott*, of Chicago, Ill., for Textile Bag Manufacturers Ass'n and members thereof, excluding *Mente & Co., Inc.*² and *Milling, Godchau, Saal & Milling*, of New Orleans, La., for *Mente & Co., Inc.*

PATUXENT GUANO CO. Complaint, April 15, 1931. Order, July 12, 1932. (Docket 1939.)

Charge: Misrepresenting business status or advantages, advertising falsely or misleadingly and misbranding or mislabeling in said respect, and as to nature of product; in connection with the sale of commercial fertilizers.

Dismissed, after answer, without assignment of reasons.

Appearances: *Mr. James W. Nichol* for the Commission.

¹ Respondent officers and members not specified above include: *Judson S. Bemis*, individually and as president of said association; *T. O. Doremus*, individually and as secretary-treasurer of said association; *Bemis Bros. Bag Co.*, *Chase Bag Co.*, *Fulton Bag & Cotton Mills*, *Philadelphia Bag Co.*, *Hutchinson Bag Co.*, *Millheiser Bag Co.*, *Morgan & Hamilton Co.*, *Crystal Springs Bleachery Co.*, *Arkell & Smiths*, *Werthan Bag Co.*, *Percy Kent Bag Co., Inc.*, *John C. Graffin Co.*, *Central Bag & Burlap Co.*, *M. J. Neahr & Co.*, *Mente & Co., Inc.*, *Richardson-Garrett Bag Co.*, *Ames Harris & Neville Co.*, *Sterling Bag Co.*, *Hardin Bag Co.*

² The Commission as of September 29, 1932, dismissed the complaint as to respondent *Mente & Co., Inc.*, for lack of proof.

STIPULATIONS ¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST ²

921. **Misrepresenting Product—Bittersweet.**—Respondent, a corporation, engaged in the manufactures of products designated “Bittersweet” and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling in interstate commerce its said products, hereby agrees to cease and desist from the [use of the] word “chocolate” either independently or in connection or conjunction with any other word or words, statement or representation, or in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are “chocolate” when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Jan. 4, 1932.)

922. **False and Misleading Brands or Labels—Malt Product.**—Respondents, engaged in the sale and distribution in interstate commerce of a malt product, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their product in interstate commerce, agreed to cease and desist from the use in connection with their brands, labels, or designations for the said product of the word “Canadian” either independently or in connection

¹ For false and misleading advertising stipulations effected through the commission's special board. See p. 570, *et seq.*

² Published, after deleting names of respondents, to inform the public of those unfair methods and practices condemned by the Commission and to establish precedents that will serve to eliminate unfair business methods of interest to the public and injury to competitors.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, Dec. 24, 1931, to July 17, 1932, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 920, inclusive—may be found in vols. 10 to 15 of the Commission's decisions.

or conjunction with the word "Maid" or with the address "120 St. James St., Montreal, P.Q., Canada", or with any other word or words, pictorial representation or insignia, or in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is manufactured in Canada and/or has been imported into the United States, when such is not the fact.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (Jan. 11, 1932.)

923. **False and Misleading Brands or Labels and Advertising—Stogies.**—Respondent, an individual, engaged in the sale and distribution of stogies in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use of the word "Havana" either independently or in connection or conjunction [with] any other word or words, or in any other way on his brands or labels affixed to said products, or in his advertising matter of whatsoever character distributed in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said products are composed of, or made or manufactured from Havana tobacco or tobacco grown on the island of Cuba, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Jan. 11, 1932.) '

924. **False and Misleading Trade or Corporate Name, Brands or Labels and Advertising—Revitalizer, Nerve Restorer, and Tonic.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of an alleged revitalizer, nerve restorer, and general system tonic, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use of the word "laboratories" as part of, or in connection or conjunction with its corporate or trade name, or in any way in soliciting the sale of or selling its products in interstate commerce, or in the advertisement, labeling, or branding thereof so as to import or imply, or which may have the tendency to confuse, mislead, or deceive purchasers into the

belief that it owns, operates, or controls the laboratory or plant wherein said product is made, when such is not the fact. Said respondent further agreed to cease and desist forever from the use in advertisements or advertising matter, or on brands or labels, distributed in interstate commerce of statements and representations to the effect that said product is a remedy for or will permanently relieve ailments such as sleeplessness, loss of appetite, general debility, nervous depression, gland weakness, diseases of stomach and kidneys, or that it is a body builder and/or health builder, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation of the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Jan. 25, 1932.)

925. Combination or Conspiracy to Restrict Competition in Purchase of Supplies—Waste Paper.—Marion Paper Co. is a corporation of Indiana, with its principal place of business at Marion, Ind. United Paper Board Co. is a corporation of New Jersey, with its principal place of business at Wabash, Ind. Each of the aforesaid respondent corporations has, for more than 1 year last past, been engaged in the manufacture of paper and paper-board products in commerce between and among various States of the United States. The raw material from which the said respondent corporations manufacture their said paper board and paper-board products is waste paper such as "News", pertaining to newspapers, "No. 1 Mixed", pertaining to mixed waste paper, and to some extent waste paper of lesser grades, and which raw material the said respondent corporations have purchased for more than 1 year last past from paper-stock dealers located in various States of the United States. The said raw material so purchased is caused to be shipped from the places of business of said stock dealers located in various States of the United States to the places of business of said respondent corporations located in States other than the States wherein shipment originated. In the course and conduct of business the said respondent corporations are now in competition with other corporations, individuals, firms and partnerships likewise engaged in the purchase of similar raw material in interstate commerce, and, for a period of time prior to May of 1929, each of the said respondent corporations was engaged in competition each with the other in the purchase of said raw material.

At a meeting held in May of 1929, and which was attended by a duly authorized representative or representatives from each respondent corporation named in the preceding paragraph, the said respondent corporations entered into and in July of said year, caused to be put into effect a mutual agreement, plan or understanding having for an object the elimination of competition among said respondent corpora-

tions in the purchase by them of waste paper from stock dealers located in various States of a like freight rate from Chicago, Ill., and including Indiana, Michigan, and Illinois. Under the said plan purchases of stock were to be made by or for the said corporations at arbitrary prices fixed by A. F. Meisterheim, of Chicago, Ill., with the knowledge, consent, approval, and cooperation of the said respondent corporations. In accordance with the said plan, each of said respondent corporations entered into a similar, individual contract with said A. F. Meisterheim appointing him its agent for the purchase of waste paper in the Chicago market and other markets, each of said corporations, agreeing, under guarantee, to make through said agent a minimum annual purchase of waste paper at a stated remuneration or commission. In further accordance with the said plan, each of the said respondent corporations agreed to and did furnish the said A. F. Meisterheim at divers times with a list of its present source of waste paper supply, stating approximately the tonnage it purchased from each source, and with a list of the various grades. The said A. F. Meisterheim also received from each of the said respondent corporations reports of its consumption of the various grades of waste paper, together with a report showing the amount of waste paper stock on hand, on order, or in transit, and the anticipated quantities required for the succeeding month. The information so received was to be, and was, used by the said A. F. Meisterheim, in cooperation with the said respondent corporations in the preparation and establishment, at the beginning of each month and for that month, of arbitrary lists of prices to be paid, and which were paid to stock dealers for supplies of waste paper sold by such dealers to said respondent corporations exclusively through said A. F. Meisterheim. To further insure the success of the plan, the said respondent corporations, acting in cooperation each with the other and with the said A. F. Meisterheim, refused to purchase or accept supplies of waste-paper products from stock dealers who failed to, or refused to, sell through said A. F. Meisterheim at the said established prices. The said respondent corporations also refused to purchase or accept waste-paper products from stock dealers whose offered supplies of products contained or included waste paper bought or obtained from a dealer or dealers who had refused to sell through said A. F. Meisterheim.

It is further stipulated and agreed, by and between the said W. E. Humphrey, chairman of the Federal Trade Commission and Marion Paper Co. and United Paper Board Co., that Marion Paper Co. and United Paper Board Co. hereby agree to cease and desist from cooperating in any manner whatsoever in the fixing of prices, or in making uniform the prices at which products shall be bought by or for them, or any of them, through a common buying agency; entering into any cooperative plan, agreement, contract, or understanding to

purchase products exclusively through a common buying agency at a price or prices fixed by said agency or cooperatively by said respondent corporations or by said agency in cooperation with said respondent corporations; cooperatively agreeing to purchase products exclusively through a common buying agency and refusing to purchase products (1) from dealers who fail to refuse to sell products through said agency and/or at prices fixed by said agency or by said agency in cooperation with said respondent corporations, or (2) from dealers whose offered products contain or include products bought or obtained from a dealer who has refused to sell through said agency and/or at its fixed purchase prices.

It is further stipulated and agreed, by and on behalf of the Commission, that this stipulation is taken for the purpose of effecting a settlement of the particular matters and things recited in said stipulation, and it is further understood and agreed that this stipulation, together with the names of the respondents stipulating, shall be released for publication and become a part of the public record. (Feb. 3, 1932.)

926. **False and Misleading Advertising—Fur-Bearing Rabbits.**—Respondents, engaged in the breeding of fur-bearing rabbits and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents agreed, individually and collectively, to cease and desist forever from the use in advertisements or advertising matter distributed in interstate commerce of exaggerated statements and representations respecting the profits which can be realized from the business of raising rabbits; and from the use of statements and representations which may confuse, mislead, and deceive purchasers into the belief that such profits are greater than can reasonably be expected.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (Feb. 10, 1932.)

927. **False and Misleading Advertising—Cow-Cleaning Prescription.**—Respondent, an individual, engaged in the manufacture of an alleged cow-cleaning prescription and in the sale and distribution of said product in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use in his

advertisements and advertising matter distributed in interstate commerce of any and all statements and representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product possesses that therapeutic value or quality so that, when administered, it will "cause the cow to clean" or will relieve the animal of garget or act as a preventive for milk fever, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Feb. 10, 1932.)

928. False and Misleading Trade or Corporate Name and Advertising—Preparatory Product.—Respondent, a corporation engaged in the sale and distribution of a preparatory product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use of the word "Laboratories" as part of, or in connection or conjunction with, its corporate or trade name in soliciting the sale of or selling its product in interstate commerce, or in its advertisements or advertising matter having interstate circulation or distribution so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said respondent owns, operates or controls the laboratory, plant or factory in which the product sold and distributed by it in interstate commerce is made, manufactured, or compounded. The said respondent also agreed to cease and desist from the use in its advertisements and advertising matter having interstate circulation or distribution of any and all statements and representations which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the said product contains, possesses, or has therapeutic properties in excess of what is actually the case or that the said product is or constitutes an efficacious treatment or agent for all ailments or diseases of the stomach and intestinal tract, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 12, 1932.)

929. False and Misleading Brands or Labels—Paints, Lacquers, Bronze Powders, Stencils, etc.—Respondent, a corporation, engaged in the manufacture and packaging of paints, lacquers, bronze powders, stencils, and other similar products and in the sale and distribution of the same in interstate commerce, and in competition with other cor-

porations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "aluminum" either independently or in connection or conjunction with any letter or letters, or with any other word or words, or in any other way so as to impart or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of aluminum, when such is not the fact; unless, when the said products are composed in substantial part of aluminum and the word "aluminum" is used to designate the same, in which case the word "aluminum" shall be accompanied by some other word or words, printed in type equally as conspicuous as that in which the word "aluminum" is printed so as to indicate clearly that the said products are composed in part of a material or materials other than aluminum.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 17, 1932.)

930. **False and Misleading Brands or Labels—Transfer Pictures, Bronze Powders and Liquids, Etc. (Aluminum).**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of transfer pictures, transfer adhesives, bronzing liquids, bronze powders and other similar products, and in competition with other corporations individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "aluminum" either independently or in connection or conjunction with any letter or letters, word or words, or in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed of aluminum, when such is not the fact; unless, when the said products are composed in substantial part of aluminum and the word "aluminum" is used to designate the same, in which case the said word "aluminum" shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the word "aluminum" is printed so as to indicate clearly that the said products are composed in part of a material or materials other than aluminum.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 17, 1932.)

931. **False and Misleading Trade or Corporate Name, Brands, or Labels—Infants' and Children's Shoes.**—Respondent, a corporation, engaged in the manufacture of infants' and children's shoes and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from marking, branding, or stamping said products, or any thereof, sold and distributed in interstate commerce with the word "Doctor" followed by a fictitious name so as to import or imply, or which may confuse, mislead, and deceive purchasers into the belief that said products are made under the supervision, or in accordance with the designs, of an orthopedist, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 24, 1932.)

932. **False and Misleading Trade Name and Brands—Torch Tips.**—Respondent, an individual, engaged in the manufacture of torch tips and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the letters "K-G" as a trade name or brand for his products; and from stating and representing that he can or will furnish "K-G" torch tips to customers, or that the products which he sells and distributes in interstate commerce are "K-G" torch tips, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Feb. 24, 1932.)

933. **False and Misleading Business Status and Advertising—Advertising Matter, Merchandise Coupons, Premium Cameras, Etc.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of coupons and advertising matter for use by retailers in connection with the sale of their merchandise, and in the redemp-

tion of such coupons and exchanging therefor various articles of merchandise, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his merchandise in interstate commerce, agreed to cease and desist forever from the use in contracts, or in advertisements and advertising matter circulated in interstate commerce of any words, statements, or representations which import or imply, or which have the capacity to confuse, mislead, or deceive purchasers into the belief that he is a distributor, agent, or representative of the Eastman Kodak Co., when such is not the fact; stating and representing, directly or indirectly, in coupons, contracts, advertisements, or advertising matter distributed in interstate commerce, that the cameras or other merchandise which he distributes in interstate commerce are given free, when such is not the fact, and/or the cost thereof is included in the remittance received and alleged to be for other merchandise and packing and shipping.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Feb. 24, 1932.)

934. **False and Misleading Testimonials or Advertising—Soap.**—Respondent, a corporation, engaged in the manufacture of toilet products including soap, creams, and powders, and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter distributed in interstate commerce of the statement that a certain number of women began the treatment with enlarged pores and ended the test with the problem solved, or of any similar statement or representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that its said product accomplished the results as indicated in the treatment of enlarged pores, when such is not the fact. The said respondent also agreed to cease and desist from the use in its said advertisements and advertising matter of the statement that "These noted dermatologists unanimously found respondent's soap most effective of all beauty aids", when such is not the fact. The said respondent further agreed to cease and desist from representing in its said advertising matter that a certain doctor was former

chairman of an organization known as "American Society of Dermatologists", when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 24, 1932.)

935. False and Misleading Trade or Corporate Name, Brands, or Labels—Electric-Light Pendants.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of novelties, including electric-light pendants, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "radium" as a trade name for its said products or on tags or cards attached to or accompanying the same; and from the use of the word "radium" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said products are made in whole or in part of radium, or that the same possess radioactive properties, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Feb. 29, 1932.)

936. False and Misleading Advertising—"Song Sheets."—Respondent, an individual, engaged in the business of publishing so-called "Song Sheets" consisting of comic verses, parodies on popular song hits, and other similar composition, and in competition with other individuals, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of captions and headings describing and representing his productions as "Broadway and Hollywood Popular Songs," or as "Songs of Radio, Stage, and Screen" and/or any other similar representations which import or imply, or which have the capacity to confuse, mislead, or deceive purchasers into the belief that said products are Broadway or Hollywood popular songs, popular or latest songs of radio, stage, and screen when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts

may be used in evidence against him in the trial of the complaint which the Commission may issue. (Feb. 29, 1932.)

937. False and Misleading Business Status and Advertising—Advertising Coupons, Premium Cameras, etc.—Respondent, an individual engaged in the sale and distribution in interstate commerce of coupons and advertising matter for use by retailers in connection with the sale of his merchandise and in the redemption of such coupons and exchanging therefor various articles of merchandise, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his merchandise in interstate commerce, agreed to cease and desist forever from the use in contracts, or in advertisements and advertising matter circulated in interstate commerce, of any words, statements, or representations which import or imply, or which have the capacity to confuse, mislead, or deceive purchasers into the belief that he is a distributor, agent, or representative of the Eastman Kodak Co., when such is not the fact, from stating and representing, directly or indirectly, in coupons, contracts, advertisements, or advertising matter distributed in interstate commerce, that the cameras or other merchandise which he distributes in interstate commerce are given free, when such is not the fact, and/or the cost thereof is included in remittance received and alleged to be for other merchandise and packing.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Mar. 9, 1932.)

938. False and Misleading Brands or Labels and Advertising—Varnish, Lacquers, and Industrial Finishes.—Respondent, a corporation, engaged in the manufacture of varnish, lacquers, and industrial finishes, and in the sale and distribution of said products in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from the use, on brands or labels affixed to its said products, and in its advertisements and advertising matter distributed in interstate commerce, of the word "rubber" either independently or in connection or conjunction with any other word or words, so as to import or imply that its products so designated and described are composed in whole or in substantial part of rubber; and from the use of the word "rubber" as descriptive of its said products in any way which may have the capac-

ity and tendency to confuse, mislead, or deceive purchasers into the belief that said products are composed in whole or in substantial part of rubber, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Mar. 9, 1932.)

939. False and Misleading Advertising—Cosmetics, Hosiery, and Imitation Pearls.—Respondent, a corporation engaged in the manufacture of cosmetics and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever, in its advertisements and advertising matter circulated in interstate commerce from the use of the words "Poudre de", "Fleur de", and/or "Jardin de" in connection with the word "Paris", and from the use of the aforesaid words or any other words from the French language which when taken in connection or conjunction with the word "Paris" or used in any other way so as to have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products to which the same are applied were imported or made in Paris, France, when such is not the fact; advertising, representing or describing its products with any false, fictitious, or misleading representations respecting the value of the same; the use of statements and representations that the prices, terms, and conditions offered in its advertisements and advertising matter are "special", or for a limited time only, or at a reduced price, when such is not the fact; the use of the word "chiffon" to describe and represent hosiery which are not made of silk, the product of the cocoon of the silk worm; from the use of the word "Free" either independently or in connection or conjunction with any other word or words, or in any way as descriptive of merchandise accompanying its products which may import or imply, or which has the capacity or tendency to confuse, mislead or deceive purchasers into the belief that said merchandise is given as a gratuity in consideration of the purchase of other products, when such is not the fact; the use of the word "pearl" or "pearls" either independently or in connection or conjunction with any other word or words, or in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so described are natural or genuine pearls, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts

may be used in evidence against it in the trial of the complaint which the Commission may issue. (Mar. 9, 1932.)

940. **Combination or Conspiracy to Limit Channels of Distribution—Barber Shop and Beauty Parlor Supplies.**—Respondent association is a corporation composed of corporations, firms, partnerships, and individuals, each of which is engaged in the sale and distribution in interstate commerce of supplies for use in barber shops and beauty parlors, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from cooperating with its membership, or with the agents, employees, or representatives of its membership, in carrying out or following a common course of action pursuant to mutual understanding, combination, or agreement, for the purpose or with the effect of directly or indirectly lessening competition or producing a restraint of trade in its products by the use of any or all of the following cooperative methods, to wit: providing manufacturers with lists of its members and requesting that they distribute their products only through such members; persuading, threatening, or coercing manufacturers to distribute their products only through its members, or to cease or refrain from dealing with distributors who are not among its members; by any other cooperative means or methods coercing or causing manufacturers to distribute their products only through its members.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Mar. 14, 1932.)

941. **False and Misleading Brands or Labels and Advertising—Toilet Articles, Fabrics, Imitation Jewelry or Precious Stones or Substances, and Imitation Leather.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of a variety of merchandise, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in his catalogs and other advertisements and advertising matter as a brand or label for any of his said products, the words "Paris", "Poudre", "Parfum" or "Henriot Parfumeurs" either independently or in connection or conjunction with any other word or words to describe or designate products not compounded or manufactured in France and imported into the United States; and from the use of such words as

"Paris", "Poudre", "Parfum", or "Henriot Parfumeurs" or any other words or the French language in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products to which the same are applied are of French origin, when such is not the fact; of the words "English" and/or "broadcloth" either independently or in connection or conjunction with any other word or words, in such a way as to import that the product to which such words apply was imported from England, or that the product is that product generally known to the trade and the public as "broadcloth", when such is not the fact; of the word "London" as a trade name or brand for products, or any of them, in such a way as to import or imply that the products so described and designated were made in London or imported from England, when such is not the fact; of the words "pearl", "pearls", "unbreakable pearls", "indestructible pearls", or any of them, either independently or in combination with any other word or words, so as to import or imply that the products to which the same are applied are composed of genuine pearls, and/or are unbreakable or indestructible, when such is not the fact; and from the use of the words "pearl", "pearls", "unbreakable", or "indestructible", or any other similar expression or combination of words which may import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products to which such terms are applied are composed of pearls, or that the same are unbreakable or indestructible, when such is not the fact; of the words "crystal" and/or "crystals" either independently or in connection or conjunction with any other word or words, or in any way to describe or designate products not composed of crystal; and from the use of the words "crystal" or "crystals" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated and described are composed of crystal, when such is not the fact; of the word "amber" either independently or in connection or conjunction with any other letter or letters, word or words to designate or describe products not made of amber; and from the use of the word "amber" or of any colorable imitation or derivative thereof in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated and described are composed of amber, when such is not the fact; of the word "silk" independently or in connection with any other word or words as a trade name or brand for products not composed of silk, the product of the cocoon of the silk worm; and from the use of the word "silk" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated and described are made of silk, the product of the cocoon

of the silk worm, when such is not the fact; of the words "platinoid finish" either independently or in connection or conjunction with any other word or words, to designate and describe products not having a platinum finish; and from the use of the words "platinum", "platinoid" or any other colorable imitation or derivative of the word "platinum" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that the products so designated and described have a platinum finish, when such is not the fact; of the word "platignum" either independently or in connection or conjunction with any other word or words to describe pens not composed of platinum; and from the use of the words "platinum", "platignum", or any other colorable imitation or derivative of the word "platinum" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that the products so designated and described are composed of platinum, when such is not the fact; of the word "crystal" either independently or in connection or conjunction with any other word or words to describe or designate pens not composed, in whole or in part of crystal; and from the use of the word "crystal" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so described are made in whole or in part of crystal, when such is not the fact; of the word "ivory" either independently or in connection or conjunction with any other word or words to describe or designate products not composed in whole or in part of ivory; and from the use of the word "ivory" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated and described are composed in whole or in part of ivory, when such is not the fact; of the word "leather" either independently or in connection or conjunction with any other letter or letters, word or words so as to import or imply that the products are composed of leather, the product of the hide or skin of an animal, when such is not the fact, and from the use of the word "leather" or any other colorable imitation or derivative of the word "leather" in any way which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated and described are composed of leather, when such is not the fact; and from the use in catalogs and other advertisements and advertising matter circulated in interstate commerce of fictitious and exaggerated prices of the products offered for sale in "deals" or "combinations."

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue (Mar. 16, 1932).

942. **False and Misleading Advertising.**—A manufacturer agrees to advertise endorsements of its products only as and when they are the genuine opinions of the endorsers resulting from the use of such products, and if a consideration has been given for the endorsements that fact is to be clearly indicated in the advertisements. (Mar. 23, 1932.)

943. **False and Misleading Brands or Labels—Glass Bottles.**—Respondent, a corporation, engaged in the manufacture of glass bottles and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from blowing, stamping, or otherwise impressing upon the glass bottles which it sells and distributes in interstate commerce the words "one pint", "full pint" or "half pint" when said products have a capacity less than a pint or a half pint, respectively; from the sale and distribution in interstate commerce of glass bottles having the shape and approximate size of the full pint and half-pint standard containers, but in reality having a capacity substantially less than a pint or a half pint, respectively, with any words, marks, or legends blown or impressed thereon which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that such containers are of the full capacity of a pint and/or a half pint, respectively, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Mar. 28, 1932.)

944. **False and Misleading Advertising—Electric Clocks and Lamps.**—Respondent, a corporation, engaged in the manufacture of electric clocks and lamps and in the sale and distribution of said products, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from stating and representing, directly or indirectly, in advertisements or advertising matter, or in any other way that United States and/or foreign patents have been granted to it upon its said products; and from the use of any letter and figures either independently or in connection or conjunction with any other word or words, statement or representation so as to have the capacity or tendency to confuse, mislead, or deceive

purchasers into the belief that said corporation has been granted a United States or other patent upon its said products, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Mar. 30, 1932.)

945. False and Misleading Brands or Labels and Advertising—Soaps.—Respondent, a corporation, engaged in the manufacture of soaps and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the words "witch hazel" either independently or in connection or conjunction with any other word or words, in its advertisements and advertising matter, or as a brand for its products, or in any way which may have the tendency and effect to confuse, mislead, or deceive purchasers into the belief that said product contains witch hazel in such substantial quantities as to be properly and accurately designated and described by the use of the words "witch hazel", when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Mar. 30, 1932.)

946. Misrepresenting Nature of Manufacture—Hosiery.—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of a variety of merchandise, including hosiery, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use of the word "fashioned" either independently or in connection or conjunction with any other word or words to describe or represent a product not manufactured in accordance with the process used in the manufacture of "fashioned" hosiery; and from the use of the word "fashioned" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the product so described and represented is that product known to the

trade and the purchasing public as "fashioned" hosiery, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Mar. 30, 1932.)

947. **False and Misleading Advertising—Aviation Correspondence Course.**—Respondent, a corporation, engaged in conducting a school whose courses of instruction consist of a series of lesson pamphlets and questions dealing with and relating to certain ground training in and about aviation fields and hangars and in the sale and distribution in interstate commerce of said courses of instruction, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its courses of instruction in interstate commerce, agreed to cease and desist from overstating and misrepresenting the demands and opportunities of its student-graduates for employment; and the said respondent also agreed to cease and desist from the use in its advertisements and advertising matter, distributed in interstate commerce of any and all statements and representations which may have the capacity or tendency to confuse, mislead, or deceive prospective students into the belief that the demands and opportunities in the field of aviation for such students who take and finish the course of instruction offered for sale and sold by the said respondent are in excess of what is actually the case. Said respondent also agreed to cease and desist from the use in its said advertisements and advertising matter of statements and representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into an erroneous belief as to the scope of the said courses of instruction, and from the use of statements and representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said courses of instruction tutor and equip the student in the art of flying an airplane. Said respondent also agreed to cease and desist from the use in its said advertisements and advertising matter of other statements and representations as to the actual earning power and probable salaries of graduate students upon completion of the course of instruction.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Apr. 1, 1932.)

948. **False and Misleading Brands or Labels and Advertising—Psoriasis Cure.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of two alleged cures for psoriasis, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling her products in interstate commerce, agreed to cease and desist from the use of such statements and representations as "Psoriasis can be cured" or "A wonderful remedy for Psoriasis," or "It is unnecessary to suffer with this dreadful skin disease," or of any similar statements or representations which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the said products, or either of them, are or is capable of effecting a cure of psoriasis, when such is not the fact. Respondent also agreed to cease and desist from the use, in her advertising matter or on her brands or labels affixed to the container of either of the said products sold and distributed in interstate commerce, of the aforesaid statements and representations, or of any other statements or representations which do not truthfully represent and describe said product, its properties and powers, and the curative and therapeutic effects to be derived from its use.

Respondent also agreed that should she ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against her in the trial of the complaint which the Commission may issue. (Apr. 6, 1932.)

949. **False and Misleading Brands or Labels—Bay Rum.**—Respondent, an individual, engaged in the manufacture, sale, and distribution of bay rum in interstate commerce, and in competition with other individuals, firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from marking, branding, or labeling said product with the words "St. Thomas"; and from the use of the words "St. Thomas" either independently or in connection or conjunction with any other word or words, or in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said product is manufactured at St. Thomas in the West Indies, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation of facts may be

used in evidence against him in the trial of the complaint which the Commission may issue. (Apr. 8, 1932.)

950. **Disparagement and Misrepresentation of Business and Product of Competitor; Misrepresentation of Own Product—Stock Preparations.**—Respondent, an individual, engaged in the manufacture of certain stock preparations and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the statement or representation to the effect that "Drovers Veterinary Union" had cheapened or changed the formula of its product, when such is not the fact. Said respondent also agreed to cease and desist from the statement and representation to the effect that its product is made from the same formula that the product designated "Third degree" of Drovers Veterinary Union was formerly made so as to confuse, mislead, or deceive purchasers into the belief that the said product designated "Third degree" had been changed, when such is not the fact. The said respondent also agreed to cease and desist from stating or representing through his salesmen, or in his advertising matter, or in any other way that the business of Drovers Veterinary Union has been sold to respondent, or that respondent's salesmen represent Drovers Veterinary Union, and from the use of any other false and misleading statements or representations which may have the capacity or tendency to confuse or deceive purchasers into the belief that the said respondent has acquired or taken over the business of Drovers Veterinary Union, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (Apr. 18, 1932.)

951. **False and Misleading Trade Name—Carbon Paper and Typewriter Ribbons.**—Respondent, an individual, engaged in the sale and distribution in interstate commerce of carbon paper and typewriter ribbons, and in competition with other individuals, firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use of the word "Manufacturing" as part of or in connection or conjunction with his trade name, or in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or

deceive purchasers into the belief that said respondent is the manufacturer of the products which he sells and distributes, and/or that he owns, controls or operates the plants or factories wherein the same are manufactured, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (Apr. 29, 1932.)

952. **False and Misleading Advertising—Yeast.**—Respondent, a corporation, engaged in the manufacture of yeast and in the sale and distribution of said product in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist forever from the use in advertisements and advertising matter of statements and representations to the effect that its yeast is standard for vitamin studies of the United States Government and/or leading universities; and from the use in advertisements and advertising matter of statements and representations which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said product is standard for vitamin studies of the United States Government and/or leading universities, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (May 6, 1932.)

953. **False and Misleading Brands or Labels—Celery.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of celery in wholesale lots, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in selling and shipping its product in interstate commerce, agreed to cease and desist forever from the use of labels stating and representing that its product is treated before shipment by that process generally known to the trade as "Precooling", when such is not the fact; and from statements and representations on labels or any other printed matter which may have the capacity or effect to confuse, mislead, or deceive purchasers into the belief that said product is treated before shipment by that process generally known to the trade as "Precooling", when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (May 6, 1932.)

954 and 955. None issued.

956. False and Misleading Brands or Labels and Advertising—Bay Rum.—Respondent, an individual, engaged in the manufacture of bay rum and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his product in interstate commerce agreed to cease and desist from the use of the word "St. Thomas" either independently or in connection or conjunction with the word "genuine" or with any other word or words as descriptive of said product, on his brands or labels, invoices, or other advertising matter distributed in interstate commerce so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said product is manufactured at St. Thomas, in the West Indies, when such is not the fact. The said respondent also agreed to cease and desist from the use of the words "St. Thomas, West Indies", "Arecibo, Porto Rico", "St. Thomas", "Porto Rico", and "American West Indies", on his said brands or labels or invoices in any way which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said product is manufactured or obtained from the places named, or any of them, when such is not the fact. The said respondent further agreed to cease and desist from the use of the words "growers", "distillers", or "distilling" or "importers" in soliciting the sale of or selling his product in interstate commerce so as to import or imply, or which may have the capacity or tendency to confuse, mislead or deceive purchasers into the belief that the said respondent cultivates or grows the bayberry plant from which said product is made, or that he distills and/or imports said product, when such is not the fact.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (May 13, 1932.)

957. False and Misleading Brands or Labels—Toilet Soaps.—Respondent, a corporation, engaged in the manufacture of toilet soaps and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement

to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist forever from the use of the words "Witch Hazel" either independently or in connection or conjunction with any other word or words, as a mark or brand for its products, or in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that said product so marked and branded contains witch hazel in such substantial quantity as to be properly and accurately described and designated by the use of the words "Witch Hazel", when such is not the fact; the use of the word "Antiseptic" either alone or in connection or conjunction with any other word or words to designate, describe, represent, or refer to its products, or as a mark or brand for the same, in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said products contain antiseptic properties other than or different from those usually found in ordinary toilet soaps, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (May 16, 1932.)

958. **False and Misleading Advertising—Soap.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of groceries, and in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from stating and representing in advertisements and advertising matter that the weight of its soap is 1 pound per bar, when such is not the fact; and from the use of statements and representations in its advertisements and advertising matter which may have the tendency or capacity to confuse, mislead, or deceive purchasers in respect of the weight of its products, and to cause them to believe that said products weigh substantially more than their true weight.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (May 20, 1932.)

959. **Misrepresentation of Business Connections, Identity, and Guarantee and Advertising Falsely and Misleadingly in Said Respects—Nursery Stock and Plants.**—Respondent, an individual, engaged in growing and propagating nursery stocks and plants and in

the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair practices as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever, either directly or through his authorized agents or salesmen, from stating and representing that such agents are representing a certain nursery company, when such is not the fact; stating and representing that such agents are representing "the big nursery at Owatonna", or from any other similar words or statements which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that they are dealing with a certain nursery company, when such is not the fact; stating and representing through his agents or otherwise that his company and a certain nursery company have merged, when such is not the fact; offering to replace, or replacing, stock purchased from certain nursery company with stock of respondent company without disclosing the fact that the replacements are being made by a different concern; and/or soliciting and taking orders from purchasers from whom orders had formerly been taken as agents of a certain nursery company without disclosing the fact that they have made a change of employers.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (May 20, 1932.)

960. False and Misleading Business Status and Advertising—Men's Clothing.—Respondent, a corporation, engaged in the manufacture of men's clothing and in the sale and distribution of said garments in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist from the use in soliciting the sale of and selling its garments in interstate commerce of the words "Hand work" either independently or in connection or conjunction with any other word or words, pictorial representations, or in any way as descriptive of said garments, so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the said garments are hand-made, or are that type of garment generally known to the trade and understood by the purchasing public as and to be hand-tailored, if such is not the fact. The said corporation, in its own behalf and in behalf of its said subsidiary companies, also agreed to cease and desist from the use in advertisements and advertising matter distributed in interstate commerce of

statements and representations which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that its garments are made by union labor or by workmen or artisans all of whom are members of or affiliated with an association or organization generally known, recognized, and referred to as "Union", when such is not the fact. The said corporations in its own behalf and in behalf of its said subsidiaries, further agreed to cease and desist from the use in said advertisements and advertising matter of statements and representations to the effect that it, or any one or more of its said subsidiary companies has or had in its or their employ over 4,000 representatives who "carry our sample line and show it in homes, offices, and factories", when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (June 1, 1932.)

961. False and Misleading Brands or Labels—Men's Shirts and Collars.—Respondent, a corporation, engaged in the manufacture of men's shirts and collars and in the sale and distribution of the same, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent agreed to cease and desist forever from marking, labeling, designating, and representing any of its products as "English broadcloth", when said products are not made from that cloth imported from England and known to the trade and the purchasing public as English broadcloth; and from marking, labeling, designating, and representing any of its products with the figures "2 x 1" when the fabric in said products is not constructed with threads running two in the warp and one in the filling. And said respondent further agreed to cease and desist forever from the use of the words "English broadcloth" and of the figures "2 x 1" in any way so as to import or imply, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated, referred to or represented are in truth and in fact English broadcloth and/or that the fabric from which the same are constructed contains threads running two in the wrap and one in the filling, when such is not the fact.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (June 1, 1932.)

962. False and Misleading Advertising—Malt Extracts with Tonic Ingredients.—Respondent, a corporation, engaged in the compound-

ing of alleged malt extracts combined with tonic ingredients and in the sale and distribution thereof in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter circulated in interstate commerce, of statements and representations suggesting or implying, or which may have the capacity and tendency to confuse, mislead, or deceive purchasers into the belief that its products are substitutes for cod-liver oil, or that said products perform the same or similar functions in the metabolism of the human body as cod-liver oil.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (June 1, 1932.)

963. False and Misleading Advertising—Proprietary Medicines.—Respondent, an individual, engaged in the manufacture of proprietary medicines and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever, in his advertisements and advertising matter circulated in interstate commerce from stating and representing that his products, or any of them, are remedies, or effective treatments, for certain diseases of animals, when there is no scientifically recognized remedy or effective treatment for such diseases; from the use of the words "Bronchial Liment" either independently or in combination with any other word or words, or in any way which may confuse, mislead or deceive purchasers into the belief that the product so designated is an effective treatment or remedy for bronchial trouble in animals; the use of statements and representations that his product called "Stomach Medicine" is an effective treatment, or remedy, for chronic troubles of the human stomach.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (June 15, 1932.)

964. False and Misleading Advertising—Soaps.—Respondent, a corporation, engaged in the sale and distribution of soap products in interstate commerce, and in competition with other corporations,

individuals, firms, and partnerships likewise engaged, entered in to the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist forever from the use in its advertisements and advertising matter of the following statements and representations: "Beware of soaps that contain animal fats! They clog the pores and make the skin coarse, muddy and sallow! Most soaps are made of animal fats or grease that you scrape from the dinner dishes. As you know from your dish washing this grease doesn't dissolve, even in hot water. And just as it leaves a residue of grease in the dishpan, so it leaves a residue of grease on your skin! Chokes the skin! The grease gets into the pores and tiny glands in the skin, and plugs them up. It stops up the natural breathing and eliminative action of the skin and prevents the skin throwing off the poisonous bodily excretions. As a result, the skin becomes not only coarsened and greasy or shiny, but sallow and muddy and often broken out. Moreover, the free alkali that most animal fat soaps contain to make them saponify or lather, irritates the skin and makes it sore, tender, and rough"; and of any other similar statements or representations either independently or in connection or conjunction with any other word or words, statement, or representation, or in any other way so as to import or imply, or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that such statements and representations as above set forth, or any of them, are true; also publishing or suggesting any test or formula designed and intended to show that soaps made with animal fats contain free alkali.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against it in the trial of the complaint which the Commission may issue. (June 23, 1932.)

965. False and Misleading Brands on Labels and Advertising—**Vermin Exterminator.**—Respondent, an individual, engaged in the manufacture of a vermin exterminator and in the sale and distribution thereof in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist forever from the use in advertisements or advertising matter, and in marking, branding, or labeling the containers in which his product is sold and distributed in interstate commerce, of any word or words, statement or representation, to the effect that said product will mummify the carcass or

prevent offensive odors from rats and mice killed by it and/or from statements or representations to the effect that cats and dogs will not eat it; and from the circulation in interstate commerce of other statements or representations which do not truthfully represent and describe his said product, or the results obtained from its use.

Respondent also agreed that should it ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (June 23, 1932.)

966. False and Misleading Advertising—Customs Tariff and Procedure Book.—Respondents, corporations, engaged in the publication of a book having for its object the giving of information required by importers in reference to the United States customs tariff, United States customs procedure, data on the different ports of the United States and other similar information, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their book in interstate commerce, agreed to cease and desist from stating and representing that their address is the United States Customs Building in New York City; stating and representing directly or indirectly, that any of their members or officers were or are officially connected with the United States Customs Service, or that they were connected with such publication while acting as such officials; the use on letterheads or other advertisements or advertising matter of a seal containing the words "U.S. Commerce Publication" and/or a pictorial representation of an eagle, or of any other seal which may have the capacity and tendency to confuse, mislead, or deceive customers into the belief that the same is an indication of an official connection of said corporations with a department or bureau of the Government of the United States; the use of the words "United States" or any words, statements, expressions, or representations as part of their corporate names or otherwise so as to confuse, mislead, or deceive purchasers into the belief that said publication is an official publication of any department or bureau of the United States Government, or that the same is prepared and published under the direction of any such officials.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (June 23, 1932.)

967. False and Misleading Brands or Labels and Advertising—Malt Sirup.—Respondent, an individual, engaged in the manufacture, sale, and distribution of a malt sirup in interstate commerce, and in

competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in selling and distributing his products in interstate commerce, agreed to cease and desist forever from the use of the word "Extract" on labels, or by verbal or printed representation, or in any way which may have the capacity and tendency to confuse, mislead, and deceive purchasers into the belief that said products are malt extracts, unless the said products in truth and in fact are extracts actually manufactured wholly from barley malt.

Respondent also agreed that should he ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against him in the trial of the complaint which the Commission may issue. (July 1, 1932.)

968. **False and Misleading Advertising—Baby Chicks.**—Respondents, individuals, engaged in the hatching of baby chicks and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist forever from the use in their advertisements and/or advertising matter of statements and representations that they have sold their products to four, or any other number of departments of the United States Government; and from the use of unauthorized statements and representations to the effect that the experts of United States Government departments have purchased their products because of the quality thereof.

Respondents also agreed that should they ever resume or indulge in any of the practices in question, this said stipulation as to the facts may be used in evidence against them in the trial of the complaint which the Commission may issue. (July 13, 1932.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT
ADVERTISING STIPULATIONS¹

0198. **Publisher—Correspondence Course in Railway Vocational Training.**—The publisher of a magazine of wide circulation, printing and circulating in his periodical the advertisements of the vendor of a correspondence course in railway vocational training alleged to be false and misleading, has stipulated with the Federal Trade Commission that if the Commission will refrain from making this publisher a joint respondent in the proceedings against the advertiser the publisher agrees:

That said publisher has no interest, right, or title in said advertisement, or in the business of said advertiser, proposed respondent herein, and if it may have any such interest, it hereby waives its right to be heard thereon, both as to the advertiser herein named and the Federal Trade Commission;

That said publisher waives his right to be made a party respondent to said proposed complaint against the advertiser herein named, for the protection of any such right;

That both as to the Federal Trade Commission and the advertiser herein named, it waives any such right which may be adversely affected by any cease and desist order the Commission may make or issue upon such complaint against the advertiser, touching the subject matter of said proposed complaint;

That in favor of the Federal Trade Commission and the advertiser herein named, it hereby waives any such rights which may be adversely affected by any stipulation hereinafter entered into by and between the Federal Trade Commission and the advertiser aforesaid, relating to the subject matter of said proposed complaint. (Jan. 4, 1932.)

0199. **Vendor Advertiser—Medicinal Preparation.**—Charles N. Mallory, trading as L. E. Norton Products Co., Chattanooga, Tenn., the advertiser-vendor of a medicinal preparation to restore sexual vigor advertised and sold under the trade name of "Aphrotone", has entered into a stipulation with the Federal Trade Commission wherein it is admitted that representations have heretofore been made that were incorrect and misleading and that hereafter the vendor

¹ Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor advertisers. Period covered is that of this volume, namely, Dec. 24, 1931, to July 17, 1932, inclusive. For digests of previous stipulations, see vols. 14 and 15 of Commission's Decisions.

For description of the creation and work of the special board, see vol. 14, p. 602 et seq.

will cease and desist from making any representations that are false or misleading and specifically from representing:

(a) That said product will restore sexual vigor in either men or women;

(b) That it is an effective substitute for the transplanting of "monkey glands" in the human body;

(c) That weakened vitality has caused more misery and despair than all other troubles put together;

(d) That a man, however impotent he might have been, may, after using said product, be likened to a stallion, "full of vim, always ready for action," etc.;

(e) That regardless of age or cause, whether "from excess, abuse, disease, or advancing age", vital powers will be "speedily restored", or that they will be restored at all, by the use of Aphrotone;

(f) That sexual excesses and indiscretions are the most easily treated of the causes of weakened vitality; or that Aphrotone can bring about a complete recovery, or any recovery, from same, within a few days or in any other length of time;

(g) That the use of Aphrotone would prevent many divorces, suicides, and premature deaths, or any such;

(h) That weakened vitality fills the divorce courts and the insane asylums and causes many failures in life;

(i) That Aphrotone applies to young and old alike, or that it "is exactly as represented", or that "it will do even more than we claim for it";

(j) That Aphrotone is "The human system's greatest tonic", or that it is in fact a great tonic;

(k) That it is a nerve, blood, and/or tissue builder;

(l) That Aphrotone pills have the capacity to restore lost vitality, or to renew energy, or to aid memory or to strengthen a debilitated body, beyond the capacity of any other tonic which stimulates the appetite;

(m) That these pills will "bring back the fire of youth", or the "glow of health", or the "strength" of manhood and womanhood;

(n) That extreme cases—or any other cases—of weakness, or impotency, or brain fatigue, or loss of vigor, or loss of vital powers caused by excessive indulgence or by youthful indiscretion—or by any other cause—may be fully restored—or at all restored—by the use of Aphrotone;

(o) That if the taking of Aphrotone "is delayed too long, Atrophy of Genital Organs is likely to set in";

(p) That the "desire and capacity for greater self-expression" should not be expended "in a sudden spurt"; or that this energy "cannot be bottled up for any length of time"; or that Aphrotone,

"intended to increase mightily your youthful instincts", will thereby (in some subtle way not disclosed) "do much more for mankind than increase the capacity for animal pleasure"; or that after all, it "is up to you", whether you will "use your powers wisely"; and all representations and statements equivalent or similar thereto in form or substance; and also agrees forthwith to cease and desist from the use of the trade name "Aphrotone" for his product, or of any other name descriptive or inferential, that might imply aphrodisiacal properties. (Jan. 4, 1932.)

0200. **Vendor-Advertiser—Service Suits, Aprons, Table Cloths, etc.**—The American Braiding & Embroidery Co., Inc., Chicago, Ill., vendor-advertiser, is engaged in selling service suits, aprons, table cloths, etc., and in advertising for agents represented they could make "\$5.00 hourly. Mercerized damask scalloped table cloths 75¢. Tremendous demand. Other bargains. Experience unnecessary."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing that the probable earnings of an agent would be an amount greater than the usual, ordinary compensation reasonably to be expected under normal conditions. (Jan. 4, 1932.)

0201. **Vendor-Advertiser—Medicinal Treatment.**—Norman H. Tufty, doing business as Morgan Miles Co., Minneapolis, Minn., vendor-advertiser, is engaged in advertising and selling a medical treatment for certain acid conditions and in advertising represents "Stomach Ulcers. Sufferers from stomach ulcers, hyperacidity, sour stomach, and the allied ailments have found positive relief in simple home remedy. No diet—eat anything after short treatment."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits and represents that he has definitely discontinued advertising such medical treatment and agrees that if he ever resumes he will conform to the rulings or precedents established by the Federal Trade Commission. (Jan. 4, 1932.)

0202. **Vendor Advertiser—High Blood Pressure Treatment.**—H. B. Tonnies, doing business as Landis Medicine Co. and advertising as C. H. Landis, Cincinnati, Ohio, vendor-advertiser, is engaged in selling an alleged medical treatment in tablet form for high blood pressure and in advertising represented "Blood Pressure. You know the dangers of high blood pressure, how it weakens your heart, and shortens your life. You can now have a famous specialist's prescription that surely reduces blood pressure, and relieves the overtaxed heart. Head pains, dizziness, hot flashes, shortness of breath, nervousness, sleeplessness, and other alarming symptoms of high blood pressure will quickly disappear. Your health is valuable, order this famous treatment now."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and that said statements are incorrect, exaggerated, and misleading. The Federal Trade Commission finds said medicinal preparation is not an adequate treatment for high blood pressure and not a competent or effective treatment at all for blood pressure due to certain conditions and the vendor-advertiser agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said medical preparation is the prescription of a famous specialist, unless the same can be justified by competent evidence;

(b) That said Special Prescription Tablets will surely reduce blood pressure and relieve the overtaxed heart, unless properly qualified to say that they will not do so in every case;

(c) That the various alarming symptoms of high blood pressure will quickly disappear by the use of said Special Prescription Tablets;

(d) That these tablets constitute an adequate treatment for high blood pressure, regardless of its cause;

(e) By implication, that said tablets are a competent or effective treatment for high blood pressure due to arteriosclerosis, nephritis, toxic goiter, or like severe conditions;

and all representations and statements equivalent or similar thereto in form or substance. (Jan. 4, 1932.)

0203. Vendor Advertiser—Hair dye.—L. Pierre Valligny and Valligny Products, Inc., New York City, vendor-advertiser, is engaged in manufacturing and selling a hair dye designated as Youth-tint and in advertising represented that the hair dye was a French preparation that would banish gray hair; penetrate the hair center and replace nature's own color and gloss; restore the original color in 15 minutes to badly streaked gray or faded hair; would not fade, and gray hair once restored would never get gray again, when in fact such dye merely imparts a selected color to the then exposed portions of the hair; does not restore any former color to the hair; may fade, under certain conditions; does not penetrate the hair to reach the color pigment in the hair roots; does not impart color to that portion of the hair that grows out after the dye is applied; and will not banish gray hair.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from describing, labeling, branding,

or otherwise designating said product as a color restorer and from representing in advertisements or otherwise:

(a) That Youth-tint is anything but a hair dye that will impart a selected color to the exposed portions of hair;

(b) That it will restore youthful or any former color of the hair;

(c) That it will not fade unless the conditions under which it will not fade are stated in direct connection therewith in clear, and conspicuous terms;

(d) That it will penetrate the hair center or replace nature's own color.

(e) That it will banish gray hair;

(f) That it will extend to growing hair or impart color to hair that grows out after the application to exposed hair;

(g) That it will in any way affect the color pigment in the hair; and all representations and statements equivalent or similar thereto in form or substance. (Jan. 4, 1932.)

2024. Vendor Advertiser—Liquor Habit Treatment.—This vendor-advertiser is engaged in selling a treatment for the liquor habit called and in advertising represented it would end the liquor habit quick, was harmless and could be given secretly in food or drink for whiskey, gin, homebrew, wine, moonshine, beer, etc.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from describing, labeling, branding, or otherwise designating their said product as being capable of "ending, stopping" or otherwise definitely and permanently terminating the liquor habit. (Jan. 4, 1932.)

2025. Vendor Advertiser—Spraying Outfit and Autowashers.—W. A. Rusler, trading as The H. B. Rusler Manufacturing Co., Johnstown, Ohio, vendor-advertiser, is engaged in selling a spraying outfit designated Comet Sprayers and Autowashers and in advertising for agents represented:

"Agents—make \$25.00—\$100.00 weekly, selling Comet Sprayers and Autowashers to farmers and autoists. All brass. Throws continuous stream; * * * 10 days Free Trial."

when in fact the earnings probabilities were exaggerated and misleading and the sprayers are not sent on free trial but only on full payment with a refund agreement.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agreed to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation that the probable earnings of such agent would be an amount greater than the usual, ordinary compensation reasonably to be expected under normal conditions; or that a free trial of such device

is offered so long as a payment is required in advance, even though subject to a refund agreement. (Jan. 4, 1932.)

0206. **Vendor Advertiser—Lingerie Chains.**—R. A. Harris, trading as Lingerie "V" Co., North Windham, Conn., vendor-advertiser, is engaged in selling chains designated as Lingerie "V" chains and in advertising for agents represented they could make "\$9 daily wearing and showing new invention. Prevents shoulder straps slipping, etc.", when such earnings are exaggerated and misleading.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation that the probable earnings of such agent would be an amount greater than usual, ordinary compensation reasonably to be expected under normal conditions. (Jan. 4, 1932.)

0207. **Vendor Advertiser—Hair Dye.**—This vendor-advertiser is engaged in manufacturing and selling a hair dye, and in advertising represented that the hair dye was a French preparation that would banish gray hair; penetrate the hair center and replace nature's own color and gloss; restore the original color in 15 minutes to badly streaked gray or faded hair; would not fade, and gray hair once restored would not get gray again, when in fact such dye merely imparts a selected color to the then exposed portions of the hair; does not restore any former color to the hair; may fade under certain conditions; does not penetrate the hair or reach the color pigment in the hair roots; does not impart color to that portion of the hair that grows out after the dye is applied; and will not banish gray hair.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from describing, labeling, branding, or otherwise designating her said dye as a color restorer and from representing in advertisements or otherwise:

(a) That the product is anything but a hair dye that will impart a selected color to the exposed portions of hair;

(b) That it will restore youthful or any former color of hair;

(c) That it will not fade unless the conditions under which it will not fade are stated in direct connection therewith in clear and conspicuous terms;

(d) That it will penetrate the roots of the hair;

(e) That it will banish gray hair;

(f) That it will extend to growing hair or impart color to hair that grows out after the application to exposed hair;

(g) That it will in any way affect the color pigment in the hair; and all representations and statements equivalent or similar thereto in form or substance. (Jan. 4, 1932.)

2008. **Vendor-Advertiser—Corsets.**—Corsetry, Inc., a corporation advertising as Grace Graham, Stamford, Conn., vendor-advertiser, is engaged in selling corsets and in advertising for agents represented ladies could sell their spare time for \$3 a hour doing pleasant, dignified work merely to show modern Grace Graham corsets and needed no experience, etc., when in fact it was merely an agency proposition on a commission basis.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation that the probable earnings of such agent would be an amount greater than the usual, ordinary compensation reasonably to be expected under normal conditions. (Jan. 4, 1932.)

2009. **Vendor-Advertiser—Epilepsy Treatment.**—R. P. Neubling, trading as R. Lepso and Lepso Co., Milwaukee, Wis., vendor-advertiser, is engaged in selling a medicinal preparation for the treatment of epilepsy designated as Lepso and in advertising represented that Lepso would free the sufferers from epileptic attacks; that thousands had stopped their attacks by using it and it was a safe and reliable treatment when, in fact, such representations were wholly incorrect in certain respects and greatly exaggerated and misleading in others and had the capacity and tendency to mislead and deceive the purchasing public.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said medicinal preparation will be sent free unless it is sent without the requirement that any money be paid for postage or clerical expense;

(b) That said medicinal preparation has stopped the attacks of epilepsy;

(c) That said medicinal preparation can be taken safely by children;

(d) That a user of said medicinal preparation will be relieved of or freed from the attacks of epilepsy;

(e) That a sufferer from epilepsy will be freed from the fear of attacks by the use of said medicinal preparation;

(f) That said medicinal preparation will stop the attacks of epilepsy or the attacks of fits;

(g) That the use of said medicinal preparation is a way to control epilepsy;

(h) That the use of said medicinal preparation will stop the cause of epilepsy;

(i) That epilepsy can be overcome or corrected;

(j) That the attacks of epilepsy can be conquered by the use of said medicinal preparation;

(k) That respondent's advice and said medicinal preparation have restored thousands of people to health;

(l) That said medicinal preparation is a competent treatment for epilepsy or fits, unless such statements are qualified to indicate the limits of its effectiveness;

and all representations and statements equivalent or similar thereto in form or substance. (Jan. 4, 1932.)

0210. Vendor-Advertiser—Salve.—G. F. Smith, trading as Rosebud Perfume Co., Woodsboro, Md., vendor-advertiser, is engaged in selling salves, perfumes, soaps, and toilet articles and giving commissions or premiums to agents for selling the same and in advertising represented that agents would receive certain premiums for selling a stated number of boxes of salve at 25 cents each "and remit money as per catalog plan" when the premium was only given for selling a larger number of boxes than stated in the contact advertisement, or remitting money in excess of the 25 cents per box sold, all of which was set forth in the catalog.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated either by contact advertisement or through premium catalogs and circulars any statement which is false or misleading in substance or form, and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise and either directly or inferentially:

(a) That a premium or reward is obtainable for a less amount in either service or money than is actually the case;

(b) That any premium is given "free", where the consideration therefor is either service or cash;

(c) That any premium will be sent upon the remittance of a stated amount without mention of additional sum to cover postage and packing in cases where this extra remittance is required;

and all representations and statements equivalent or similar thereto in form or substance. (Jan. 4, 1932.)

0211. Publisher—Medicines.—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertise-

ments alleged to contain false and misleading statements, claims, and representations for seven advertisers selling various medicines and other articles of commerce and seeking solicitors and agents.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; declares that he has no interest, right, or title in said advertisements, or in the business of said advertisers, and if he may have any such interest he waives his right to be heard thereon and waives his right to be made a party respondent to the proposed complaints against the advertisers; and waives any right which may be adversely affected by any cease and desist order against the advertisers and/or any stipulation that may be entered into between the advertisers and the Commission. (Jan. 4, 1932.)

0212. **Publisher—Rheumatism, Stomach Ulcers, Eczema and Rupture Remedies.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for four vendors of alleged remedies for rheumatism, stomach ulcers, eczema, and rupture.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits the publication of such advertisements; declares that he has no interest, right, or title in said advertisements, or in the business of said advertisers, and if he may have any such interest he waives his right to be heard thereon and waives his right to be made a party respondent to the proposed complaints against the advertisers; and waives any right which may be adversely affected by any cease and desist order against the advertisers and/or any stipulation that may be entered into between the advertisers and the Commission. (Jan. 4, 1932.)

0213. **Publisher—Correspondence Course of Instruction for Railway Workers.**—The publisher of a magazine of wide interstate publication printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the vendor of a correspondence course of instruction for various railway workers.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; declares that he has no interest, right, or title in said advertisements or in the business of said advertiser, and if he may have any such interest he waives his right to be heard thereon and waives his right to be made a party respondent to the proposed complaint against the advertiser; and waives any right which may be adversely affected by any cease and desist order against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission. (Jan. 4, 1932.)

0214. **Publisher—Flesh- or Tissue-Building Cream.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the vendor of an alleged flesh- or tissue-building cream.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; declares he has no interest, right, or title in said advertisements, or in the business of said advertiser, and if he may have any such interest he waives his right to be heard thereon and waives his right to be made a party respondent to the proposed complaint against the advertiser; and waives any right which may be adversely affected by any cease and desist order against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission. (Jan. 4, 1932.)

0215. **Publisher—Cures for Stammering, Gallstones, Blood Pressure, Indigestion, Appliances for the Deaf, Keytags, Battery-Charging Fluid, and Correspondence Courses of Instruction for Many Vocations.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading claims, statements, and representations for 21 vendor-advertisers of various articles of commerce ranging from a cure for stammering, gallstones, blood pressure, indigestion, to appliances for the deaf, keytags, battery-charging fluid, and correspondence courses of instructions for many vocations.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; declares he has no right, title, or interest in said advertisements or in the business of said advertisers, and if he may have any such interest he waives his right to be heard thereon and waives his right to be made a party respondent to the proposed complaints against the advertisers; and waives any right which may be adversely affected by any cease and desist orders against the advertisers and/or any stipulations that may be entered into between the advertisers and the Commission. (Jan. 4, 1932.)

0216. **Vendor-Advertiser—Treatment for Old Leg Sores, Varicose Veins, and Eczema.**—F. P. John, advertising as F. P. John, Druggist and Fedor P. John, Ph.R., Thiensville, Wis., vendor-advertiser, is engaged in selling a treatment for old leg sores, varicose veins, and eczema, and in advertising represented his specific treatment would permanently heal old leg sores, varicose ulcers and other leg afflictions, and eczema, stops pain, soothes instantly; thousands cured, etc.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and alleges he has definitely discontinued all advertising and

has no intention of resuming, but if he ever does resume advertising, such advertising will conform to the rulings or precedents established by the Federal Trade Commission. (Jan. 4, 1932.)

0217. **Vendor-Advertiser—Bibles, Religious Books, and Dictionaries.**—Alvin S. Magnusson, trading as Wilmore Book & Bible Co., Chicago, Ill., vendor-advertiser, is engaged in selling Bibles, religious books, and dictionaries and in advertising for agents represented they could make \$300 monthly easy.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representation; alleges he discontinued naming a specific amount to be earned by the agents some time before, and agrees to cease and desist from publishing and circulating, or causing to be published and circulated any statement or representation that the probable earnings of such agent would be an amount greater than the usual, ordinary compensation reasonably to be expected under normal conditions. (Jan. 4, 1932.)

0218. **Vendor-Advertiser—Medicinal Preparation.**—Ten Herbs Co., Chicago, Ill., vendor-advertiser, is engaged in selling a medicinal preparation designated "Ten Herbs" and in advertising represented that Ten Herbs would relieve numerous ills, including disorders of the stomach, liver, kidneys, and bowels, rheumatism, neuritis, and nervousness, and published many testimonials as evidence thereof, when in fact it was not an effective treatment for rheumatism, neuritis, and nervousness, or for conditions other than those affected by sluggishness or functional inactivity of the stomach, bowels, and kidneys.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating or causing to be published and circulated any statement or representation, directly upon the responsibility of the respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise;

(a) That said preparation is an effective or efficient remedy for rheumatism;

(b) That it is effective or efficient remedy for neuritis;

(c) That it is an effective or efficient remedy for nervousness;

(d) That it is effective for any conditions other than those calling for a stomachic remedy or for stimulation of the eliminative functions of the bowels and kidneys. (Jan. 4, 1932.)

0219. **Vendor-Advertiser—Psoriasis Treatment and Skin Soap.**—H. G. Levy, doing business as Interstate Laboratories, Chicago, Ill., vendor-advertiser, is engaged in selling a treatment for psoriasis

designated as "Dermolax" and in advertising represented that psoriasis was not a blood disease but a dry, laminated, scaly condition caused by a germ localized in the tissues of the skin that subsists on and consumes the oil in the skin until the dried tissues break up and flake off like dandruff, and that his treatment consisted of brown and white Dermolax and Dermolax special skin soap; and that such compounds were composed of the most effective curative elements known to science as a specific for psoriasis and would reach the seat of the trouble because it penetrates, etc.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading, and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That psoriasis is not a blood disease, or that it is caused by a germ localized in the tissues of the skin;

(b) That the skin soap used as a part of the Dermolax treatment is a special soap, or that it is made especially for this respondent;

(c) That the Dermolax ointment reaches the seat of the trouble in psoriasis;

(d) That there is nothing else known that has more marvelous results to its credit than the Dermolax treatment;

(e) That the Dermolax treatment is successful, because it penetrates, or that it does penetrate;

(f) That the curative elements composing the Dermolax treatment constitutes a specific for psoriasis; or that there is a specific for psoriasis;

(g) That the Dermolax treatment has given quick relief to thousands of sufferers;

and all representations and statements equivalent or similar thereto in form or substance. And also agrees to discontinue using the trade name "Interstate Laboratories" because he has no laboratory and there is nothing interstate about his business except that he sells and ships his product in interstate commerce. (Jan. 4, 1932.)

0220. Vendor-Advertiser—Bicycles.—This vendor-advertiser is engaged in selling bicycles and in advertising represented they would be sent on 30 days free trial, when in fact full or partial payment was required before delivery.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representa-

tions and agrees to cease and desist from representing in advertisements or otherwise:

That said bicycle will be sent to prospective purchasers for "free trial" unless and until such trial is permitted without the payment in advance of any amount of money, or without the requirement that any service be rendered by such prospective purchasers, and all representations and statements equivalent or similar in form or substance. (Jan. 4, 1932.)

0221. Publisher—Medical Treatments.—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for five vendors of various medical treatments alleged to be good for piles, eczema, increase the weight, remove wrinkles, and restore youthful color to gray hair.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements, waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist orders that may be made against the advertisers and/or any stipulations that may be entered into between the advertisers and the Commission of which he has notice to the same extent as if he was a party to such order or stipulation. (Jan. 4, 1932.)

0222. Publisher—Watches, Perfumes, Medical Preparations for Gallstones, Blood Diseases, etc.—The publisher of a magazine of wide interstate circulation, printed, published, and circulated advertisements alleged to contain false and misleading claims, statements, and representations for seven vendors of various articles from watches, perfumes, etc., to medical preparations for gallstones, blood diseases, warts and moles removers, and fat reducers and producers.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; declares he has no interest, right, or title in such advertisements, or in the business of such advertisers, and if he may have any such interest he waives his right to be heard thereon and waives his right to be made a party respondent to the proposed complaints against the advertisers; and waives any right which may be adversely affected by any cease and desist order against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission. (Jan. 4, 1932.)

0223. Vendor Advertiser—Courses of Instruction in Painting.—National Art School (Inc.), advertising as National Art Studios (Inc.), Chicago, Ill., vendor-advertiser, is engaged in teaching by printed courses of instruction the painting of photographs and miniatures and selling such courses and equipment, and in advertising for agents represented they could

"Make Money at Home. Oil Painting photos and miniatures. No Talent required. Easy, fascinating work for men and women. \$35 to \$100 a week and more. Big demand for artists. Free Employment Service. Earn while learning. We teach you at home. Complete artist's outfit furnished."

In a stipulation filed with and approved by the Federal Trade Commission, this vendor-advertiser admits making such representations and alleges it discontinued all advertising and has done no advertising since November 1930, and agrees that if it should resume advertising it will conform to the rulings or precedents established by the Federal Trade Commission; and, in particular, that any probable earnings represented to prospective students will not be an amount greater than the usual, ordinary compensation reasonably to be expected under normal conditions. (Jan. 11, 1932.)

0224. Publisher—Medical Prescription.—The publisher of a southern daily newspaper printed, published, and circulated an advertisement alleged to contain false and misleading claims, statements, and representations for the vendor of a medical prescription.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice to the same extent as if he was a party to such order or stipulation. (Jan. 18, 1932.)

0225. Vendor-Advertiser—Perfumes.—Theo. White, trading as Theo. White Co. and Palace De Flores, Los Angeles, Calif., vendor-advertiser, is engaged in selling perfume and in advertising represented that such perfume was irresistible and would attract and compel another to love the user of such perfume, etc.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

- (a) That said perfume is irresistible, or;
- (b) That the use of said perfume will enable a person
 - (1) To attract any person desired, or
 - (2) To win the love of any person desired, or
 - (3) To be exclusively attractive, or
 - (4) That said perfume can captivate the soul,

and all representations and statements equivalent or similar in form or substance. (Jan. 18, 1932.)

0226. Publisher—Bedwetting Treatments, Hair Dye and Reducing Paste.—The publisher of a magazine of wide interstate circulation

printed, published and circulated advertisements alleged to contain false and misleading claims, statements and representations for nine vendors of various articles from treatments for bedwetting to hair dye and reducing paste.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; declares it has no interest in the business of the advertisers, and if it may have any it waived any rights it may have to be heard thereon and to be made a party respondent; and waives any rights that may be adversely affected by a cease and desist order or stipulation that may be entered into between the advertiser and the Commission of which it has notice to the same extent as if it were a party to such order or stipulation. (Jan. 18, 1932.)

0227. **Vendor-Advertiser—Rupture Treatment.**—This vendor-advertiser is engaged in manufacturing and selling appliances for the treatment of ruptures, advertising in the name of an individual who claimed to be cured of a bad rupture and had nothing to sell.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representation and agrees to immediately discontinue the insertion for publication of the advertisement in the name of this individual or other advertisements of like purport and effect. (Jan. 18, 1932.)

0228. **Vendor-Advertiser—Hair Remover.**—Annette Lanzette (Inc.), Chicago, Ill., vendor-advertiser is engaged in selling a synthetic pumice stone designated "Lanzette Device" for removing superfluous hair and in advertising represented it would rid one of such hair and was simple, painless, harmless, and inexpensive.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published and circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from describing, labeling, branding, or otherwise designating its said product as a permanent hair remover, or to use the word "rid", or similar expressions to imply a definite termination of hypertrichosis as a result to be obtained by the use of said device. (Jan. 25, 1932.)

0229. **Vendor-Advertiser—Treatment for Piles.**—Peoples Drug Stores, Washington, D.C., vendor advertiser, is engaged in selling a treatment for piles designated "Pile Foe" and in advertising represented:

"Piles gone in 5 days or money back."

"Pile Foe is rigidly guaranteed to stop the pain and torture of Blind, Itching, or Protruding Piles no matter how long you have suffered."

"Pain leaves you instantly, the soothing healing process goes on for 5 days then your piles are a thing of the past."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That the use of said medicinal preparation will cause piles to be "gone."

(b) That the use of said medicinal preparation will stop the pain caused by piles "regardless of the length of time a person has suffered."

(c) That the use of said medicinal preparation will cause pain from piles to leave "instantly."

(d) That by the use of said medicinal preparation "piles can be relieved or healed in 5 days or in any other definite time." (Jan. 25, 1932.)

0230. Vendor-Advertiser—Treatment for Prostatic Troubles.—Geroge Starr White, Los Angeles, Calif., vendor-advertiser, is engaged in selling an appliance for the treatment of the prostate gland designated as "Valens Bio-Dynamo Prostatic Normalizer", and in advertising represented that this magnetized appliance was an effective treatment for prostatic troubles.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser agrees that he will not in the future advertise said Valens Bio-Dynamo Prostatic Normalizer in any newspaper, periodical, or by direct mail. (Jan. 25, 1932.)

0231. Vendor-Advertiser—Rheumatism Treatment.—J. T. Keller, trading as Keller Kapsule Co., Kansas City, Mo., vendor-advertiser, is engaged in selling Keller's Kapsules for Rheumatism and Neuritis and in advertising represented:

"The Superiority of Kapsule Medication over pills and tablets has long been recognized.

"In our Kapsules for Rheumatism and Neuritis, we offer you, not a new formula particularly, but a very old one that has been greatly improved upon. It is unequalled for its system—has analgesic and anti-inflammatory properties. It produces an immediate and marked increase in uric acid excretion and a very prompt decrease in uric acid formation.

"Keller's Kapsules are indicated in all Rheumatic and Gouty conditions, Lumbago, Neuritis, Neuralgia and Sciatica."

when in fact the therapeutic efficacy of said Keller's Kapsules for Rheumatism and Neuritis is limited to their action as an uric acid solvent, an analgesic and an antipyretic; and that pathological conditions such as rheumatism, neuritis, neuralgia, gout, lumbago, sciatica, and allied ailments are not generally the result of excessive uric acid.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statements or representations directly upon the responsibility of the respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said medicinal preparation is a competent treatment for rheumatic or gouty conditions, or lumbago, neuritis, neuralgia, sciatica, or allied afflictions unless such representations are qualified to indicate that such preparation is efficacious only where such ailments result from excessive uric acid;

(b) That said medicinal preparation has any therapeutic value other than its action as an uric acid solvent or an analgesic or an antipyretic;

(c) That said medicinal preparation has definite "anti-inflammatory powers" beyond those of an antipyretic to reduce fever;

(d) That said medicinal preparation produces a "very prompt" decrease in uric acid formation; and all representations and statements equivalent or similar thereto in form or substance. (Jan. 25, 1932.)

0232. **Publisher—Alterative Tonic.**—The publisher of a daily newspaper with a large circulation in the Gulf States printed, published, and circulated false and misleading statements and representations for the manufacturer of a vegetable compound alterative tonic.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisement; declares he had no interest in the business of the advertiser or the further publication of such advertisement that he cares to defend in proceedings before the Commission and waives any rights that may be adversely affected by a cease and desist order or stipulation relating to the subject matter. (Jan. 25, 1932.)

0233. **Vendor-Advertiser—Medicinal Preparation.**—C. W. Reynolds trading as Reynolds Chemical Co., Mound, Minn., vendor-advertiser is engaged in selling a medicinal preparation designated "Mak-Ova-Stomach Tablets" and in advertising represented such tablets would stop stomach agony, relieve pain, vomiting, and other discomforts at once and were highly recommended for relief of ulcers, severe chronic gastritis, acidosis, indigestion, etc.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, declares he has discontinued all advertising, but if he resumes

he will conform to the rulings or precedents established by the Federal Trade Commission and particularly agrees to cease and desist from representing either directly upon his own responsibility, or indirectly as purporting to be upon the responsibility or in the words of another:

(a) That said "Mak-Ova-Stomach Tablets" will stop stomach agony;

(b) That thousands of sufferers report amazing recovery after using said treatment;

(c) That such medicinal preparation relieves one of pain, vomiting, and other discomforts at once, unless properly qualified that it will not always do so;

(d) That improvement, by the use thereof, is steady and/or rapid, unless duly qualified;

(e) That this is a competent or effective treatment for stomach ulcers, or indigestion, or stomach pains, or dyspepsia, or chronic gastritis, or acidosis, or constipation, or flatulency, or heartburn, without regard to how the same may have been caused;

(f) That said Mak-Ova-Stomach Tablets constitute an effective or competent treatment for either rheumatism or gout;

(g) That said stomach tablets remove the cause of indigestion; or banish the cause of 90 percent of human ills; or that 90 percent or any like proportion of human ills, however caused, develop into a condition of hyperacidity in the stomach and urine; or

(h) That said formula is either wonderful, or the result of years of experimentation by a specialist, or cost many thousands of dollars to perfect, or is the fruit of painstaking and expensive research; and all representations and statements equivalent or similar thereto in form or substance. (Jan. 25, 1932.)

0234. **Vendor-Advertiser—Process for Silvering Mirrors.**—W. S. Wear, trading as Wear Mirror Works, Excelsior Springs, Mo., vendor-advertiser, is engaged in selling a process for silvering mirrors and in advertising represented that it was a process for making "Genuine French Plate Mirrors" easy to learn, guaranteed, protected by patent, and would enable the user to start his own business and make big profits, when in fact the difference between French and other mirrors is in the glass used and not the silvering process.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements, inferentially or otherwise;

(a) That the Wear Process of silvering will of itself make French Plate Mirrors or Genuine French Plate Mirrors;

(b) That respondent owns or uses any patented process for the making of French Plate Mirrors;

(c) That respondent's course of instructions tells how French Plate Mirrors are to be made, until such time as said course is duly revised so that it does so; or

(d) That any process of silvering whatsoever can make a French Plate Mirror out of any glass excepting only imported French plate glass;

and all representations and statements equivalent or similar thereto in form or substance. (Jan. 25, 1932.)

0235. Vendor-Advertiser—Treatment for Stomach Ulcers, etc.—Ramstead, Inc., Milwaukee, Wis., vendor-advertiser, is engaged in selling a treatment for stomach ulcers and kindred ailments designated the "Ramstead Treatment" and in advertising represented: "Stomach Ulcers. Do not require surgical operations in most cases. \$1.00 Box Free of the Ramstead Treatment which many report has given them complete relief from this distressing ailment as well as sour or acid stomach, acidosis, nausea, heartburn, indigestion, belching, bloating, constipation. Write today for the \$1.00 Box Absolutely Free, Ramstead Co., Inc., Dept. 211, P. O. Box 925, Milwaukee, Wisconsin";

when in truth and in fact said statements that this treatment has given complete relief from acidosis is held by Federal Trade Commission to be incorrect, exaggerated, and misleading in that acidosis, a systematic condition, is as a rule met with only in very serious cases of diabetes and Bright's disease, and a preparation intended for the ordinary stomach ailments would be worthless in such conditions.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation directly upon the responsibility of the respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading, and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from describing, labeling, branding, or otherwise designating its said product as a treatment for acidosis and all representations and statements equivalent or similar thereto in form or substance. (Feb. 1, 1932.)

0236. Vendor-Advertiser—Bladder Treatment.—The Knox Co., Kansas City, Mo., vendor-advertiser, is engaged in selling a treatment for disturbances due to functional irritation of the bladder, designated "Cystex", and in advertising represented that "Cystex" was an effective treatment for bladder weakness, backache, burning or itching sensation, leg or groin pains, muscular aches, etc.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representa-

tions; avers that any use it may have made of exaggerated statements or claims regarding its medicine, Cystex, was due to inadvertence rather than to lack of good faith or intent to deceive, and agrees to cease and desist from representing in advertisements or otherwise:

(a) That, impliedly or otherwise, respondent's medicine is an effective remedy or cure for bladder weakness, or getting up nights, or backache, or burning or itching sensations, or leg or groin pains, regardless of how the same may be caused;

(b) That, inferentially, backache, frequent nights and day calls, burning, leg pains, or muscular pains are all or any of them commonly due to functional bladder irritation—inasmuch as each of these ailments is often caused by organic and other disturbances in no way connected with the mere functioning of the bladder;

(c) That, unless the statement confining the cause solely to functioning of the bladder is displayed in type fairly conspicuous and reasonably legible, respondent's medicine is inferentially or otherwise an effective remedy or treatment for Getting up nights, or Kidney Acids or Acidity, or Bladder Weakness, or Backache, or Leg Pains;

(d) That a treatment is offered "Free" when the price thereof is required in advance with a money-back agreement; and all representations and statements equivalent or similar thereto in form or substance. (Feb. 1, 1932.)

0237. **Publisher—Hair Dyes.**—The publisher of a large daily newspaper of wide circulation in the Midwest printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for two vendors of hair dyes.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; declares he has no interest in the business of the advertisers or the further publication of such advertisements that he cares to defend in proceedings before the Commission, and waives any rights that may be adversely affected by a cease and desist order or stipulation relating to the subject matter. (Feb. 1, 1932.)

0238. **Vendor-Advertiser—Ointment or Salve—Premiums.**—George C. Wilson, trading as Wilson Chemical Co., Tyrone, Pa., vendor-advertiser, is engaged in selling an ointment designated "White Cloverine Salve" through agents working on commission or for premiums, and in advertising represented that certain premiums were given for selling a specified number of boxes of salve "and remitting as per plan in catalog", when in fact such premiums are not given for selling the stated number of boxes and sending in the amount secured for them but the sale of a larger number of boxes or remitting more money is required.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations; avers that any use he may have made of inaccurate statements regarding the premium offers was due to inadvertence rather than to lack of good faith or intent to deceive, and agrees to cease and desist from publishing and circulating or causing to be published or circulated either by contact advertisements or through premium catalogs and circulars any statement which is misleading in substance or form, and specifically stipulates and agrees to refrain from representing in advertisements or otherwise and either directly or inferentially:

(a) That a premium or reward is obtainable for a less amount in either services or money than is actually the case;

(b) That any premium is given "free" where the consideration therefor is either services or cash;

(c) That any premium will be sent upon the remittance of a stated amount without mention of additional sum to cover postage and packing in case where this extra remittance is required; and all representations and statements equivalent or similar thereto in form or in substance. (Feb. 1, 1932.)

0239. **Vendor-Advertiser—Perfumes and Cosmetics.**—Ann Griffith, trading as Love Charm Co., St. Louis, Mo., vendor-advertiser is engaged in selling perfumes and cosmetics designated as "Love Charm", and in advertising represented that it is a new creation from the secret formula of a celebrated French perfumer.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from describing, labeling, branding, or otherwise designating her said products as being of French origin or according to the formula of a celebrated French perfumer. (Feb. 1, 1932.)

0240. **Vendor-Advertiser—Booklet.**—Mrs. K. M. LaFlesh, trading as The Chandler Co., Chicago, Ill., vendor-advertiser, is engaged in selling a booklet entitled "Pin Money. One Hundred Ways to Make Money at Home" and a list of firms purporting to offer "profitable spare or full time employment", and in advertising represented:

"Free Information Regarding Reliable permanent, profitable home work. No canvassing. No schemes or junk. Chandler Co., 9-D, 1611 Great Northern Bldg., Chicago"; when in fact the form in which the contract advertisement appears gives the reader the impression that respondent has some work to offer, which is not the case.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing, in advertisements or otherwise, either directly or inferentially:

(a) That profitable employment is offered under the classification of "Help Wanted", unless and until such be in fact the case;

(b) That the employment referred to involves no canvassing, where any part of such employment does contemplate outside selling;

(c) That the information to be furnished is reliable unless and until such has been ascertained to be the fact;

(d) That no schemes or junk are involved in the work suggested unless and until such has been ascertained to be the fact; and all representations and statements equivalent or similar thereto in form or substance. (Feb. 15, 1932.)

0241. **Vendor-Advertiser—Diabetes Treatment.**—C. Grover Caldwell, trading as The Wabash Chemical Co., Chicago, Ill., vendor-advertiser, is engaged in selling a treatment for diabetes designated "Pancretone", and in advertising represented:

"Diabetes.

"Treated by a New Product called 'Pancretone.' Requires no starvation diet; contains no harmful drugs. This amazing remedy is relieving thousands.

"'Pancretone' when taken as directed will eradicate sugar from the urine in most cases in from 5 to 21 days.

"This Wonderful Remedy helps the System to rapidly build a Carbohydrate Tolerance.

"'Pancretone' is out of the experimental stage.

"The enclosed Testimonials are positive proof that even the Worst Cases can secure satisfactory relief if the Treatment is continued a reasonable length of time.

"Years of Specialization in the Treatment of every known Form and Stage of Diabetes has taught us that Results are always obtained when 'Pancretone' is continued with unbroken Regularity. This gives the Medicine ample time to rid the Body of all Sugar and Poisons and restore the Circulation to Normal Function.

"Many physicians have recognized its Merits and are prescribing 'Pancretone' to their patients in spite of the fact that no effort or Money has been used for Propaganda among the Medical Profession."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated to prospective purchasers of his product, any statement or representation directly upon the responsibility of the respondent or indirectly as purporting to be upon the responsibility or in the words of another any statement which is false or misleading or tending to induce the public or prospective purchasers of his said product to believe:

(a) That Pancretone is a new product;

(b) That said remedy is amazing or that it is relieving thousands;

- (c) That Pancretone will eradicate sugar from the urine in from 5 to 21 days;
 - (d) That said remedy helps to build rapidly a carbohydrate tolerance in the system;
 - (e) That it is out of the experimental stage;
 - (f) That any testimonials are of themselves positive proof that cases can secure satisfactory relief by this treatment;
 - (g) That results are always obtained by the use of Pancretone in every known form and stage of diabetes; or that Pancretone is a competent treatment for true diabetes or any type of so-called diabetes other than the type of which sugar in the urine is an indication;
 - (h) That said medicine will rid the body of all sugar and poisons and restore the circulation to normal function;
 - (i) That a container and bottle will be sent and complete test of urine made *free of charge*, the price thereof being included in the charge for such 60-day treatment;
 - (j) That Pancretone has restored the health of many people, broken in health and almost hopeless, when all else had failed;
 - (k) That many physicians recognize its merits and prescribe Pancretone to their patients;
 - (l) That the respondent spends \$1 to prove his statements each time an inquiry is received from a prospective purchaser;
 - (m) That thousands of sufferers or any considerable number have discontinued the use of insulin and are getting the same results through the use of Pancretone;
- and all representations and statements equivalent or similar thereto in form or substance. (Feb. 15, 1932.)

0242. Vendor-Advertiser—Treatment for Run-Down Vitality.—F. A. Durrant and D. W. Dehoney, Jr., trading as Meed Co., Kansas City, Mo., vendor-advertiser, is engaged in selling a treatment for run-down vitality designated “4 V Viosterol Compound” and in advertising represented:

“Vigor Slipping? Do you lack strong, youthful force, vigor, and vitality? Are you weak, nervous, rundown, dissipated, lacking the vital punch of life, half alive? Then your nerves, glands, and system will quickly respond to this famous Wisconsin University discovery that gives you vigor-producing factors—straight”; when in truth and in fact said statements are held by the Federal Trade Commission to be incorrect in certain respects and exaggerated and misleading in others in that:

The claims purport to offer a remedy for a weak, nervous, run-down, or dissipated condition of the nerves, glands, and system without regard to the cause of such condition, whereas the effectiveness of this treatment is limited to cases of vitamin D deficiency.

The claims fail to distinguish between treatment and removal of underlying causes on the one hand and relief of condition that may be regarded as manifestations or symptoms on the other hand.

Neither this nor any other product can be effective generally or in all cases of vitamin D deficiency.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulate and agree in soliciting the sale of and selling their said product in interstate commerce to cease and desist from representing in advertisements or otherwise that said compound is recommended for conditions of undernourishment, emaciation or debility other than those in which the use of such a vitamin D concentrate may be indicated.

Respondents furthermore stipulate and agree to purge their present advertising claim for 4 V Viosterol Compound of all sweeping or general claims regarding health, vigor, and vitality, and restrict those claims to the relief of those conditions in which such vitamin D concentrates are recognized to have beneficial use. (Feb. 15, 1932.)

0243. **Vendor Advertiser—Rummage Stocks.**—Louis Arkin trading as Ideal Jobbers, Chicago, Ill., vendor-advertiser, is engaged in selling clothing, auction goods and receiver's stocks, etc., and in advertising represented—" \$150 Weekly—Own bankrupt rummage store now. Everything furnished. Experience unnecessary. Ideal. 1945 Wabansia, Chicago, Ill."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise that the probable profits of such purchaser of rummage stocks would be any specified amount, or any amount greater than the usual, ordinary profit to be reasonably expected under normal conditions. (Feb. 15, 1932.)

0244. **Vendor Advertiser—Fat Remedy.**—O.B.C.T. Laboratory, Chicago, Ill., vendor-advertiser, is engaged in selling a remedy for excessive fat designated O.B.C.T. and in advertising represented:

"Reduce with O.B.C.T. She used to be fat! Any woman can reduce with O.B.C.T. Quickly and painlessly, without harm or inconvenience. No exercise or diet necessary. O.B.C.T. is made under the supervision of a licensed, practicing physician. O.B.C.T. is the most wonderful fat reducer ever prescribed. We positively

guarantee that you will lose weight on the first box, or we will refund your money!"

when in truth and in fact said statements are considered by the Federal Trade Commission to be incorrect and misleading in that any treatment, self-administered, which contains, as this does, thyroid, pituitary, ovarian, and orchic glandular products, may not be correctly described as harmless.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and says it has heretofore definitely discontinued all representation in its advertising that its said remedy acts either quickly or painlessly or without harm or inconvenience, and has no intention whatsoever of reviving such advertising claims; and agrees that in the event it decides ever to resume making representations as to the safety of its products, such future advertising will be made to conform to the rules or precedents established by the Federal Trade Commission. (Feb. 15, 1932.)

0245. **Vendor Advertiser—Hair Dye.**—Nourishine Manufacturing Co., Los Angeles, Calif., this vendor advertiser is engaged in selling a hair dye and coloring treatment designated "Nourishine" and in advertising represented:

"Stop Gray Hair. If you are troubled with gray hair, falling hair, or dandruff, don't give up! Use Nourishine! Nourishine is a tonic that acts naturally, at the base of the trouble—the hair roots. Nourishine cleanses the scalp, banishes dandruff, stimulates and invigorates the roots, and promotes hair growth. It acts as a food tonic for starved hair follicles and thus eliminates the cause of gray hair. The one liquid will restore gray hair to any original color, regardless of its shade. Easy to apply. Certain, uniform results. \$1.25 at all drug and department stores.

"Why Have Gray Hair? Thousands are restoring their hair to its original color by using Nourishine. The time-tried tonic-hair restorer is easy to apply and produces certain, uniform results. The one liquid restores the hair to any original color, which returns evenly, naturally—no streaks!

"Nourishine also stops falling hair, cleanses the scalp, banishes dandruff, and promotes hair growth. \$1.25 at all drug and department stores."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating or causing to be published or circulated any statement or representation directly upon the responsibility of the respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees in

soliciting the sale of and selling said product in interstate commerce, to cease and desist from describing, labeling, branding, or otherwise designating same as a hair color restorer; and from representing in advertisements or otherwise:

- (a) That gray hair may be stopped by the use of Nourishine; or
- (b) That Nourishine banishes dandruff; or
- (c) That Nourishine promotes hair growth, or that it invigorates the roots of the hair; or
- (d) That Nourishine restores gray hair to the original color; or
- (e) That gray hair will disappear or is banished by the use of Nourishine; or
- (f) That Nourishine brings back the natural color of the hair; and all representations and statements equivalent or similar thereto in form or substance. (Feb. 15, 1932.)

0246. **Vendor Advertiser—Goiter Treatment.**—Dr. Arthur A. Rock, Milwaukee, Wis. This vendor-advertiser is engaged in selling a treatment for goiter, and in advertising represented he had an honest, proven treatment for goiter used throughout the world.

“Goitre can be cured. Dr. Rock, the eminent goitre specialist, has treated goitre for nearly a quarter of a century and within the last year has made a remarkable discovery which has aroused intense interest. It has been brought to light by scientific research that goitre is not a disease and is not to be treated as such.

“A prominent goitre specialist for over 24 years has perfected a different method of treatment for his patients that has proved remarkably successful. This same method is now being used for a home treatment of goitre cases all over the country with astonishing results. The Doctor states that goitre is a condition which grows worse with neglect and recommends immediate attention no matter how small the growth may appear. He strongly opposes needless operations. Dr. Rock is the author of a book that tells in a simple way about treating goitre at home. He has published this book at his own expense and will send a copy free to anyone interested. Write him today.” when in truth and in fact said statements are held by the Federal Trade Commission to be incorrect and in certain respects and exaggerated and misleading in others in that:

Respondent’s so-called free book—“published at his own expense”—does not tell, either in a simple way or at all, how to treat goiter at home or give any ideas about preparing and administering a home treatment as the term is commonly understood, but is merely a printed advertising pamphlet that describes the various kinds of goiter and urges the reader to purchase respondent’s treatment.

Respondent’s “remarkable discovery”, to wit, that there is some connection between the ovaries of woman and a goitrous condition of the thyroid gland, has been a matter of common knowledge to the medical profession for years.

A treatment for simple goiter, either external or internal, is not an effective treatment for exophthalmic goiter.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation directly upon the responsibility of the respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which false or misleading and specifically stipulates and agrees in soliciting the sale of and selling his said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

- (a) That goiter can be cured.
- (b) That respondent's tablets will cure goiter or kindred ailments;
- (c) That any book given or sold discloses or prescribes a home treatment for goiter unless and until such be the fact;
- (d) That by using respondent's treatment surgical operations can in all cases be avoided;
- (e) That surgical operations for goiter are always dangerous;
- (f) That half of those operated on for goiter, or any other stated proportion, either die or are no better or have a recurrence of the trouble within 2 or 3 years;
- (g) That there is the possibility of death as the end of any goiter operation;
- (h) That respondent's treatment will aid in all kinds of goiter regardless of how long standing;
- (i) That respondent's treatment will aid in all cases of goiter regardless of the kind or form of goiter that the patient may have;
- (j) That respondent's treatment is effective for internal goitre of exophthalmic nature;
- (k) That respondent's treatment will "rid" one of goitre, either without danger or at all;
- (l) That respondent's medicine is harmless under all conditions;
- (m) That there is anything remarkable about the respondent's discovery or that it has aroused "intense interest";
- (n) That goiter is the greatest danger to the health of the American people; or that it will menace the next generation; or that Americans will become known as the "turtle necked people"; or that in fact goiter is either a great danger or a menace to the American race as a whole;
- (o) That testimonial letters are in themselves proof of respondent's claims;
- (p) That respondent has had no dissatisfied patients, and/or that his treatment "pleases all who try it";
- (q) That an offer in a printed form letter is "not made to every one";

(r) That the reader is requested "not to mention to others" the "special offer" made to him in a printed form letter;

(s) That any testimonial quoted in a printed form letter "came in today's mail"; and all representations and statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees to eliminate from his advertising literature all testimonial letters containing statements inconsistent with the purport of the proposed changes and amendments herein-above enumerated. (Feb. 15, 1932.)

0247. **Vendor Advertiser—Eczema Treatment—Ovelmo Co., and J. C. Hutzell, Fort Wayne, Ind.** This vendor-advertiser is engaged in selling a treatment for eczema designated "Ovelmo Cream" and in advertising represented:

"Eczema can be cured. If you have Eczema, Itch, Salt Rheum, Tetter—never mind how bad—my treatment has cured the worst cases I ever saw—give me a chance to prove my claim. If you have any such skin trouble—never mind how bad—my treatment has stopped the worst cases I ever heard of—give me a chance to prove my claim."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from describing, labeling, branding or otherwise designating their said product as a cure for eczema and from representing in advertisements or otherwise:

(a) That said Ovelmo treatment is a cure for eczema;

(b) That it is an effective treatment for eczema regardless of the type;

(c) That 50,000 persons have been cured of eczema by said treatment;

(d) That such treatment has cured the worst cases of eczema, itch, salt rheum, and tetter no matter how bad;

(e) That such treatment has stopped the worst cases of skin trouble ever heard of;

(f) That eczema can be stopped through the use of Ovelmo, unless such statement is clearly qualified to indicate that it applies only to the itching or eruption of eczema

and all representations and statements equivalent or similar thereto in form or substance. (Feb. 15, 1932.)

0248. **Vendor Advertiser—Healing Salve.—Morris R., Charles, Mary, and Robert Shapiro, copartners trading as UCA-Mentho Co., Chicago, Ill.** This vendor-advertiser is engaged in selling a healing salve called UCA-Mentho through agents working for a commission or premiums and in advertising represented:

"Given, latest style watch. Real timepiece; Engrav'd white gold effect-silver dial; 10-year guar. 6-jewel movement. Send for 12 boxes UCA-Mentho Healing and Vapor Salve which you sell at 25¢ a box. We also send 12 Perfume Novelties you give away FREE and easy plan for obtaining wrist watch. Send no money. We pay postage. UCA-Mentho Co., Dept. YB50 Chicago."

when in fact the agent is required to sell 12 boxes and remit \$3 for the salve and \$3.50 in cash extra, or sell 24 boxes and remit \$6 for the salve and \$1.95 extra to secure the watch.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise, and either directly or inferentially:

(a) That a premium or reward is obtainable for a less amount in either services or money than is actually the case;

(b) That any premium is given "Free", the price thereof being included in the charge for such salve;

(c) That any premium will be sent upon the remittance of a stated amount without mention of additional sum to cover postage and packing in cases where this extra remittance is required; and all representations and statements equivalent or similar thereto in form or substance. (Feb. 15, 1932.)

0249. **Vendor Advertiser—Book.**—E. J. Eller trading as Eller Co., New York City. This vendor-advertiser is engaged in selling a book containing names, addresses, and information about securing home work and in advertising represented:

"Help Wanted—Female. Homework—Women wanting reliable kinds write for information. Enclose stamp. Eller Co."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from:

(a) Representing that respondent has employment to offer; or

(b) Publishing any advertisement in furtherance of the sale of said book in any classified column whose caption indicates that help is wanted;

and all representations and statements equivalent or similar thereto in form or substance. (Feb. 29, 1932.)

0250. **Vendor-Advertiser—Rheumatism, Neuritis, etc., Treatment.**—Hagen Import Co., St. Paul, Minn. This vendor-advertiser is engaged in selling an herb tea medication for rheumatism, neuritis, arthritis, and lumbago, and in advertising represented:

"Nature's Gift for Rheumatism. Herbs from German Black Forest help when all others have failed. Now anyone—No matter how long you have suffered with those torturing pains of Rheumatism, Neuritis, Arthritis, or Lumbago, can get help and permanent relief.

"Thousands of testimonials prove its worth. Full particulars of this simple, convenient home treatment, together with 125-page book complete with descriptions and illustrations mailed postpaid to those so afflicted.

"Hagen Import Co. Medical Dept. No. 2. St. Paul, Minn."; when in fact the Federal Trade Commission finds the therapeutic qualities of said herb tea are limited to laxative, diuretic, and stomachic properties, and it would not be effective as a treatment for rheumatism and kindred ailments in the sense in which those terms are understood and applied by the medical profession.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That said Herb Tea may be indicated for any uses other than those of a medicine combining diuretic, laxative, and stomachic properties;

(b) That this is a proper treatment for Rheumatism, Neuritis, Arthritis, or Lumbago as those diseases are understood and described professionally and scientifically;

(c) That it is a proper treatment for Rheumatic conditions unless qualified to mean those pains often designated by the layman as rheumatic which are in fact due to stomach disorders, faulty elimination, or excessive uric acid;

and all representations and statements equivalent or similar thereto in form or substance. (Feb. 29, 1932.)

0251. Vendor-Advertiser—Puzzle Prize Contests.—This vendor-advertiser is engaged in publishing a magazine with a large interstate circulation and, seeking more subscribers, admits that as a means of procuring the services of local agents to solicit subscriptions to its said magazine, it has conducted various contests in which prizes were offered to the winners in accordance with certain rules established by respondent. Respondent also admits that for the purpose of securing a mailing list and inducing persons to enter the contest, thereby increasing the circulation of its publication, it has caused certain puzzle form advertisements to be inserted in various publications; and also admits that said advertisements are misleading in that, as a matter of fact:

(a) No prize or reward is given or awarded for the mere solution of the problem or puzzle portrayed;

(b) To secure any of the prizes offered, the winner must enter a contest, the nature of which is not disclosed in the advertisement, and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in said advertisement.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from any false or misleading representation in advertisements or otherwise, and either directly or indirectly:

(a) That the mere solution of any puzzle will enable a contestant to win the prize;

(b) That any prizes offered are free;

(c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;

(d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle.

Respondent further stipulates and agrees that it will not publish any advertisement offering a prize or reward to the winner of a contest when there is a puzzle or problem portrayed in the same advertisement unless there appears also in such advertisement, adjacent to and equally conspicuous with said offer of a prize or reward, a clear statement to the effect that something more of a substantial nature will be required, in addition to the solution of the puzzle or problem, before the prize or reward can be won. (Feb. 29, 1932.)

0252. Vendor-Advertiser—Antiseptic Powders and Cones.—J. Bergman, Inc., and J. Bergman, New York City. This vendor-advertiser is engaged in selling antiseptic powders and antiseptic vaginal cones and in advertising represented:

“No more worry for married women.”

“Intimate personal hygiene problems need no longer worry married women.”

“This service consists of a scientific infallible antiseptic preparation which destroys all germ-laden accumulations;”
when in fact neither the powder nor cones are germicides and will not do what is claimed for them.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing or circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That the use of either of said preparations relieve married women from worry; or

(b) That either of said preparations is an infallible antiseptic or a germicide; or

(c) That either of said preparations will destroy germ laden accumulations, or help to neutralize and clear out undesirable secretions; or

(d) That either of said preparations is a remedy for maintaining the regular functions of the genital organs;

(e) That either of said preparations is a competent treatment for leucorrhœa, whites, or other unhealthy discharges; or

(f) That the use of either of said preparations will help women maintain perfect ease, or physical comfort, or make them carefree; or

(g) That either of the preparations is nonpoisonous; or

(h) Directly or by implication that the use of either of said preparations will accomplish birth control and prevent conception;

and all representations and statements equivalent or similar thereto in form or substance. (Feb. 29, 1932.)

0253. Vendor Advertiser—Goitre Treatment.—Munich Method, Inc., Buffalo, N.Y. This vendor-advertiser is engaged in selling a treatment for goitre designated as the Munich Method, and in advertising represented—

“No matter how long you have suffered or what you have tried, you owe it to yourself to investigate this new scientific method.”

“* * * its surprising success in correcting and ridding people of Goitre has been acclaimed throughout Europe.”

“This new scientific method for the correction and control of Goitre * * *.”

“No matter how long you have suffered, no matter if your Goitre is of long standing or recent development, no matter if you have tried everything under the sun in search of a cure for your Goitre, you should investigate the latest scientific method, that bids fair to remove this disfiguring and dangerous scourge.”

“It was organized for the purpose of bringing within the reach of American Goitre victims the latest and most up-to-date method for the reduction and correction of Goitre that science has perfected.

“What a boon it will be to these poor unfortunates when mothers who either live in a goitre-infected area, or who know there is a goitrous tendency in their family, will submit to proper medical treatment during pregnancy, so development of the thyroid gland in children yet unborn may be aided to avoid the handicap and high mortality of goitre in infancy.”

“It is adapted to any Goitre, large or small. It has been used with success in almost every form of Goitre known to Medical Science.”

“* * * if a Goitre has not reached the incurable stage it can be reduced, corrected, and gotten rid of by the Munich Method.”

"At least seven out of ten children born to families where one of the parents is goitrous are afflicted with Goitre and in danger of Cretinism."

when in fact such treatment is not a competent treatment for forms of goiter other than simple goiter.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That said medicinal preparation is a competent treatment for goiter unless such representation is qualified to indicate that it does not apply to other than simple goiter; or,

(b) That said medicinal preparation is effective in the treatment of goiter regardless of the length of time a person has suffered; or

(c) That said medicinal preparation has been successful in ridding people of goiter; or,

(d) That said medicinal preparation will correct or control goiter; or,

(e) That said medicinal preparation is a cure for goiter; or,

(f) That goiter is a dangerous scourge; or,

(g) That said medicinal preparation represents *the* latest scientific method for the removal of goiter; or,

(h) That said medicinal preparation "is adapted to any goiter, large or small"; or,

(i) That said medicinal preparation has been used with success in almost every form of goiter; or,

(j) That if goiter has not reached the incurable stage it can be reduced, corrected, or gotten rid of by use of said medicinal preparation; or,

(k) That 7 out of 10 children born to families where one of the parents is goitrous are afflicted with goiters and in danger of cretinism, or that goiter is or may be hereditary; or,

(l) Directly or inferentially that the thyroid gland of children can be developed by medical treatment administered to their mothers during pregnancy; or,

(m) That there is a high infant mortality caused by goiter; and all representations and statements equivalent or similar thereto in form or substance. (Feb. 29, 1932.)

0254. **Publisher—Vegetable Tonic.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer and vendor of a vegetable tonic.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements;

declares no interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be made a party respondent and any rights that may be adversely affected by a cease and desist order or stipulation relating to the subject matter. (Feb. 29, 1932.)

0255. **Advertising Agent—Battery-Charging Compound.**—An advertising agent prepared and placed for publication advertising copy alleged to contain false and misleading claims, statements, and representations for the manufacturer and vendor of a battery-charging compound.

In a stipulation filed with and approved by the Federal Trade Commission this advertising agent admits preparing and placing for publication such advertising copy; declares no interest in the business of the advertiser or the publication of such advertising copy which he desires to defend before the Commission; and waives all right to be heard or made a party respondent in proceedings instituted against the advertiser before the Commission, and waives all rights that may be adversely affected by any cease and desist order or stipulation relating to the subject matter. (Feb. 29, 1932.)

0256. **Publisher—Cosmetics and Other Beauty Preparations.**—The publisher of a magazine printed, published, and circulated advertisements alleged to contain false and misleading claims, statements, and representations for a manufacturing vendor of cosmetics and other beauty preparations.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits publication of such advertisements; declares no interest in the business of the advertiser or the publication of such advertisements that he cares to defend before the Commission and waives the right to be made a party respondent and any rights that may be adversely affected by a cease and desist order or stipulation relating to the subject matter. (Mar. 7, 1932.)

0257. **Publisher—Gland-Tonic Tablets.**—The publisher of a magazine of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading claims, statements and representations for the vendor of gland-tonic tablets.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits the publication of such advertisements; declares he has no interest in the business that he cares to defend in proceedings before the Commission, and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice to the same extent as if he were a party to such order or stipulation. (Mar. 7, 1932.)

0258. **Publisher—Dropsy Treatment.**—The publisher of a newspaper and magazine section of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading claims, statements, and representations for the manufacturer and dispenser of a medical treatment for dropsy.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits publication of such advertisements; declares no interest in the business of the advertisers or the publication of such advertisements that he cares to defend before the Commission and waives the right to be made a party respondent and any rights that may be adversely affected by a cease and desist order or stipulation relating to the subject matter. (Mar. 7, 1932.)

0259. **Vendor-Advertiser—Tools, Books, Curios, etc.**—Charles A. Bilgman and Charles A. Bilgman, Jr., trading as Model Co., Chicago, Ill. This vendor-advertiser is engaged in selling tools, books, and curios and in advertising represented underground treasure could be located by a magnetic device offered for sale, and that certain other articles would straighten curly, kinky hair; stop falling hair, overcome baldness, bring back estranged mates; bring restful sleep; reveal secrets; assist undertakings; bring good luck with lucky symbols, rings, lodestones, powders, etc.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That the device offered by respondents will enable one to find underground treasures; or that there is any secret about it; or that possession of same may mean a fortune to its owner;

(b) That the Adam and Eve Root has any magical qualities, or that it affects the generative organs, or that it either brings back or holds the love of anyone;

(c) That any preparation sold by respondents for treatment of the hair will straighten the hair; or stimulate growth of the hair; or contains nourishing ingredients to keep the hair roots healthy; or will smoothen and/or straighten each strand of the hair; or prevents falling hair or baldness; or enables one to have long, straight, and/or abundant smooth hair; or will bring everything essential to beauty for unattractive hair;

(d) That five finger grass will bring restful sleep or will ward off "any evil that any five fingers could bring", or any other evil whatsoever;

(e) That the "Special Spirit of Venus Seal" is made of genuine imported parchment, or that the possession of same will make any person beloved, or enable him to know secrets through dreams, or will assist him in any undertaking;

(f) That the "Oriental Lucky Ring Outfit" offered for sale by respondents is oriental; or has magic power; or will make its possessor a leader, or wealthy, or a winner in games, or love or any other thing whatsoever; or will drive away evil; or will make anyone lucky;

(g) That possession of respondents "Mystic Controlling Bag" will control luck, or bring a loved one under control, or enable one to enjoy all the good things of life, or make him a winner, or provide him always with money;

(h) That respondents' "Magnetic Lodestone" will turn away evil and/or bring good luck;

(i) That possession of respondents' gazing crystal will make a dream castle come true; or make one lucky in either love or fortune or fame or cards, or in any other thing or undertaking; or is a great aid in the development of the mind; or is evidence of one's advanced ideas and culture;

(j) That respondents' "Model Controlling Bag Curio" contains any properties that are mystic or that will attract or control luck, or in any way whatsoever affect one's circumstances;

(k) That "Lady Love" perfume gives one a mysterious attraction or a tantalizing allure that captivates, or that it draws or inclines a chosen one to "yield to Love's sweet spell";

(l) That respondents' "Magic Rug" is a new invention; or banishes leg strain; or ends backache; or eliminates fatigue; or is either wonderful or magical; or forever takes the curse off all tiring and dreaded standing-up tasks; or will accomplish any more than any other aerated rubber rug or mat;

(m) That the price charged for an article is "special" unless the same is lower than the price regularly charged for such articles;

(n) That an article is "free", the price thereof being included in the special charge for the combination of things offered; and all representations and statements equivalent or similar thereto in form or substance. (Mar. 7, 1932.)

0260. Vendor-Advertiser—Rheumatism Treatment.—Frederick Dyer Co., Jackson, Mich. This vendor-advertiser is engaged in selling "Rheuma-Alterative Tablets" and medicated "Dyer Foot Drafts" for rheumatic pains, and in advertising represented that Dyer Two-Fold Treatment (consisting of alterative tablets and foot drafts) would free one from rheumatic pains regardless of age, stage, severity, or duration, etc.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That said treatment is a competent treatment for rheumatic pains, regardless of the varying conditions of age, stage, severity, or duration; or

(b) That said treatment has brought health to thousands of sufferers;
or

(c) That said treatment has freed persons from their bonds of pain; or

(d) That any person has been cured by the use of said treatment; or

(e) That said treatment has brought recoveries of health to thousands of people; or

(f) That by the use of said treatment a person can get rid of rheumatic pain; or

(g) That by the use of said treatment a person may be free from rheumatism; or

(h) That more than temporary relief from rheumatic pain can be caused by the use of said treatment;

and all representations and statements equivalent or similar thereto in form or substance. (Mar. 7, 1932.)

0261. **Vendor-Advertiser—Hair Remover.**—Leopold Decrissey and Richard A. Ehrlich, trading as Gypsia Products Co., New York, N.Y. This vendor-advertiser is engaged in selling a preparation for removing hairs, and in advertising represented that it was a marvelous imported Parisian discovery and would permanently remove unwanted hair in a jiffy by destroying hair and root.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That said preparation will remove hair "for good"; or

(b) That by the use of said preparation a permanent removal of hair can be accomplished unless clearly indicated that it must be repeatedly applied according to directions; or

(c) That said preparation will destroy the hair root;
and all representations and statements equivalent or similar thereto in form or substance. (Mar. 14, 1932.)

0262. **Vendor-Advertiser—Curios, Jewelry, Perfumes, and Miscellaneous Merchandise.**—Leroy Perry, trading as P. S. Bureau, Brooklyn, N.Y. This vendor-advertiser is engaged in selling curios, jewelry, perfumes, toilet preparations, novelties, and miscellaneous merchandise, and in advertising represented

"\$ Always Have Luck: \$. (Illustration of lodestone.) Unlucky in Money, Games, Love or Business? You should carry a pair of genuine Mystic Brahma Red Highly Magnetic Lodestones. Rare, amazing, compelling, attractive, these Live Lodestones are carried by Occult Oriental people as a Powerful Lucky Charm, one to prevent Bad Luck, Evil, and Misfortune, and the other to attract much Good Luck, Love, Happiness, and Prosperity."

claiming they have been carefully selected genuine Mystic Brahma Lodestones and alive, of fine grade, etc., when in fact they are merely common, magnetic stones, broken up and rolled in iron filings with the smaller pieces called female and the larger ones male.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That the possession or use of any of the articles of merchandise sold by respondent will (1) prevent bad luck, evil, or misfortune; (2) attract good luck, love, happiness, and prosperity;

(b) That the lodestones sold by respondent possess mystic qualities;

(c) That the lodestones sold by respondent are rare, amazing, compelling, or weird;

(d) That the possession of said lodestones will enable one to attract good luck or be successful in money, love, or business;

(e) That said lodestones are either male or female;

(f) That said lodestones have been mated;

(g) That said lodestones have been scientifically tested;

(h) That any ring sold by respondent is Chinese or Egyptian unless such ring has been imported from China or Egypt, respectively;

(i) That any ring sold by the respondent is set with emeralds, rubies, or other precious stones unless such settings are genuine precious stones as described;

(j) That the medicinal tablets designated as Aubex Tablets are partially composed of potent glands of vigorous animals;

(k) That said Aubex Tablets will aid the vital organs to function; and all representations and statements equivalent or similar thereto in form or substance.

Respondent further stipulates and agrees in soliciting the sale of said merchandise in interstate commerce to cease and desist from:

(a) Designating merchandise as "Perles" unless such designation is clearly qualified to indicate that the articles are not genuine pearls;

(b) Using the word "Orient" or "L'Orient" to describe any article not actually imported from the Orient. (Mar. 21, 1932.)

0263. Vendor-Advertiser—*Massage Cream*.—*Marcelle Fuolaire* trading as *Madame Fuolaire* and *Parisian Laboratories*, Hollywood, Calif. This vendor-advertiser is engaged in selling massage creams called "*Parisian Flesh Food*", and in advertising represented that *Parisian Flesh Food* will speedily remove all lines, make wrinkles vanish, thin faces plump, fill out hollow cheeks, correct flabby withered skin, nourish starving tissues, renew lifeless skin, feed tissues under the skin, rebuild a pendant under-fed breast, etc., when in fact she has no laboratory, no place of business in Paris, and said cream is not a flesh food or tissue builder, but merely a massage cream.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from describing, labeling, branding, or otherwise designating same as a "flesh food" and from representing in advertisements or otherwise:

(a) That the use of said massage cream will (1) Cause wrinkles to vanish; (2) remove all lines from the face; (3) make thin faces plump; (4) fill out hollow cheeks; (5) banish lines, wrinkles or hollows; or,

(b) That said massage cream is a flesh food, a food for the tissues, a tissue builder, or wrinkle eradicator; or,

(c) That said massage cream will (1) Nourish tissues; (2) renew lifeless skin; (3) bring food in direct contact with the tissues; (4) rebuild tissues; (5) restore youthful beauty; (6) get to the cause of wrinkles or crowsfeet; (7) eradicate wrinkles; (8) revive the tissues.

(d) That respondent operates or maintains a laboratory;

(e) That respondent operates or maintains a place of business in Paris;

and all representations and statements equivalent or similar thereto in form or substance, and quit using "Parisian" or "Laboratories" as part of her trade name or the trade name of the massage cream. (Mar. 21, 1932.)

0264. Vendor-Advertiser—Kidney and Bladder Treatment.—E. B. Hall, trading as E. W. Hall and Dr. E. W. Hall, St. Louis, Mo. This vendor-advertiser is engaged in selling a treatment for kidney and bladder trouble called "Texas Wonder" and in advertising represented "Texas Wonder for kidney and bladder troubles, gravel, weak and lame back, rheumatism and irregularities of the kidneys and bladder", which is found to be incorrect by the Federal Trade Commission in that neither E. B. Hall nor E. W. Hall, his father, were doctors and E. W. Hall died several years ago and that "Texas Wonder" is composed of ingredients with limited curative powers far less than is claimed.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That either E. W. Hall was a doctor or that respondent E. B. Hall is a doctor;

(b) That any doctor or pharmacist is connected with the compounding, selling or shipment of "Texas Wonder" until and unless such be the fact;

(c) That "Texas Wonder" or the same or similar combination of drugs under this or any other trade name, is a competent treatment for any disease, disorder or ailment other than certain irregularities of the kidneys and bladder and certain so-called rheumatic pains;

(d) That "Texas Wonder" is a competent treatment for kidney and bladder troubles, rheumatism and kindred diseases or has been employed with success in rheumatism, diabetes, kidney, and bladder troubles or cases of gravel and other kindred diseases, without specifically limiting such claims, statements and representations to the definitely known therapeutic values of the ingredients used in compounding the medicine; and all representations and statements equivalent or similar thereto in form or substance. (Mar. 21, 1932.)

0265. **Publisher—Needles.**—The publisher of a farm newspaper of large interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading claims, statements, and representations for the vendor of needles seeking to induce boys and girls and others to act as his agents, etc.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits the publication of such advertisements; declares he has no interest in the business of the advertiser or the further publication of such advertisements that he cares to defend before the Commission; and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice to the same extent as if he was a party to such order or stipulation. (Mar. 23, 1932.)

0266. **Publisher—Rupture Appliance and Medicine.**—The publisher of two magazines of large interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading claims, statements, and representations for the manufacturing vendor of a rupture appliance and the vendor of an alleged medicine to overcome female sterility in women.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits the publication of such advertisements; declares he has no interest in the business of the advertisers or the further publication of such advertisements that he cares to defend in proceedings before the Commission, and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertisers and/or any stipulations that may be entered into between the advertisers and the Commission of which he has notice to the same extent as if he were a party to such orders or stipulations. (Mar. 28, 1932.)

0267. **Vendor Advertiser—Rubber Products and Specialties.**—Maurice Willens, trading as Easetex, Chicago, Ill. This vendor-

advertiser is engaged in selling rubber products and specialties including a sanitary belt for women and in advertising represented:

"Women—Spare time, showing wonderful sanitary Belt and Protector. \$25 Week. Sample Free. Easetex, 68-C-West Austin, Chicago."

"Just Out—Newest Sanitary belt. Women earning \$10 daily. Experience unnecessary. Outfit free. Easetex, 431 N. Clark, Chicago."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, alleges he has discontinued such advertising and does not intend to resume as to probable earnings and agrees that if he does resume advertising for saleswomen again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that any probable earnings represented to prospective saleswomen will not be an amount greater than the usual, ordinary compensation reasonably to be expected under normal conditions. (Mar. 28, 1932.)

0268. Publisher—Treatment for Rheumatism, Gout, and Kindred Ills.—The publisher of a daily newspaper with a large circulation in the Gulf States printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturer-vendor of an alleged medical treatment for rheumatism, gout, and kindred ills.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits the publication of such advertisements; declares he has no interest in the business of the advertisers or the further publication of such advertisement that he cares to defend in proceedings before the Commission, and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice to the same extent as if he was a party to such order or stipulation. (Mar. 28, 1932.)

0269. Vendor Advertiser—Puzzle Contests.—This vendor-advertiser is engaged in publishing a magazine of large interstate circulation and in advertising for agents represented that [they] could win large prizes or premiums by merely solving a simple puzzle portrayed.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and that said advertisement is misleading in that, as a matter of fact:

(a) No prize or reward is given or awarded for the mere solution of the problem or puzzle portrayed;

(b) To secure any of the prizes offered the winner must enter a contest, the nature of which is not disclosed in the advertisement, and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in said advertisements; and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement which is false or misleading in substance or form; and specifically stipulates and agrees to cease and desist from representing in advertisements or otherwise, and either directly or inferentially:

(a) That the mere solution of any puzzle will enable a contestant to win the prize;

(b) That any prizes are offered free;

(c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;

(d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle. (Mar. 28, 1932.)

0270. Vendor-Advertiser—Metal Finish.—G. D. Jenison, trading as Gun Metal Finish Co., Decatur, Ill. This vendor-advertiser is engaged in selling a metal finish designated “Chromium Plating Powder” and in advertising represented selling a metal finish designated—

“Chromium Plating Powder. Deposits a heavy coat of metal on Iron, Steel, Copper, Brass or Nickel, Guaranteed not to tarnish. A couple of hours work will make your auto parts, plumbing fixtures, tools, tableware, etc., like new and dispense with polishing forever. Chromium Plating Powder contains an electro-positive metal that causes electrolytic action to take place when it comes in contact with water the same as an electroplating bath.”

“No Limit to the Amount of Metal You Can Deposit. Prevents Iron and Steel from rusting. Is the only product on the market that will deposit a heavy coat of metal without electricity or machinery. Contains no poison and will not injure the hands. Chromium Plating Powder must not be confused with the mercury and silver washes that merely color the metal and tarnish in a few days. It plates as heavy a coat of metal as a plating bath”;

when in truth and in fact said statements are incorrect in certain respects and misleading in that—

Said plating powder contains no chromium;

It consists principally of cadmium chloride, zinc dust, and chromic oxide;

Deposits of cadmium tarnish much more readily than do chromium deposits;

The action which takes place when this plating powder comes in contact with water is not the same as an electroplating bath;

Said product does not plate as heavy a coat of metal as a plating bath.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from describing, labeling, branding, or otherwise designating same as being chromium and from representing in advertisements or otherwise:

(a) That deposits of such plating powder will not tarnish;

(b) That the action taking place when said powder comes in contact with water is the same as an electroplating bath;

(c) That there is no limit to the amount of metal one can deposit;

(d) That said product plates as heavy a coat of metal as a plating bath;

and all representations and statements equivalent or similar thereto in form or substance. (Mar. 28, 1932.)

0271. **Publisher—Medicines.**—The publisher of a newspaper of wide interstate circulation printed, published, and circulated advertisements alleged to contain false and misleading claims, statements, and representations for five vendors of various articles from medicines and appliances for the treatment of diseases to a magazine seeking subscribers.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits the publication of such advertisements; declares he has no interest in the business of the advertisers or the further publication of such advertisements that he cares to defend in proceedings before the Commission and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertisers and/or any stipulations that may be entered into between the advertisers and the Commission of which he has notice to the same extent as if he were a party to such orders or stipulations. (Apr. 4, 1932.)

0272. **Vendor-Advertiser—Stomach Trouble Treatment.**—Joseph J. Hausch and wife, trading as Joseph J. Hausch Laboratories, Wauwatosa, Wis. This vendor-advertiser is engaged in selling a treatment for stomach trouble and tapeworm designated "Special Remedy 'A', and in advertising represented—

"Ends Stomach Trouble—Banishes Tape Worm. No matter how long you have suffered—how much you have doctored—how many times you have been told your case is incurable I positively guarantee that my special Remedy 'A' will end the worst case of stomach trouble (except cancer) and expel any tapeworm or my treatment

need not cost you a cent. I take all the risk, you none. You must get satisfactory results or you need be out nothing * * *.”

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations; allege they have discontinued advertising such commodity and do not intend to resume, but if they do they will conform to the rulings, or precedents established by the Federal Trade Commission; and in particular that reasonable limitations of the therapeutic properties will be indicated. (Apr. 4, 1932.)

0273. **Vendor Advertiser—Rubber Goods and Novelties.**—J. Irvin Strain, trading as La Beaute Studios, Baltimore, Md. This vendor-advertiser is engaged in the business of selling lists of dealers in rubber goods, French novelties, love potions, and sundry other items of similar nature.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits he has made the following statements and representations by advertisements inserted in various publications, including the National Farm News, issue of January 1932 and otherwise:

“MEN: Rubber Goods, Rare French Novelties, Beautiful Girl Pictures, Rare Books, Best Remedies, Alluring Love Drops and Lovers’ Potions, Cupid’s Assistants, etc. All hard to get. We tell you where. Send for valuable list Now. 25c stamps or coin. La Beaute Studios, 857-WB Hamilton Terrace, Baltimore, Md.”

He also claims he has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event he decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Apr. 4, 1932.)

0274. **Vendor-Advertiser—Treatment for Removing Warts and moles.**—This vendor-advertiser is engaged in selling a treatment for removing warts and moles and in advertising represented:

“Moles and Warts Removed Permanently. Rid your face, neck, arms and body of all unsightly moles and warts with ‘Antimole.’ One application does it. Safe—easy to use—painless—leaves no scar. Used successfully by physicians, skin specialists, and beauty experts * * *”

when in fact the treatment is caustic and unless used with care may cause burns.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees in soliciting the sale of and selling of said Antimole,

to refrain from the use of the word "safe", unless and until the same be qualified, by word or words clearly indicating that said product must be used in accordance with directions; that he will not market said product unless and until the same shall be accompanied by printed directions explaining the nature of said product and how it may safely be used without danger of injury. (Apr. 4, 1932.)

0275. Vendor-Advertiser—Hair Coloring Preparation and Cosmetic Pencil.—Juel Denn Cates and S. D. Cates, trading as Juel Denn, Chicago, Ill. This vendor-advertiser is engaged in selling a hair coloring preparation designated Oratex and a cosmetic pencil designated "Gray Hair Pencil", and in advertising represented—

"Gray Hair Pencil. Free, Get It Now! Instantly changes gray hair to Natural Color. Only method known to keep gray hair away from roots, temples, parting. Limited number Free to quickly introduce.

"Instantly changes gray hair to youthful color; Cannot be detected; Will not fade or wash off", and similar representations; when in fact it

Does not cause the life of the hair to come back, or in any way affect the vitality of the hair;

Is not, as implied, a scientific method of restoring the pigment to the hair;

Is not an advanced method or a new idea;

The regular pencil is not given without obligation; nor is it given free;

The regular price was not \$3 as stated, when the product was being offered at \$1; the number of packages of Oratex set aside for 50-cent sales was not limited to 1,000 as alleged; nor was the advertised time limit of 48 hours in which to accept the 50-cent offer observed by respondent; and publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the undersigned respondents, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulate and agree, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing in advertisements or otherwise:

(a) That either "Oratex" or said "Gray Hair Pencil" of respondents (1) changes gray hair to natural color; (2) changes gray hair to youthful color; (3) is either the only method or the latest method known to keep gray hair away from roots, temples, and parting, or will do so; (4) banishes or obliterates gray hair, or rids one of gray hair; (5) restores or brings back natural color or youthful color to the hair; (6) causes the life of the hair to come back; (7) is a scientific way for one's hair to regain its natural or youthful color, or is a new idea;

(b) That respondents' pencil is given without obligation, or free, so long as a purchase of Oratex must first be made;

(c) That the price offered is a special price unless it is in fact a temporary reduction from the established regular price of the product;

(d) That the number of packages at a bargain price is limited to, or that the same have been set aside for, specified persons, so long as any person is invited to buy as many packages as he wishes at said price;

(e) That a time limit has been placed upon the acceptance of an order unless acceptance is refused after the expiration of such limited period;

and all representations and statements equivalent or similar thereto in form or substance. (Apr. 4, 1932.)

0276. Vendor-Advertiser—Hair Tonic.—Bernard Bernard, trading as Slavin Institute. This vendor-advertiser is engaged in selling a hair tonic and in advertising represented

"Will grow your hair or costs nothing; growing hair is now a science; hair roots don't die; our treatment * * * supplies nourishment;

"It has grown hair on thousands of heads and is guaranteed to grow hair on your head, stop falling hair, eliminate dandruff;

"Don't suffer baldness or any abnormal scalp condition any longer;

"* * * the Slavin Hair Grower is guaranteed to grow hair, stop falling hair, eliminate dandruff * * *

"* * * the Slavin treatment * * * has grown hair on thousands of heads that had been bald from 6 months to 20 years. If it will do this for others, why will it not do the same for you;

"* * * you ought not to settle down to baldness for the rest of your life;

"Your hair can be restored;

"Soft, silky, glossy hair covering your head cannot be measured in terms of cash;

"You will be overjoyed as * * * dandruff disappears and you see the new hair beginning to cover your baldness;

"* * * we provide nourishment for the growing of the hair, the results are practically certain, for the hair roots rarely, if ever, die;

"Dandruff * * * will become a thing of the past;

"* * * MacDonald uses the Slavin Hair Grower on his scalp * * * and thus assures himself of keeping the fine head of hair he has grown."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from describing, labeling, branding, or otherwise designating same as a hair grower and from representing in advertisements or otherwise:

(a) That said treatment will grow hair or is guaranteed to grow hair; or

- (b) That said treatment has grown hair on thousands of heads; or
- (c) That hair roots do not die; or
- (d) That growing hair is a science; or
- (e) That said treatment will or is guaranteed to stop falling hair, eliminate dandruff, or produce a normal condition of the scalp; or
- (f) That it is not necessary for the prospective purchaser to suffer baldness or an abnormal condition of the scalp; or
- (g) That hair can be restored; or
- (h) That said treatment will provide nourishment for the growing hair; or
- (i) That results are practically certain; or
- (j) That, by using said treatment, dandruff will become a thing of the past; or
- (k) That the use of said treatment will assure a good head of hair; or
- (l) That the continued use of said treatment will assure one of a healthy scalp or a permanent growth of hair; or
- (m) That said treatment is a cure for dandruff; or
- (n) That said treatment will provide the nutriment necessary to toughen the hair;

and all representations and statements equivalent or similar thereto in form of substance, and also agrees to cease and desist from using the word "Institute" as part of his trade name. (Apr. 11, 1932.)

0277. Vendor-Advertiser—Medicinal Bandages.—W. C. Van Loon, trading as Physicians Remedy Co., Los Angeles, Calif. This vendor-advertiser is engaged in selling medicinal bandages for the treatment of goiter and in advertising represented

"Cure goitre while you sleep;

"Every form of goitre yields to this soothing but powerful absorbent appliance;

"It relieves the distress, reduces the enlargement, and restores one's good health;

"Facts about the Goitre Disease and how to cure it;

"The famous Medicated Goitre Bandage is far superior to any other method for the removal and cure of goitre * * *;

"The relief is immediate and the cure without delay;

"The usual time to complete a cure is three to four months;

"Cures while you sleep;

"Many recommended Iodine * * *. Usually the result is unsatisfactory;

"The use of ointments, salves, and liniments are equally dangerous;

"Thyroid tablets are frequently prescribed by physicians, but with indifferent results, often the disease is aggravated;

"The better way is to use the Medicated Goitre Bandage three or four months and avoid the necessity of a dangerous and expensive surgical operation;

"When you pay for a Medicated Goitre Bandage * * * you are paying for * * * certainty of benefit;

"The Medicated Goitre Bandage is a powerful antiseptic absorbent that reduces the enlarged gland and eradicates the disease;

"Nature's Remedy for goitre, bronchocele, graves disease, big neck, or swelled neck;

"Ninety-five percent of goitres are curable when the famous Medicated Goitre Bandage is used;

"This old reliable remedy has been curing goitres of every type for over 40 years;

"The famous Medicated Goitre Bandage is the most practical method of treating and curing the goitre disease;

"Do not blame us for trying to convince you of the safety and certainty * * * of the famous Medicated Goitre Bandages;

"Certainty of results with this scientific method of treatment;

"* * * send for a bandage and let us cure the goitre;

"It is the object and work of the medicated bandage to absorb and eliminate this toxic condition, relieve the distress, reduce the enlargement and restore your good health.

"The disease yields most readily to the bandage when worn at night * * *."

when in fact said medicated bandage is not a cure nor a competent treatment for goiter.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise—

(a) That said medicated bandage is a cure for goiter, or;

(b) That by wearing said medicated bandage goiter can be cured, or;

(c) That every form of goiter yields to said medicated bandage, or;

(d) That the wearing of said bandage will (1) Relieve distress caused by goiter; (2) reduce the enlargement caused by goiter; (3) restore one's health; (4) remove goiter; (5) cure goiter; (6) eradicate the disease of goiter; or (7) absorb or eliminate the toxic condition.

(e) That any relief afforded or benefit derived by wearing said medicated bandage is immediate or certain;

(f) That advertising circulars published by respondent disclose a method for curing goiter, or;

(g) That by the use of said medicated bandage an operation can be avoided, or;

(h) That said medicated bandage is nature's remedy or a competent treatment for goiter, bronchocele, Graves disease, big neck, or swelled neck, or;

(i) That any definite proportion of goiters are curable when said medicated bandage is used, or;

(j) That said medicated bandage is a scientific method of treatment, or;

(k) That the use of iodine in the treatment of goiter is unsatisfactory, or;

(l) That goiter yields readily to said medicated bandage, or;

(m) That the use of ointments, salves, or liniments is dangerous, or;

(n) That the use of thyroid tablets frequently aggravates the disease or produces indifferent results

and all representations and statements equivalent or similar thereto in form or substance. (Apr. 11, 1932.)

0278. Vendor-Advertiser—Gland Treatment.—H. A. Funke, trading as Lovejoy Laboratories, Newark, N.J. This vendor-advertiser is engaged in selling a sexual gland treatment designated "Lovejoy's New Discovery" and in advertising represented

"Turn Back. Age. (Picture.) Not too old. How to regain youthful activities through Guaranteed Lovejoy's Discovery. Start life anew. 'A man is as old as his glands', doctors now say. Go back 20 to 40 years simply by re-charging your glands with Lovejoy's New Discovery. No operation necessary. Yet results are guaranteed. Over 15,000 men are already using this product regularly although it is new on the market."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents to the Federal Trade Commission that he has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event he decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Apr. 18, 1932.)

0279. Vendor-Advertiser—Revitalizer.—Gray Laboratories, Inc., New York City. This vendor-advertiser is engaged in selling a revitalizer for men designated "Go Go", and in advertising represented

"Go Go. Revitalizer for Men. In offering this preparation we have taken full cognizance of the countless numbers of spurious products claiming to be of a similar nature. We feel after all these years of experience with Go Go that it is without the slightest doubt the best combination of its kind. We make no baseless and exaggerated claims, spread no misleading or fraudulent ideas—but merely present the facts. Go Go has been used by thousands who have found it most effective and beneficial and have passed the good word on to their fellow men. Thus the sincerest of praises that any product could earn for itself—repeated orders and personal recommendations."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents to the Federal Trade Commission that it has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of orders unsolicited through advertising. Respondent further stipulates and agrees that in the event it decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Apr. 18, 1932.)

0280. Vendor-Advertiser—Tonic.—M. Wineholt, trading as Wineholt Laboratories, Wineholt Sales Co., Wineholt Specialty Co., and Mervin Wineholt, Woodbine, Pa. This vendor-advertiser is engaged in selling various articles of merchandise and in advertising represented French pepups. The peppiest tonic tablet in America. A potent tonic, famous for its swift action on the run-down system. Helpful to either sex.

6-jewel watch * * * gold shell case, white or green gold finish chain, gold band dinner set, imported-full jeweled watch. Reproduction diamond, solid white gold effect, platinum color. Lucky silver ring, known to bring luck to the wearer. Good luck rabbit foot. Gold filled wish bone and lucky horse shoe. Ivory finish toilet set, wonder of the 20th century—rare, valuable secret book reveals the secrets of hypnotism, telepathy, personal magnetism, mesmerism, and clairvoyance, when in fact these articles are not as represented.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents he has discontinued selling the French pepups, and agrees to cease and desist from representing in advertisements or otherwise:

(a) That any article of jewelry has a gold shell unless such article has a coating of gold of sufficient thickness to constitute a gold shell as generally understood by the public and the jewelry trade; or

(b) That any article of jewelry has a gold finish when such is not the fact; or,

(c) That any dishes have a gold band when such is not the fact; or,

(d) That any article not manufactured in France or imported from France is French; or,

(e) That any article of jewelry is engraved unless the inscription or design thereon is produced by cutting or carving; or,

(f) That any watch is full jeweled unless such watch contains the number of jewels required to constitute a "full jeweled" watch as generally understood by the public and the jewelry trade; or,

(g) That any article cannot be manufactured in America for less than a specified cost, when such is not the fact; or,

(h) That any stone is a "reproduction diamond" unless such a stone has been artificially produced and contains all of the qualities of a genuine natural diamond; or,

(i) That the possession of any merchandise sold by respondent or offered for sale, has the power to bring to the owner or wearer good luck in money, love, business or otherwise; or,

(j) That the students of said course of instructions in hypnotism will be enabled to control others, or to conquer bad habits or enemies, or to win success, or to obtain power, wealth or social position; and all representations and statements equivalent or similar thereto in form or substance. (Apr. 18, 1932.)

0281. **Vendor-Advertiser—Vacuum Massage Developer and Ointment.**—H. F. McKean, trading as Laboratory Manager, and McKean Laboratories, Santa Ana, Calif. This vendor-advertiser is engaged in selling a vacuum massage developer designated the Hamilton Method and an ointment designated "Novus-Textus-Ungere" and in advertising represented, men—enlarge any muscles; strictly confidential, leading method of development, harmless and permanent.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, represents to the Federal Trade Commission that he has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event he decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Apr. 18, 1932.)

0282. **Vendor-Advertiser—Fat Reducing Treatment.**—Kotal Company, Inc., trading as Korein Co., New York City. This vendor-advertiser is engaged in selling a fat reducing treatment designated "Korein Tabules" and "Korein System", and in advertising represented

"Men and women of all ages and weights have used Korein. They report reductions from 10 to 70 pounds, easily, safely, genuinely.

"Korein is fully guaranteed and absolutely harmless.

"There are no strenuous exercising rules, no starvation directions, nor anything else that is unreasonable";

and many similar representations whereas the information held by the Federal Trade Commission is that if they contain iodine in sufficient quantities to be effective in reducing fat they would not be safe, but on the contrary, dangerous for many people to take except under the supervision and direction of a qualified physician; the directions accompanying the medicine, respondent furnishes a diet list of approved and disapproved foods, and also an exercise chart, or course.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That respondent's product is either safe or harmless;

(b) That no diet is necessary while using respondent's product, so long as a diet is furnished by respondent as a part of the Korein System;

(c) That no reducing exercises are needed while using said product, so long as a course of exercises is provided as a part of said Korein System;

(d) That corpulent or obese persons—Are not healthy, or Are afflicted as such with various ailments, or Never live to an old age, or Do not enjoy life sufficiently, or Often have dangerous heart trouble; and all representations and statements equivalent or similar thereto in form or substance. (Apr. 18, 1932.)

283. Vendor-Advertiser—Treatment for Eye Diseases.—John J. Henderson trading as Henderson Laboratory, Charleston, W.Va. This vendor-advertiser is engaged in selling a treatment for eye diseases designated "Ocular" and in advertising represented: "Eye Diseases. Weakness, Irritation, and Failing Vision are usually the result of toxins and poisonous accumulations in the blood that find lodgment in the delicate eye tissues. Ocular Treatment assists Nature in overcoming the cause and restoring strong healthy eyes."

"Ocular Antiseptic Absorbent Eye Treatment is not an eye water, eye wash, or an eye drop, but it is a scientific and effective eye treatment. It possesses antiseptic and cleansing properties which assists Nature in overcoming infections, toxins, and poisonous accumulations which have found lodgment and have infiltrated the delicate tissues of the eyes.

"Ocular is indicated in all forms of eye irritations, weaknesses, eye strain, discomfort, and in all eye diseases such as: Bacterial infections, Conjunctivitis, Trachoma (granulated lids), Common Sore Eyes, Ophthalmia, Iritis, Corneal ulcers, Atrophy, Incipient Cataract, Glaucoma, Opacities, Scar Tissue, and all types of congestion, and inflammation of the eye tissues, and weakened or failing vision, etc.

"It is impossible to correctly prescribe glasses to any eye that is afflicted with some form of irritation, weakness, or disease involving the tissues.

"There are many conditions which may cause eye irritations, weaknesses, discomfort, and failing vision. Glasses may temporarily relieve discomfort, but they do not assist nature in overcoming and correcting the cause of eye troubles";

when in fact said statements are held by the Federal Trade Commission to be incorrect in certain respects and exaggerated and misleading in others in that an analysis shows that this preparation would probably be of value in the treatment of minor eye irritations such as those due to wind, sun, dust, etc.; but would not constitute a treatment for the various serious eye disorders as claimed; nor would it prevent failing vision; nor could it be depended upon to produce clear eyes, as indicated by its name. The tests show that the preparation is not antiseptic, as claimed. The system of eye exercises offered as a preventative against serious eye disorders is without scientific foundation and is believed to be definitely harmful in several respects.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

- (a) That said preparation is antiseptic;
 - (b) That it is a valuable treatment for anything more than minor eye irritations;
 - (c) That it constitutes an effective treatment for any serious eye disorder;
 - (d) That it can prevent failing vision;
 - (e) That it will produce clear eyes if they are afflicted by more than a minor irritation;
 - (f) That the eye exercises offered are either scientific or harmless;
 - (g) That said preparation is a corrective treatment for the blood or is efficacious in eliminating infections, toxins or impurities in the blood stream;
 - (h) That it is impossible to prescribe glasses correctly for any eye that is afflicted in the tissues;
 - (i) That glasses do not assist Nature in overcoming and correcting the cause of eye trouble;
 - (j) That the use of this treatment will correct either headache or neuritis of the head or face, or nervous prostration, or irritability, or restlessness, or insomnia, or neuritis or nervous indigestion, whether the same be due to nerve-leakage or otherwise; or that said treatment will improve the general health of the body;
- and all representations and statements equivalent thereto in form or substance. (Apr. 25, 1932.)

0284. **Vendor-Advertiser—Book on Hypnotism.**—Jack Parravano, trading as Casanova Publishing Co., New York City. This vendor-advertiser is engaged in selling a book entitled “25 Lessons in Hypnotism”, and in advertising represented—

“Hypnotism. Complete Course of Hypnotism, Mind Reading, and Magnetic Healing. 25 fascinating lessons. How to become an

expert, hypnotize at a glance, make others obey your wishes, overcome bad habits in yourself and others, gain love, wealth, and power. Invaluable to every man and woman, executives, salesmen, doctors, mothers, etc. Simple, easy system. Learn at home. Only \$1.10. Send cash, stamps, or money order."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents he has definitely discontinued selling said book, and agrees not to resume such business. (Apr. 25, 1932.)

0285. Vendor-Advertiser—Gland Preparation.—Charles S. Younkman and George A. Cummins, trading as Pureplus Remedies, Limited, Tulsa, Okla. This vendor-advertiser is engaged in selling a preparation for sexual incompetency designated "Gland-Glad".

"Gland-Glad. (Picture of Dr. Plus.) 'Papa's Silent Partner.'

"Brings quick animation, ready response, lingering satisfaction. If your vitality is low, gladden your glands! Let 'Papa's Silent Partner' make you look and feel younger than your years. Get Gland-Glad! Be a he-man. Start today! \$2 brings box of 36 capsules; 3 boxes, \$5; C.O.D. \$2.19 and \$5.25. No narcotics or habit-forming drugs. Money-back guarantee."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represent they have definitely discontinued advertising said commodity and do not intend to resume and agree that in the event they decide to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (Apr. 25, 1932.)

0286. Vendor-Advertiser—Keytag and Keycheck Outfits.—Chester W. Scott, trading as C. Keytag Co., Cohoes, N.Y. This vendor-advertiser is engaged in selling outfits for making keytags or keychecks, and in advertising represented—

"Help Wanted. Make \$21 per 100 Stamping Names and marketing Keychecks. Samples and Instructions 25¢. C. Keytag Co., Cohoes, N.Y."

when in fact he does not require help and has no employment to offer.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from describing or inferentially or otherwise designating his proposition as an offer of employment, and from publishing his advertisements in the "Help Wanted" columns of periodicals unless and until such time as he may actually have employment to offer at a compensation. (Apr. 25, 1932.)

0287. Vendor-Advertiser—Stomach-Trouble Treatment.—George Von Nieda, trading as Von Drug Co., Minneapolis, Minn. This

vendor-advertiser is engaged in selling a treatment for stomach ulcers and other stomach troubles designated "Von Stomach Treatment" and "Von's Pink Tablets", and in advertising represented—

"Stomach Acidosis. A Super-Acid Stomach Is The Prime Cause of Ulcers. Von's Stomach Treatment, with its Famous Pink Tablets, and proper food directions, reduces acid to normal, preventing new ulcers from forming, and heals those already formed—easily—inexpensively.

"Restores stomach and bowels to normal health in but two months. No dope. No habit-forming drugs. Just the purest and best of recognized medicines for the stomach; in a new combination that gets real results in a remarkably short time. No rigid diet. No inconveniences. Not just something to take for temporary relief, but a Treatment that Corrects stomach troubles. Guaranteed to relieve or money refunded.

"3 Day Relief—No Operation. Von's Tablets have cured some of the most severe cases even after all other treatment had failed. Also unequalled for hyper-acidity, gas or stomach pains, indigestion, constipation, etc. Send \$1.25 for full 8-day treatment, postage prepaid.

"No need to suffer with ulcers, hyper-acidity, distress after eating, stomach pains, gas or sour stomach, indigestion or constipation. Von's Tablets will heal you just as they have healed thousands of others often after other treatments have failed.

"Its famous tablets have given wonderful results in hundreds of cases of stomach ulcers, acidosis, gas, indigestion, constipation and kindred disorders. No pain, no diet.";
when in fact

The value of said product appears to be limited to its properties as an antacid in cases of hyperacidity of the stomach, as a mild laxative, and as providing a protective element to irritated stomach surfaces through its bismuth content, thus aiding in the promotion of healing.

Each individual case of stomach ulcer may require special attention as to diet, mode of living, and habits in general.

Acidosis, a systemic condition, is as a rule met with only in very serious cases of diabetes and Bright's disease, and a preparation of this nature would be worthless in such conditions.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That said preparation is an effective treatment for "stomach acidosis" or for acidosis at all;

(b) That such treatment restores stomach and bowels to normal health, unless qualified to show that the action of said medicine is

limited to cases of gastric hyperacidity or conditions where the use of its bismuth element will act as a protective factor and aid in healing;

(c) That no diet is required or necessary in combination with said treatment, or that all wholesome foods could be eaten during the process of the treatment;

(d) That said preparation is a remedy for stomach ulcers unless duly qualified to show that its action is limited to ulcers caused by hyperacidity;

and all representations and statements equivalent thereto in form or substance.

Agrees to discontinue the use of the words "heal", "cure", or "rid" in connection with his stomach-ulcer treatment, admitting that although such may be the truth in particular cases, the generality of construction by the reading public might convey untruthful meaning.

Agrees that, in all future advertising, this preparation shall be referred to as relieving hyperacidity or excess acid in the stomach, and, due to the bismuth content of the product, as soothing to the irritated membranes of the stomach when caused by hyperacidity. (Apr. 25, 1932.)

0288. Vendor-Advertiser—Indigestion Treatment.—Trigestia Corporation, Newark, N.J. This vendor-advertiser is engaged in selling "Trigestia Tablets", and in advertising represented—

"Trigestia is a safe and sure relief for indigestion, gas pains * * * distress after meals and stomach disorders * * * dyspepsia, * * * and headaches from indigestion—you will marvel at the quick corrective effect of Trigestia Tablets."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements and otherwise:

a. That said medicinal preparation is an adequate treatment for indigestion, gas pains, distress after meals, stomach disorders, or headaches from indigestion; or

b. That the use of said medicinal preparation will enable one to eat the kind of food desired; or

c. That said medicinal preparation is a sure relief for any ailment and all representations and statements equivalent or similar thereto in form or substance. (Apr. 25, 1932.)

0289. Publisher—Artificial Ear Drums.—The publisher of a magazine of large national circulation printed, published, and circulated advertisements alleged to contain false and misleading claims, statements, and representations for the manufacturer and vendor of artificial ear drums to overcome deafness.

In a stipulation filed with and approved by the Federal Trade Commission this publisher admits the publication of such advertisement; declares he has no interest in the business of the advertiser or the further publication of such advertisements that he cares to defend in proceedings before the Commission, and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice to the same extent as if he were a party to such order or stipulation. (Apr. 25, 1932.)

0290. Vendor-Advertiser—Garden Seed.—William A. Frew, trading as Lancaster County Seed Co., Paradise, Pa. This vendor-advertiser is engaged in selling garden seed and soliciting agents to sell them and accept cash commissions or various premiums as compensation, and in advertising represented:

“Strap watch. Perfect time keeper. Sport model, cushion shape, silver finish, jewel movement. It’s a dandy. Send for 20 packets Garden Seeds. Sell at 10¢ a pack. Remit as per plan in catalog, sent with seeds, then watch is yours.”

when in fact he required the agent to remit \$2 for the 20 packages of seeds and \$1.78 additional—a total of \$3.78 to secure the watch.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise, and either directly or inferentially:

(a) That a premium or reward is obtainable for a less amount in either services or money than is actually the case;

(b) That any premium is given “Free”, the price thereof being included in the charge for such seeds;

(c) That any premium will be sent upon the remittance of a stated amount without mention of additional sum to cover postage and packing in cases where this extra remittance is required. (May 2, 1932.)

0291. Vendor-Advertiser—Home Study Courses in Psychology.—Richard Blackstone, a corporation, New York City. This vendor-advertiser is engaged in selling home-study courses in psychology to overcome bashfulness and nervousness, etc., and in advertising represented—

“Nerves? Are you always excited? Fatigued? Worried? Gloomy? Pessimistic? Constipation, indigestion, cold sweats, dizzy spells, and bashfulness are caused by Nerve Exhaustion. Drugs, tonics, and medicine cannot help weak, sick nerves! Learn how to regain vigor, Calmness, and Self Confidence; Send 25¢ for My Amazing Book. Learn about my method to overcome Nerve Exhaustion.

"Are You 'Bashful?' 'Shame on you!' Are you nervous, embarrassed, or ill at ease? Stop being shy of strangers. Conquer the terrible fear of your superiors. Be cheerful and confident of your future! Your faults easily overcome so you can enjoy life to the fullest. Send 25 cents for this amazing book.

"You Are Self Conscious! Shame on you! There is no need for you to be nervous and embarrassed. Stop being shy. You can learn how to conquer the terrible fear of your superiors. Every individual now suffering from Bashfulness (Self-Consciousness) will welcome this good news. Remarkable discovery used with great success—whereby you can quickly and easily overcome your faults. Be cheerful and confident of your future! If you're Bashful—don't wait another day—Send 25¢ for my fascinating amazing book. Tells how to master and overcome self Consciousness. Write today.

"Bashfulness is a Disease. Bashfulness is a disease, to be diagnosed as carefully as any other malady. It arises largely from perverted mental habits.

"This cure is permanent. Instruction is Individual. All this invaluable information is embodied in my course in Nerve and Health Culture. The instruction is not general, and each case is given individual personal attention.

"My Method. Any case of Stammering and Stuttering, I care not how severe, may be entirely and permanently cured, provided there is the proper application and intelligence to direct and instruct. My method will prove of the greatest help and aid in this respect."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That constipation, indigestion, cold sweats, dizzy spells, and bashfulness, or any of them, are caused by nervous exhaustion, without due qualification to the effect that they are sometimes so caused;

(b) That neither drugs nor tonics nor medicine can help weak, sick nerves;

(c) That one may learn for 25 cents, or any other nominal sum, how to regain vigor or calmness or self confidence, unless and until such instruction is actually offered for the price indicated;

(d) That for 25 cents, or any other nominal amount, one may learn how to conquer bashfulness, or nervousness or embarrassment, overcome his faults easily and enjoy life to the fullest, unless and until such instruction is actually for the price indicated;

(e) That respondent's method of treatment is any "remarkable discovery", or that any 25-cent book sold by respondent "tells how to master and overcome self-consciousness;"

(f) That bashfulness is a disease, or that it arises from perverted mental habits;

(g) That respondent's "cure" is permanent, or that by it all shyness, embarrassment and/or nervousness will be banished forever;

(h) That no tonic or system of exercises can build up strong, sound nerves;

(i) That each case is given individual personal attention by respondent;

(j) That any case of stammering or stuttering, no matter how severe, may be entirely and permanently cured, or that either one may be cured at all through printed instructions;

(k) That no worth-while physician will prescribe drugs or medical treatment to effect a strengthening or rebuilding of the nervous and vital forces;

(l) That neither osteopathy nor chiropractic nor massage nor vibratory treatments can permanently better the internal nervous system;

(m) That respondent's course of instruction makes the pupil immune to the contraction of colds or catarrh or grippe or influenza or bronchitis or any other respiratory disorder;

(n) That through respondent's course all the pains experienced by the neurasthenic will disappear;

(o) That respondent's course is an effective or competent treatment for either cold hands and feet, or gas in bowels and stomach, or sour stomach, or dizziness, or heart palpitation, or backache, or pains, or decline in sex force, or sex weakness and impotency, or neuritis;

(p) That the Blackstone Treatment is entirely different from any other method, or that it will absolutely bring very positive and permanent relief from the various physical ailments mentioned;

(q) That lack of energy, indigestion, constipation, and kindred ailments "positively indicate" a deranged nervous system for which respondent's course would be an effective treatment;

(r) That respondent's course will effectively eliminate poisons from the system; or that "the necessary mental measures" can prevent gas in the stomach or bowels; or that external and internal pains and aches will "probably gradually disappear" as a result of said treatment; or that the measures offered by respondent will "readily correct" a condition of anemia; or that the diet offered is competent to relieve headaches; or that said course will relieve rheumatic pains, or will stop the hair from falling out, or will overcome hay fever and asthma; or will correct weak eyes or defective hearing; and all representations and statements equivalent or similar thereto in form or substance.

This advertiser also agrees to delete from its courses and literature medical terms such as "diagnosis of the case", etc., and also "guarantee"; and discontinue use of a so-called "credit check" and alleged "special prices" when they are the regular prices. (May 2, 1932.)

0292. **Vendor-Advertiser—Hair Treatment.**—Everett S. Hiscox, and Jesse F. Hiscox, trading as, Hiscox Chemical Works, Patchogue, N.Y. This vendor-advertiser is engaged in selling a treatment for the hair, designated "Parkers Hair Balsam", and in advertising represented:

"A serious drawback to a satisfactory appearance is faded or prematurely gray hair. This condition is caused by a dryness of the capillary bulb which supplies color and nourishment to the hair. If not corrected it will cause ultimate baldness. Parker's Hair Balsam has behind it a record of forty years of success in dealing with this condition. It supplies the necessary moisture to the scalp, removes dandruff, and stops itching. It restores the color and keeps the scalp in the soft pliant condition best for hair growth.

"Parker's Hair Balsam. Restores Color to Gray or Faded Hair.

"Parker's Hair Balsam Restores Color and Beauty to Gray and Faded Hair."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That Parker's Hair Balsam will restore color to gray or faded hair;

(b) That said product furnishes the necessary moisture or stimulation to overcome dryness of the capillary bulb which supplies color and nourishment to the hair; and statements equivalent thereto in form or substance, when in fact there is no product known to science that will "restore" the color to hair after it has become gray. (May 2, 1932.)

0293. **Vendor-Advertiser—Skin Treatment.**—Roy M. Kirtland and Frank L. Engle, trading as Dorothy Ray, Chicago, Ill. This vendor-advertiser is engaged in selling preparations for treatment of the skin, and in advertising represented—

"Beautiful Complexion in 15 days. Clear your complexion of pimples, blackheads, whiteheads, red spots, enlarged pores, oil skin, and other blemishes. I can give you a complexion soft, rosy, clear, velvety beyond your fondest dream. And I do it in a few days. My method is different. No cosmetics, lotions, salves, soaps, clay, ointments, plasters, bandages, masks, vapor, sprays, massage, rollers, or other implements. No diet, no fasting. Nothing to take. Cannot injure the most delicate skin.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That a beautiful complexion can be had in 15 days or in any other length of time; or

(b) That said preparation is a competent treatment for pimples or other skin blemishes unless clearly indicated that its efficacy is limited to pimples and blemishes peculiar to the outer layer of the skin; or

(c) That the use of said preparation is the sure road to beauty; or

(d) That said preparation treats causes and not symptoms; or

(e) That by the use of said preparation a person's days of suffering will be over; or

(f) That the use of said preparation will produce a perfect complexion or a complexion as soft and as clear as a baby's; or

(g) That the possession of a wonderful complexion is within the reach of anyone; or

(h) That by the use of said preparation a person can be rid of his troubles; or

(i) That the arms, neck, shoulders, hands, face or any other part of the body can be beautiful by the use of said preparation; or

(j) That the use of said preparation will make the complexion perfect; or

(k) That by the use of said preparation skin troubles, regardless of extent, can be overcome; or

(l) That by the use of said preparation skin blemishes can be banished; or

(m) That a prospective purchaser can have the same success that other users have reported; or

(n) That cosmetics are harmful and all representations and statements equivalent or similar thereto in form or substance, and also agree that—

(a) Using the name "Dorothy Ray", or any other feminine name as a trade name; or

(b) Publishing any advertisement purporting or implying that it was inserted by a woman; or

(c) Publishing and distributing to prospective purchasers any advertising literature that states or implies that it was written or signed by a woman, unless such is in fact the case; or

(d) Designating by a fictitious name the picture of any woman appearing in any advertisement or advertising literature; or

(e) Distributing to prospective purchasers form letters or circular letters marked "personal." (May 2, 1932.)

0294. **Vendor-Advertiser—Treatment for Piles.**—Harry H. Fatty, trading as Donovan Surgical Co., Brooklyn, N.Y. This vendor-advertiser is engaged in selling a patented reservoir appliance for treating piles designated "The Donovan Instrument" and an ointment to be used therein designated "Donovene."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making certain statements, claims and representations in aid of the sale of such appliance and ointment and represents that his contract with the manufacturers for such appliance and ointment has been terminated and he is discontinuing advertising and selling such articles and does not intend to either advertise or sell them hereafter. (May 2, 1932.)

0295. **Vendor-Advertiser—Tonic.**—This vendor-advertiser is engaged in selling an alleged tonic, and in advertising represented:

"You men past 40 try this. All In? Lack Vigor? Have you lost your courage and grow Tired too soon? Send at once for ———, the new amazing new tonic Discovery, pep and energy back quick. Feel like a new man, full of red-blooded vim and vigor. Nothing like ———. That's why so many find this tonic so wonderful. Satisfaction guaranteed or money back. Send \$2.00 for double strength package. New Wonder Tablet Special 2 package offer, \$3.00.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees that in order to vacate said order directing that complaint issue and dispose of these proceedings by agreement, said proposed respondent hereby agrees to immediately discontinue the insertion for publication of the advertisement herein set out, or other advertisements of like purport and effect, and to discontinue business formerly carried on by that name. (May 2, 1932.)

0296. **Vendor-Advertiser—Course in Piano Playing.**—Easy Method Music Co., a corporation, Chicago, Ill. This vendor-advertiser is engaged in selling a printed course of instructions in piano playing designated "Easy Form Music", and in advertising represented:

"Learn to play the piano in one hour.—Music without notes! Simple as A-B-C. 800,000 children and grown-ups have learned. No knowledge of note music and no teacher required; no lessons by mail. Sent Free on trial—100 famous vocal and instrumental selections printed in wonderful new Easy Form music.

"Send no Money. If you don't learn in 5 days to play Several pieces, send it back. Or, if you keep it, pay only 6½¢ for each selection. Act while Special Half-Price Offer lasts? No extra charges. Be sure to state how many white keys on your piano or organ."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations.

The respondent represents to the Federal Trade Commission that it has definitely discontinued the making of such statements, and does not intend at this time to resume such advertising in the future; stipulates and agrees that in the event it decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that there will be no further representations that playing of the piano may be learned in one hour or in any other unreasonably short period of time, and no further representation that over 300,000, or any other number not capable of proof, have learned to play with said system. (May 2, 1932.)

0297. Vendor-Advertiser—Hair Preparation.—The Canute Co., Milwaukee, Wis. This vendor-advertiser is engaged in selling a preparation for coloring the hair designated "Canute Water", and in advertising represented; that Canute Water is clear, of wonderful properties, safe, sure, will not stain the skin or scalp, and by brushing it on a few times the hair will regain its beautiful, rich, youthful color, etc., etc.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

(a) That the application of said preparation will restore hair to its original color; or

(b) Gray hair can be recolored to any natural shade by the application of said preparation; or

(c) That the application of said preparation to the hair will cause it to regain its youthful color; or

(d) That color or youthful appearance can be restored to hair by the application of said preparations; or

(e) That the use of said preparation is a natural way to color hair; or

(f) That by permitting the hair to absorb said preparation a color just like nature's will be produced; or

(g) That by the application of said preparation the hair is made new; or

(h) That said preparation gives satisfaction in every case; or

(i) That said preparation is a color restorer;

and all representations and statements equivalent or similar thereto in form or substance. (May 9, 1932.)

0298 and 0299. Publishers—Blood Tonics.—The publishers of magazines of large national circulation printed, published, and circulated advertisements alleged to contain false and misleading claims, statements, and representations for the manufacturer of a blood tonic.

In stipulations filed with and approved by the Federal Trade Commission these publishers admit the publication of the advertisements, declare no interest in the business of the advertisers or the publication of such advertisements that they care to defend in proceedings before the Commission, and waive the right to be made parties respondent and any rights that may be adversely affected by cease and desist orders or stipulations relating to the subject matter. (May 16, 1932.)

0300. **Publisher—Magnetic Vitalizer.**—The publisher of a large midwestern daily newspaper, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the vendor of an alleged magnetic vitalizer.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements, declares he has no interest in the business of the advertisers or the further publication of such advertisements that he cares to defend in proceedings before the Commission, and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice to the same extent as if he was a party to such order or stipulation. (May 16, 1932.)

0301. **Publisher—Oil Heater.**—The publisher of a weekly newspaper of large national circulation, printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for an oil heater.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; declares he has no interest in the business of the advertisers or the further publication of such advertisements that he cares to defend in proceedings before the Commission and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice to the same extent as if he was a party to such order or stipulation. (May 16, 1932.)

0302. **Vendor-Advertiser—Treatment for Fits, Epilepsy, and Convulsions.**—Richmond Remedies Co., a corporation, St. Joseph, Mo. This vendor-advertiser is engaged in manufacturing and selling "Richmonds Samaritan Nervine", alleged to be a competent treatment for fits, epilepsy, and convulsions, and in advertising represented:

"Fits, Epilepsy, Convulsions, Nervous Disorders, Richmond's Samaritan Nervine. Quick Relief. Used for 50 years. Price \$1.50 postpaid. Money back if not satisfied. Circular free."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents it has definitely discontinued advertising said remedy and does not intend to resume, but if it does it will conform to the rulings or precedents established by the Federal Trade Commission. (May 23, 1932.)

0303. Vendor-Advertiser—Skin Treatment.—Constantin Skrepinsky, operating as Modern Hygiene Co., Hamilton Grange Station, New York City. This vendor-advertiser is engaged in selling a skin treatment called "Care-O-Skin", and in advertising represented:

"New Scientific Discovery Ends Skin Troubles. Say good-bye to your skin troubles by spreading a thin film of Care-O-Skin over the affected part. You will be amazed how easily and effectively it secures the desired results even in serious cases of skin disorders. It ends skin troubles, heals and soothes cuts, burns, itching, acne, moderate bleeding caused by external injury, etc., practically without leaving a scar. Send 60¢ today for a tube of Care-O-Skin and let it help you just as it has helped countless others. Money cheerfully refunded if you are not absolutely satisfied. This ironclad guarantee protects you, so send order today to"

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from representing in advertisements or otherwise:

- (a) That said preparation will end skin troubles;
 - (b) That one can say good-bye to his skin troubles by the mere spreading of a thin film of Care-O-Skin over the affected part;
 - (c) That it will effectively secure the desired result in serious cases of skin disorders, or that it is a competent treatment at all, for any systemic infection of the skin;
 - (d) That it is an effective or competent treatment for skin disorders or ailments due to internal causes;
- and all representations and statements equivalent thereto in form or substance. (May 23, 1932.)

0304. Vendor-Advertiser—Rheumatism Treatment.—A. G. Luebert, Coatesville, Pa. This vendor-advertiser is engaged in selling "Nox'Em Brand Tablets and Capsules" for rheumatic fever and the aches and pains of neuralgia, gout, and muscles and in advertising represented.

"Drive Out the muscular Aches and Pains of Rheumatism. No Matter How Severe, This Scientific Remedy Will Bring Relief The First Day.

"More than a quarter century's experience has proven that Luebert's Nox'Em Rheumatism Tablets and Capsules (combined) will quickly relieve the most acute rheumatic pains.

"To prove it to you a full 60¢ package will be sent you for 10¢ to cover mailing expense. You will be the judge of its effectiveness.

"Luebert's Nox'Em Rheumatism Tablets perform their duty in a truly scientific manner. As true relief must be internal, they cleanse the system and blood of all acid poisons and stimulate the liver and kidneys. You will eat, work, and sleep better and life will once more be worth living. Send for your package today.

"Those frightful twinges—those sleepless nights—that deplorable feeling of helplessness—All Will Be Gone when you take Luebert's Nox'Em Rheumatism Tablets. They relieve you in a few hours, assure a good night's sleep, drive out acid poisons, purify the blood, stimulate the liver, heal the kidneys, and strengthen the bladder—You Get Relief Immediately.

"Rheumatism Must Go With This Reliable Scientific Remedy That Eliminates the Poisons From the System. Pain Eased At Once.

"Rheumatic Poisons cause deposits in the joints and muscles and clog the whole system. The only possible way to get rid of them is to drive them out with proper internal medication. You need Luebert's Nox'Em Rheumatism Tablets and Capsules.

"You don't have to wait long, relief usually comes the first day."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from describing the same as "Rheumatism Tablets"; from representing them in advertisements or otherwise; and either directly or inferentially as an effective or competent treatment or remedy for conditions not fairly embraced within the professional definition or popular understanding of rheumatic fever, or for conditions not reasonably associated with or regarded as accompanying rheumatic fever, or for nerve pains in general; and all representations and statements equivalent or similar thereto in form or substance. (May 23, 1932.)

0305. Vendor-Advertiser—Treatment for Piles.—W. D. Rea, doing business as Rea Brothers and Co., and Rea and Co., Minneapolis, Minn. This vendor-advertiser is engaged in selling a medicinal preparation for treating piles designated "Red Cross Suppositories", and in advertising represented

"Piles Sure Cure. We pay postage and send free Red Cross Pile and Fistula Cure.

"In the treatment of old, long standing chronic cases, where seemingly nothing but an operation would cure, and in complicated cases where other conditions have to be considered, and in acute, painful, and inflammatory cases, the Red Cross Suppository treatment is of definite curative value. * * * good results are sure to follow.

"What you want now is relief, and later a cure.

"* * * our object is two-fold; to secure you as a patient, and rid you of your affliction".

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing in advertisements or otherwise:

a. That said medicinal preparation is a cure for piles, fistula, or other rectal diseases; or

b. That said medicinal preparation is of curative value in the treatment of piles, fistula, or other rectal diseases; or

c. That said medicinal preparation is a competent treatment for cases of piles, fistula, or other rectal diseases where seemingly nothing but an operation would cure; or

d. That the use of said medicinal preparation will rid one of the affliction of piles, fistula, or other rectal diseases; and all representations and statements equivalent or similar thereto in form or substance. (May 23, 1932.)

0306. **Vendor-Advertiser—Physical Culture Course.**—Robert B. Mistrot, trading as Self Development Institute, San Antonio, Tex. This vendor-advertiser is engaged in selling a course of instructions in physical culture designated as "Instant Energy" and in advertising represented certain things which are held to be false and misleading.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents that he has definitely discontinued advertising said commodity and does not intend to resume, but if he does he will conform to the rulings and precedents established by the Federal Trade Commission. (May 23, 1932.)

0307. **Vendor-Advertiser—Hair Coloring Preparation and Shampoo.**—Johnson Sharp & Co., Chicago, Ill. This vendor-advertiser is engaged in selling a hair coloring preparation designated "Gra-Go" and a shampoo designated "Maybella" and in advertising represented:

"Don't Dye Gray Hair. New Discovery Restores Original Color Without Dyes. Free book explains how amazing new discovery restores Original Color To Gray Hair—also particulars of our 30-day Free Trial Offer of Gra-Go. Applied to scalp—not to hair. This clean, colorless liquid used for all colors of hair. No sample of hair needed. Gra-Go will restore your hair gradually, magically to the original natural shade so skillfully that your friends cannot detect the process. No Graying at the roots. Not affected by washing or waving. Acts as hair tonic. Ends dandruff. Thousands have used successfully. Write Today for free offer. No obligations.

"Gra-Go—the marvelous scientific discovery for banishing Gray Hair.

"In fact, Maybella Shampoo will rid your hair of dandruff, prevent falling hair, and promote a healthy scalp with luxuriant, lustrous hair.

"With Maybella Shampoo and Gra-Go you have the perfect combination for keeping your hair naturally colored, healthy, beautiful, and attractive.

"You know now that through Gra-Go you rid yourself of Gray Hair and impart the youthful beauty of your hair.

"Then start to apply Gra-Go. Watch the color gradually come back to your gray hair. This offer gives you every opportunity to be rid of your gray hair."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement which is false or misleading and specifically stipulates and agrees in soliciting the sale of and selling its said products in interstate commerce, to cease and desist from representing in advertisements or otherwise:

(a) That said Gra-Go is a new discovery, or that it is either amazing or marvelous or scientific;

(b) That it restores original color to gray hair, either gradually or magically or in any other way whatsoever;

(c) That by the use of same there will be no graying at the roots of the hair;

(d) That Maybella Shampoo is an adequate treatment for the cause of dandruff, or that it will do more than remove the loose dandruff scales;

(e) That Maybella Shampoo will rid your hair of dandruff or prevent falling hair;

(f) That either Maybella Shampoo or Gra-Go will enable one to keep his hair naturally colored;

(g) That through Gra-Go one can rid himself of gray hair, or cause the natural color to come back into the hair;

and all representations and statements equivalent or similar thereto in form or substance. (May 23, 1932.)

0308. **Publisher—Key Tags.**—The publisher of a magazine of wide national circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the manufacturers of key tags and the vendor of a large number of articles of commerce.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits publication of such advertisements; declares no interest in the business of the advertisers or the publication of such advertisements that he cares to defend before the Commission and waives the right to be made a party respondent and any rights that may be adversely affected by a cease and desist order or stipulation relating to the subject matter. (May 23, 1932.)

0309. **Vendor-Advertiser—Bunion Treatment.**—Kay Laboratories, Chicago, Ill.—This vendor-advertiser is engaged in selling a treatment for bunions designated "Pedodyne" and in advertising represented that it would end bunions; stop pain almost instantly; quickly start reduction of enlarged growths; and various other similar claims.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another which is false or misleading; and specifically stipulates and agrees, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing in advertisements or otherwise:

(a) That by the use of Pedodyne Solvent, bunions are gone in 15 days;

(b) That said treatment will end bunions; or will end bunions forever;

(c) That bunions go like magic by the use of Pedodyne;

(d) That Pedodyne reduces the disfiguring growth of a bunion so fast that it is amazing; or like magic;

(e) That never in the history of medical science has the amazing action of Pedodyne been equaled;

(f) That Pedodyne is scientific, or that your family doctor would recommend it as the best, most dependable or most effective bunion treatment science has to offer;

(g) That Pedodyne is an effective or adequate treatment for bunions;

(h) That other methods than Pedodyne are crude or unscientific or barbarous or uncomfortable or clumsy or useless or worthless;

(i) That Pedodyne is either the greatest or the best or the most sane or sensible method ever devised for the treatment of bunions

and enlarged joints, or that it is a suitable or competent treatment at all, for such conditions, except for the relief of pains caused by bunions;

(j) That Pedodyne helps to banish bunions or that it heals the same day and night;

(k) That with Pedodyne you may get rid of your bunions now;

(l) That this new solvent process actually seems to dissolve the enlargement of a bunion;

(m) That the gentle Pedodyne solvent by reason of its cleansing nature and pus-removing action, reduces the hump of a bunion;

(n) That for thousands, Pedodyne has removed their bunions utterly and restored them to complete foot health;

(o) That only a nature-help like Pedodyne can remove the cause of a bunion;

(p) That finally the hump has vanished because nature has completed her process of repair, thanks to Pedodyne;

(q) That when Pedodyne is applied nature proceeds to function until a normal condition results, and the distortion called a bunion disappears;

(r) That a stated price is the "regular" price where periodic reductions are offered in follow-up form letters; or that such reduced offers will not be repeated when followed by further reductions; or that the reader may never have another chance at such price; or that a time limit is placed upon the acceptance of such an offer unless acceptances are refused after the time stated; or that the original offer is "our low price."

(s) That a multigraphed form letter is "Personally dictated by the Manager", or is "A Personal Letter to You", or is "Dictated by the Manager of the Pedodyne Company"; and all representations and statements equivalent thereto in form or substance. (May 23, 1932.)

0310. Publisher—Rabbits.—The publisher of a popular magazine of large national circulation, printed and circulated advertisements alleged to contain false and misleading statements, claims and representations for the breeder, buyer, and seller of rabbits.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements, declares he has no interest in the business of the advertisers or the further publication of such advertisements that he cares to defend in proceedings before the Commission, and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice

to the same extent as if he was a party to such order or stipulation. (June 13, 1932.)

0311. **Publisher.**—The publisher of a farm magazine of large national circulation printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for eight advertisers of various articles seeking agents and customers.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements, declares he has no interest in the business of the advertisers or the further publication of such advertisements that he cares to defend in proceedings before the Commission, and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice to the same extent as if he was a party to such order or stipulation. (June 13, 1932.)

0312. **Advertising Agent—Treatment for Nervous Women.**—An advertising agent prepared and placed for publication advertising copy, alleged to contain false and misleading claims, statements, and representations for another advertising agency, advertising under an assumed name and offering a treatment for nervous women.

In a stipulation filed with and approved by the Federal Trade Commission this advertising agent admits preparing and placing for publication such advertising copy, declares no interest in the business of the advertiser or the publication of such advertising copy which he desires to defend before the Commission, and waives all right to be heard or made a party respondent in proceedings instituted against the advertiser before the Commission and waives all rights that may be adversely affected by any cease and desist order or stipulation relating to the subject matter. (June 13, 1932.)

0313. **Publisher—Rheumatism Treatment.**—The publisher of a large southern daily newspaper printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for the vendor of an alleged remedy for rheumatism and kindred ailments.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements, declares he has no interest in the business of the advertisers or the further publication of such advertisements that he cares to defend in proceedings before the Commission, and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the adver-

tiser and the Commission of which he has notice to the same extent as if he was a party to such order or stipulation. (June 13, 1932.)

0314. Vendor Advertiser—Treatment for Piles.—The E. R. Page Co., Inc., Marshall, Mich. This vendor-advertiser is engaged in selling a treatment for piles designated "Page's Combination Treatment", and in advertising represented it would end pile torture and that it was a new internal treatment that would do it with no delay and no suffering.

That it would quickly stop all pain, suffering, and itching, heal internally—the correct way—because it removed the cause of the trouble.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing in advertisements or otherwise:

- (a) That the use of said treatment will "End" pile torture;
- (b) That said treatment removes the cause of piles;
- (c) That said treatment will "Heal" piles;

and all representations and statements equivalent thereto in form or substance. (June 13, 1932.)

0315. Vendor Advertiser—Pep Treatment.—F. R. Finston, advertising as P. L. Finston, Hamilton Grange P.O., New York. This vendor-advertiser is engaged in selling a so-called pep treatment designated "Potentine Compound" and in advertising represented:

"Joy! New Thrill of Youthful Energy! New! It's Great—Ask any man who is taking Potentine, he will tell you what good it does for that run-down 'Nervous-wreck' condition. You played-out Men who want strong Vigor-steady Nerves, Manly Vim, here is fresh hope for a quick 'come back.' Years don't count—it's new Ambition, new confidence, new Courage you need. Whether you are 30, 50, 60, or more, make this amazing test. Notice the change. Enjoy the new sensation this stimulating Potentine brings you. From now on feel like a real man."

"You are not too old or too young to try a \$2.00 Treatment of Potentine at my risk and expense. For no matter how old you are, no matter how far you have allowed yourself to become exhausted, F. R. Finston wants to take a chance with you and send you The Complete Potentine Double Compound."

when in fact Potentine was impotent for the purpose claimed.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents he had definitely discontinued advertising and does not intend to resume, but if he does he will conform to rulings and precedents established by the Federal Trade Commission. (June 13, 1932.)

0316. Vendor-Advertiser—Baldness Prescription.—Steddiford Pitt, doing business as Sted Pitt and Steddiford Pitt Co. This vendor-advertiser is engaged in selling a prescription for baldness, and in advertising represented—

“Don't let \$1.00 stand between you and a good head of hair.

“The method is * * * positive.

“You will thank me * * * for telling this method which has succeeded where everything else has failed.

“* * * your hair trouble is solved for the rest of your life”; when in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing in advertisements or otherwise:

(a) That by following said prescription a person can have a good head of hair; or

(b) That the method of treatment set forth in said prescription will stop falling hair, eradicate dandruff, or grow new hair; or

(c) That the method of treatment set forth in said prescription is positive; or

(d) That the method of treatment set forth in said prescription has succeeded where everything else has failed; or

(e) That the possession of said prescription will solve a person's hair troubles for the rest of his life;

and all representations and statements equivalent or similar thereto in form or substance. (June 13, 1932.)

0317. Vendor-Advertiser—“Ergo-Quine” Tablets.—Perry Summer, trading as Ergo-Quine Co., Providence, R.I. This vendor-advertiser is engaged in selling a treatment for absent or interrupted menstruation designated “Ergo-Quine”, and in advertising represented;

"Stop worrying. Ergo-Quine 'The Liquid Tablet' highly recommended for absence or interrupted monthly periods due to colds, anemia, and other causes. A trial will convince you. Full treatment sent in plain sealed wrapper for \$5 cash or C.O.D. Write in confidence. 'Ergo-Quine Company, Dept. 124, Providence, R.I.'"

which representations are held by the Federal Trade Commission to be false and misleading, to the detriment of the public interest and injury of competitors.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and represents he has definitely discontinued advertising and does not intend to resume, but if he does he will conform to the rulings or precedents established by the Federal Trade Commission. (June 13, 1932.)

0318. Vendor-Advertiser—Spine Treatment.—Mrs. Josephine Brooks, Corry, Pa. This vendor-advertiser is engaged in advertising a method of treatment for curvature of the spine and offering to furnish information regarding such treatment to anyone who answered her advertisements and declaring she had nothing to sell, etc.

In a stipulation she represents she has definitely discontinued advertising and does not intend to resume, but if she should will conform to the rulings or precedents established by the Federal Trade Commission. (June 13, 1932.)

0319. Vendor-Advertiser—Puzzle Contest.—This vendor-advertiser is engaged in publishing a magazine and seeking subscribers and solicitors to secure them, and in advertising represented—

"Amazing Opportunity! Win \$2250.00 Cash Prize.

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Solve The Magic Puzzle. Qualify for the Opportunity.

Directions—Take any numbers from 1 to 9 inclusive and arrange them in the squares so that when added together vertically, horizontally, and diagonally the total will be 15. No number can be used more than twice.

This is an interesting test of your patience and skill. It can be done. Try, and if you can do it, send your answer with your name and address to me at once and open the opportunity to win a big prize. Duplicate prizes in case of ties.

\$5000.00 in Prizes Given.

Someone with sharp eyes to qualify and who is quick will get a Buick sedan and \$1000.00 cash, or \$2250.00 cash. Many valuable prizes—automobiles, radios, diamonds, cash—over \$5000.00 will be given free to advertise and make friends. Follow my simple plan and you can win. Everyone who takes an active part will get money. You Cannot Lose! You are sure to get a prize when you enter. Answers accepted only from persons living in the U.S.A., outside Chicago, Ill. Write Quick! Send no Money. Costs Nothing To Win! Rush your answer."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and admits—

(a) No prize or reward is given or awarded for the mere solution of the problem or puzzle portrayed;

(b) To secure any of the prizes offered, the winner must enter a contest, the nature of which is not disclosed in the advertisement, and compete for the prizes offered by working in accordance with certain rules and conditions not disclosed in said advertisements; and agrees to cease and desist from publishing and circulating, or causing to be published and circulated, any statement which is false or misleading in substance or form; and specifically stipulates and agrees to cease and desist from representing, in advertisements or otherwise, and either directly or inferentially:

(a) That the mere solution of any puzzle will enable a contestant to win the prize;

(b) That any prizes offered are free;

(c) That any prize, benefit, or competitive advantage is offered for the mere solution of any puzzle;

(d) That the solution of any puzzle qualifies a person to enter a contest in which prizes are awarded to winners unless no person is permitted to enter the contest until he or she has correctly solved the puzzle;

and also agrees that it will not publish any advertisement offering a prize or reward to the winner of a contest when there is a puzzle, or problem, portrayed in the same advertisement unless there appears also in such advertisement, adjacent to and equally conspicuous with said offer of a prize or reward, a clear statement to the effect that something more of a substantial nature will be required, in addition to the solution of the puzzle, or problem, before the prize or reward can be won. (June 13, 1932.)

0320. Vendor-Advertiser—Crispette Machines.—H. W. Eakins, trading as Long-Eakins Co., Springfield, Ohio. This vendor-advertiser is engaged in manufacturing and selling a machine for making Crispettes, and in advertising represented that purchasers were making certain earnings by using his machines when such was not true.

In a stipulation filed with and approved by the Federal Trade Commission, this vendor-advertiser admits making such representations and agrees to cease and desist from publishing any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; or that the probable day by day earnings under normal conditions of purchasers of Crispette machines would be equivalent or comparable to earnings made only from time to time under unusual circumstances; or that instances of unusual earnings, or sales of the product made by Crispette machines, actually occurring, are customary or usual or to be expected by purchasers as a daily or regular probability; or that the earning probabilities from Crispette machines and the sale of the article produced thereby when operated and conducted by one person are in excess of the actual facts or equivalent or comparable to earning probabilities where the help of others is employed either in the preparation of raw products, the operation of the machine or the sale of its product; or any and all representations and statements equivalent or similar thereto in form or substance. (June 13, 1932.)

0321. Vendor-Advertiser—Reducing Cream.—Eugene Munk, trading as La Renee Cosmetic Co., New York City. This vendor-advertiser is engaged in selling an anti-fat treatment designated "La Renee Reducing Cream" and in advertising represented:

"Remove fat. (Picture of slender woman and fat women standing on a balance.) A Safe and Sure Way from any part you wish reduced. No diets, medicines, exercise, baths or equipment necessary. Satisfaction Guaranteed.

"La Renee Reducing Cream has slenderized thousands of over-stout people when other means failed. A creamlike white preparation, a secret product of modern science, rigidly tested, has proven to quickly remove excess fat from double chin, arms, abdomen, bust, hips, legs, or any other part of body." which statements are deemed to be incorrect, exaggerated, and misleading in that the ingredients composing this so-called "reducing cream" are the same ingredients used by other concerns for so-called "developing creams" for adding flesh and size to the body; the representation that no diets, medicines or baths are necessary is not consistent with the facts or with respondent's recommendations in his printed directions for use; it has not yet been proven to the Commission's medical authorities that any cream applied externally will of itself penetrate into the tissues and break down the underlying fat cells as indicated by respondent's statements; and such representations therefore have the capacity and tendency to mislead and deceive the purchasing public into buying said La Renee Cosmetic Cream in the erroneous belief that the same are true and that the use thereof will accomplish in all cases the results set out or indicated therein.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing in advertisements or otherwise:

- (a) That the application of said cream will of itself remove fat;
- (b) That no diets, medicines, or baths are indicated;
- (c) That said cream has slenderized thousands of overstout people, or any other number not capable of proof;
- (d) That said creamlike preparation will either quickly or otherwise remove excess fat and without inconvenience;
- (e) That a price offered is "special" unless it is less than the usual or regular price of the product and limited as to time or persons; and all representations and statements equivalent thereto in form or substance. (June 13, 1932.)

0322. Vendor-Advertiser—Beard Remover.—Milton Meyer, trading as G. Page Co., Chicago, Ill. This vendor-advertiser is engaged in selling a beard-remover designated "Smile", and in advertising represented:

"Shave without a razor. New Sensation Offers Big Chance To Earn up to \$32 A Day Profit.

"Biggest seller in history. The razorless sensation 'Smile' removes the beard as if by magic, and leaves you with the slickest, smoothest shave you've ever had. Just rub it on—then wipe it off—and the beard's gone; swiftly, cleanly, closely. After years of research work, chemists have at last given the world a perfected product so truly remarkable, so safe and so economical that men everywhere are using this new easy way of shaving. No bother—no fuss—no more blades to buy—no more cutting or unnecessary pain; 'Smile' leaves you with an after-feel of facial comfort, even on toughest beard or tenderest skin. Thoroughly tested, widely approved and absolutely guaranteed. 'Satisfaction guaranteed' with every order. Won't cause itch, rash, or ingrown hair. Easy to use. Use once or twice a week since it helps prevent rapid regrowth.

"25,000,000 eager prospects. 'Smile' is sweeping the country like wildfire. It opens up a new non competitive, depression-proof field. Without experience—spare and full time representatives can make big money by cashing in on the tremendous demand for a razor substitute. The market is large—the need is great—the profit

is big. Repeat sales mean more profit. Your prospects are Doctors, Druggists, Dept. Stores, Men, Women, etc. Now's the time to introduce 'Smile'—before limitations go on the market. Sales guaranteed. Territory going fast! Act quick. Write to-day! We furnish you with everything to start you off making big profits."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, represents that he has definitely discontinued the business of selling said beard remover in interstate commerce, and he hereby stipulates and agrees not to resume hereafter such business in interstate commerce. (June 13, 1932.)

0323. Vendor-Advertiser—Sanitary Protectors or Shields.—William O'Connor, trading as La Mar Co. and La Mar Specialty Co., Chicago, Ill. This vendor-advertiser is engaged in selling sanitary protectors or shields for women, and in advertising represented:

"Ladies—make shields at home. \$12 per hundred. Work sent prepaid to reliable women. Particulars for stamped addressed envelope. La Mar Company D-13 M. Drawer Y, Chicago, Ill.;" which representations the Federal Trade Commission has deemed to be misleading.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations, represents to the Federal Trade Commission that he has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event he decides to resume advertising again, such advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission. (June 13, 1932.)

0324. Vendor-Advertiser—Rabbits.—A. L. Keeny, trading as The Eastern Rabbitry, New Freedom, Pa. This vendor-advertiser is engaged in selling rabbits for breeding purposes and conducting a general rabbit-breeding industry, and in advertising represented:

"Make \$10,000 a year raising rabbits for us. We pay up to \$12.00 each for all you raise. Send 25¢ for full information and contract, everything explained. Send at once and find out about this big proposition we have to offer you. The Eastern Rabbitry, route 1, Box, New Freedom, Pa."

when in truth and in fact said statement as to the amount of money to be made is incorrect, exaggerated, and misleading in that respondent admits that the gross income of a man working full-time raising these rabbits would average \$1,800 per year, and that out of this he would have to account for the cost of upkeep, rent or taxes, hutches, feeding, insurance, crating, interest on equipment, etc., in computing his net

income. Respondent further admits that in the only two cases known to him where rabbit raisers have reported a profit of \$10,000 a year, the figures were gross and were approximate, and no account was taken by them of the expenses incurred, which included labor of four or five additional men in each case, and correspondingly increases costs as to every item of operation.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees, in soliciting the sale of and selling said breeding stock in interstate commerce, to cease and desist from representing in advertisements or otherwise that the profit to be made by the raising of rabbits is any sum which would be greater than the *average net* income received by the ordinary operator, respondent furthermore agreeing that if any amount shall hereafter be published by him, such figure shall be based upon accurate and reliable information as ascertained by approved accounting methods. (June 13, 1932.)

0325. **Publisher—Hair Dye and Tonic.**—The publisher of a western newspaper printed, published, and circulated advertisements alleged to contain false and misleading statements, claims, and representations for a hair dye and tonic.

In a stipulation filed with and approved by the Federal Trade Commission, this publisher admits the publication of such advertisements; declares he has no interest in the business of the advertisers or the further publication of such advertisements that he cares to defend in proceedings before the Commission and waives any rights he may have in the matter and agrees to observe and abide by the provisions of any cease and desist order that may be made against the advertiser and/or any stipulation that may be entered into between the advertiser and the Commission of which he has notice to the same extent as if he was a party to such order or stipulation. (June 20, 1932.)

0326. **Vendor-Advertiser—Medicated Chewing Gum.**—Edgar A. Van Dyke, Jr., trading as Alvanite Products Co., New York City. This vendor-advertiser is engaged in selling a medicated chewing gum for reducing flesh, and in advertising represented:

“Chew and Grow Thin.

“Remarkable discovery.

“Chew Reduco-Gum after every meal.

“Results assured.

"Chew and grow thin until you have reduced your weight to normal.

"* * * wouldn't it be still more remarkable if you could lose this superfluous weight.

"You will be astonished at the simple yet sure method this is to lose weight.

"Reduco-Gum will bring gradual reduction.

"Reduco-Gum will not only eliminate all superfluous fat * * *."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from describing, or otherwise designating his said product as "Reduco" gum and from representing in advertisements or otherwise:

(a) That the chewing of said medicated gum will enable a person to (1) Grow thin; or (2) reduce weight to normal or at all; or (3) lose superfluous weight; or,

(b) That said medicated gum is a competent agent for reducing weight; or,

(c) Results are assured;

and all representations and statements equivalent or similar thereto in form or substance. (June 20, 1932.)

0327. Vendor-Advertiser—Bust Developer.—J. Fred Thomas, Lydia A. Thomas, and Harold Thomas, trading as Olive Co. and Hawkeye Advertising Co. This vendor-advertiser is engaged in selling a mechanical device for developing the bust, and in advertising represented:

"Endorsed by physicians of National reputation.

"I have proven that any woman can have a beautiful bust if she will only use your method.

"In this book you will find a happy solution for the underdeveloped woman.

"The method recommended is time-tested and reliable, endorsed by such well known physicians as Drs. C. S. Carr and Thos. J. Allen.

"More than 148,000 women have successfully used this method to beautify the form.

"Most remarkable results can be obtained even in the cases of those well advanced in years, * * *.

"The results from this harmless method should be permanent * * *.

"* * * should bring wonderful results even in the most obstinate cases.

"Anyone can accomplish the results I did if they have the desire for a beautiful figure.

"The only developer.

"Used in Beauty Parlors.

"* * * the only safe, harmless method for developing the bust.

"Also the treatise by Dr. Thomas J. Allen, another physician of National reputation * * *.

"* * * when such unusual results are received in the most obstinate and difficult cases! Isn't this proof that the National can give you the perfect 'Fashion Figure'?"

"The Only Scientific Appliance for Perfect Harmless Bust Development.

"Dr. Thomas J. Allen, 'America's Foremost Authority on Diet and Health' Endorses the New National * * *.

"The New National * * * will develop and expand the breasts of any women or girl who will follow the instructions.

"No harmful effects can follow this treatment * * *.

"There is No Other Bust Developer.

"It is the only safe and harmless method that will expand the breasts to their normal size * * *.

"The National is perfected in every detail for the harmless natural development of these beautiful organs.

"It is possible for you to have a plump, full bust just like you are expected to have.

"You can perfect your body as much as you desire.

"If your bust is flat and flabby and lifeless you can restore the round, plump beauty.

"We provide the most reliable means in the National for any woman to develop her bust.

"If you want a Beautiful Bust send for the National.

"They found the National the only method that would restore shrunken, flabby breasts to natural size.

"* * * the only rational, safe, sure way.

"Send your order now and have a beautifully developed bust yourself * * *.

"* * * if any woman will follow instructions carefully she is bound to obtain the desired results.

"If you had ordered the National when you received our book you would now be in possession of the beautiful curves of womanhood.

"* * * 'I have found the only way of developing the bust'.

"* * * the one real bust developer * * *.

"If every woman could know—Actually Know—that these great pleasures can come into her life.

"Order a National Developer today. Say 'I Will' have a beautiful bust.

"Think after you have used the National—of the happiness and satisfaction you will have in the possession of a beautiful rounded bust.

"Surely a beautiful bust is worth more than the small amount we ask for the developer.

"You can have a beautiful bust.

"Exert your rights Now and say I will Have a Beautiful Bust. We will do our part.

"Get ready for the New Life that awaits you.

"There is positively no woman on earth that would be without a beautiful bust if she would only devote a few minutes daily to the use of your developer.

"The National does develop the bust.

"There Is No Other Bust Developer.

"There is no other method of bust development that is natural or scientific, that can be depended on in all cases.

"* * * everyone may have a beautiful bust by using the National.

"* * * Be Assured of Beautiful Development * * *.

"* * * an opportunity for you to have * * * a beautiful rounded bust.

"* * * the remarkable developing power of the National in beautifying the breasts in the most obstinate and seemingly hopeless cases.

"* * * it produces such 'Venus-Like' development.

"* * * all this charm of perfect womanhood can be yours * * *.

"You, too, can be made perfect in your witching beauty.

"It will develop your bust to marvelous beauty.

"If you are Embarrassed with a Flat Bust, The New National Will Bring You Real Happiness.

"You, Too, Can Have a Perfect Bust";

when in truth and in fact said statements are incorrect in certain respects and exaggerated and misleading in others.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated any statements or representations directly upon the responsibility of the undersigned respondents, or indirectly as purporting to be upon the responsibility or in the words of another, which are false or misleading; and specifically stipulate and agree, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing in advertisements or otherwise:

(a) That said device or the method employed in the use of said device has been endorsed by physicians of national reputation;

(b) That Thos. J. Allen is or was a physician;

(c) That said device has been used successfully by more than 148,000 women, or any other number, in excess of the number of which respondents have actual knowledge;

(d) That Thos. J. Allen is or was America's foremost authority on diet and health;

(e) That Dr. C. S. Carr was a well known physician;

(f) That by the use of the device every woman can have a beautiful bust, can have a beautiful figure, can develop and expand the breast, can obtain the desired results, or can have great pleasures come into her life;

(g) That the use of said device will be a happy solution for the underdeveloped woman;

(h) That satisfactory results may generally be expected from the use of said device by persons advanced in years;

(i) That the use of said device is a sure, safe, harmless, rational, or natural method of developing the breast;

(j) That satisfactory results may be expected from the use of said device in the most obstinate, difficult, or seemingly hopeless cases;

(k) That said device is the only bust developer, that there is no other bust developer, or that the use of said device is the only way of developing the bust;

(l) That said device is used by beauty parlors, unless and until said device is generally used by a substantial number of beauty parlors;

(m) Generally and without qualification that by the use of the device a prospective purchaser: (1) Can have a plump, full breast; (2) can perfect the body as much as desired; (3) can restore round plump beauty to a flat, flabby and lifeless bust; (4) can have a beautifully developed bust; (5) can possess the beautiful curves of womanhood; (6) can have a beautiful bust; (7) can have a new life; (8) can have the charm of perfect womanhood; (9) can be made perfect in bewitching beauty; (10) can have a perfect bust; (11) will be assured of beautiful development.

(n) Generally and without qualification that the use of said device will: (1) Expand the breasts to normal size; (2) develop the bust to marvelous beauty; (3) bring happiness to the user.

(o) That said device is the one real bust developer;

(p) Generally and without qualification that said device "does" develop the bust;

and all representations and statements equivalent or similar thereto in form or substance. (June 20, 1932.)

0328. Vendor-Advertiser—Calendars, Printing, and Novelties.—John W. Minschwaner, trading as K. Signet, John W. Minschwaner and Sarah G. Sutphin, and Sutmin Novelty Co., Pennington, N.J. This vendor-advertiser is engaged in selling calendars, printing, and novelties, and in advertising represented:

(Ring) "1/30 14th Karat Gold Signet Ring. Guaranteed to wear five years. To introduce same 30¢ each or 2 for 50¢. Initial on free. Thousands sold, and Melba 30-inch long indestructible pearl necklace, lustrous cream tints with handsome clasp set with one white Mexican diamond carefully graduated. Rich looking and durable; equal in appearance to pearls that sell for very much higher. A real honest to goodness set of pearls for 68 cents and a new Mexican Yogi Diamond ring for 30 cents, mounting in imitation white gold, etc.; and a Cornelian Cameo Ring, fancy shank in platinoid finish for 20 cents."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation directly upon the responsibility of the undersigned respondents, or indirectly as purporting to be upon the responsibility or in words of another, which is false or misleading; and specifically stipulate and agree, in soliciting the sale of and selling said articles of merchandise in interstate commerce, to cease and desist from describing, labeling, or otherwise designating same as—

- (a) 1/30 14th Karat Gold Signet Rings;
 - (b) A real honest to goodness set of pearls;
 - (c) Pearl Necklace;
 - (d) Mexican Yogi diamond ring, or any other description containing the word diamond;
 - (e) Mexican diamonds, so long as the stones are not real diamonds;
 - (f) Cornelian cameo rings;
- and all representations and statements equivalent thereto in form or substance. (June 20, 1932.)

0329. Vendor-Advertiser—Toilet Preparations.—Adele Millar, trading as Mme. Adele, Los Angeles, Calif. This vendor-advertiser is engaged in selling "Mme. Adele" toilet preparations, including a treatment for facial blemishes designated "Wonder Peel Paste", and in advertising represented:

"Adele Millar, Wonder Peel Paste, 1-Day Home Treatment; Freckles, Pimples, for Blackheads, Enlarged Pores, Wrinkles, Pits, Scars, Puffs, Acne condition of back and shoulders. Wonder Peel Paste gives new life and youth to aging faces. No failure, No redness afterwards. Price, \$5.

"Wonder Peel Paste draws impurities, freckles, wrinkles, and discolorations to the surface of the scarfskin, which in its turn peels off gently and painlessly, leaving the new skin underneath fresh, clear, and soft as a child's,"

when in truth and in fact the Federal Trade Commission holds said statements to be incorrect in certain respects and exaggerated and

misleading in others in that an analysis of the formula of said Wonder Peel Paste discloses that whereas it would act as a corrosive to the skin and might in this way remove freckles, still it would not be efficacious in removing wrinkles, pimples, blackheads, scars, pits, so-called "liver spots", acne on face, back, or shoulders; nor would it be an efficacious treatment for flabby skin on neck and throat, hands, and arms; and furthermore the Commission is advised that nothing applied externally reaches into the seat of the trouble when these surface blemishes result from conditions beneath the surface of the skin.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing in advertisements or otherwise:

(a) That said product gives new life and youth to aging faces by a 1-day home treatment;

(b) That said product is efficacious in removing wrinkles or pimples or blackheads or acne or scars or pits or discolorations such as liver spots;

(c) That said product draws impurities, wrinkles, or discolorations to the surface of the skin, to be peeled off;

(d) That said product is an efficacious treatment for smoothing out the lines and wrinkles of the skin;

(e) That the peeling off of the outer skin efficacious for conditions caused by boils;

(f) That there is no failure in obtaining the results claimed by the use of this 1-day home treatment;

and all representations and statements equivalent thereto in form or substance. (June 20, 1932.)

0330. Vendor-Advertiser — Eczema Treatment.—Standardized Remedies Tu-Tan-Kam, Laboratory, Inc., advertising as Standard Remedies Laboratories, Brooklyn, N.Y. This vendor-advertiser is engaged in selling a treatment for eczema, designated "Dr. Ward's Combination Treatment for Skin Disorders", and in advertising represented—

"ECZEMA. Get Rid Of It Quickly. Free Trial Of Dr. Ward's Famous Treatment used by him more than 60 years.

"No matter how long you have suffered or how hopeless your case seems, you can now quickly stop that itching and burning and clear away those ugly blemishes."

which statements are held by the Federal Trade Commission to be incorrect, exaggerated, and misleading in that the claims are entirely too broad; eczema is a disease condition of many types, stages, and locations, not amenable to any fixed line of treatment; and while the preparation may have beneficial action in relieving itching and burning symptoms, it could not form adequate treatment of the cause of eczema in all cases.

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and the respondent represents to the Federal Trade Commission that it has definitely discontinued the advertising of said commodity, and does not intend at this time to resume such advertising in the future; and that the sale of said commodity is limited to the filling of unsolicited orders. Respondent further stipulates and agrees that in the event it decides to resume advertising again, such future advertising will be made to conform to the rulings or precedents established by the Federal Trade Commission; and in particular that it will not represent this preparation as adequate or efficacious in the treatment of eczema or other skin disorders without due qualification. (June 20, 1932.)

0331. Vendor-Advertiser—Novelties, Rings, and Lucky Charms.—Morris Goldstein, trading as King Novelty Co., New York City. This vendor-advertiser is engaged in selling novelties, rings, and so-called "luck charms", and in advertising represented—

"Just Out—A New Lucky Black Cat Brooch. Good Luck. Be lucky in everything with this new lucky Black Cat Brooch, made on white pearl, hand painted and gold stamped. Very attractive.

"'Believe it or Not' But it is positively true that you can now get a Genuine Diamond set in a 14kt Solid Gold ring for only \$3.98 no installments to pay.

"Never before has such a value been offered to you. Installment houses charge \$20.00 for this ring. By buying direct from us you save the dealer's profit. This Ring is a Very Attractive Gift.

"If you want proof of this Great Bargain, just send us your name and address and we will send you this Genuine Diamond Gold Ring. Upon arrival, pay postman Only \$3.98.

"Money Refunded If Not Satisfied.

"Good Luck for Women. Hindu Good Luck Charm—is said to bring Wealth, Happiness, Success in Love, Business, and All undertakings, and protect you against Misfortunes, Sickness, Enemies, Etc. This charm is of unique design and beauty. Green silver finish. Set with 4 beautiful colored stones. Has 32-inch silk cord.

"Why Not be Lucky. Lucky Sheik Ring. Be lucky by wearing one of these wonderful Lucky Sheik Rings which is said to bring Wealth, Happiness, Good Luck in Love, Business, Games, and All

Undertakings, and protect you against Misfortunes, Sickness, Enemies, Etc. This Lucky Sheik Ring is of Unique Design, Rose Gold Finish. Set with colored Stones."

In a stipulation filed with and approved by the Federal Trade Commission this vendor-advertiser admits making such representations and agrees to cease and desist from publishing and circulating, or causing to be published or circulated, any statement or representation directly upon the responsibility of the undersigned respondent, or indirectly as purporting to be upon the responsibility or in the words of another, which is false or misleading; and specifically stipulates and agrees, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing in advertisements or otherwise:

(a) That said Black Cat Brooch will cause one to be lucky in anything; or is made on white pearl;

(b) That said \$3.98 ring is a genuine diamond, or is of 14 karat solid gold; or is the same ring for which installment houses charge \$20; or that never before has such a value been offered;

(c) That the "Hindu Good Luck Charm" either will in fact or may be "said" to bring wealth or happiness or success in love or business or any undertakings whatsoever, or to protect against misfortunes or sickness or enemies or any other thing;

(d) That the "Lucky Sheik Ring" is wonderful or will enable the wearer to be lucky, or will in fact or may be "said" to bring any good luck or ward off any bad luck; and all representations and statements equivalent or similar thereto in form or substance. (June 27, 1932.)

DECISIONS OF THE COURTS ¹

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

ALGOMA LUMBER CO. ET AL. *v.* FEDERAL TRADE COMMISSION ²

(Circuit Court of Appeals, Ninth Circuit. March 7, 1932)

No. 6716

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

In proceeding to review Federal Trade Commission's order, question whether trial examiner's report shall be included in record certified by Commission rests in sound discretion of court (15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Generally, in proceeding to review Federal Trade Commission's order, Commission should not be required to certify examiner's report or exceptions thereto as part of record, unless report and exceptions are referred to in Commission's findings and thereby adopted by it (15 USCA sec. 45).

Course, usually adopted by Commission, of omitting examiner's report in transcript, is better practice to be followed, unless upon hearing of matter inclusion of report for some reason appears necessary to correct the decision.

(The syllabus is taken from 56 F. (2d) 774)

Petition by Algoma Lumber Co. and others to set aside orders of Commission.³ On respondent's motion to amend ex parte order directing inclusion in record to be certified by respondent of a copy of the trial examiner's report upon the facts. Motion granted.

Warren Olney, Allan P. Matthew, Carl I. Wheat, and McCutchen, Olney, Mannon & Greene, all of San Francisco, Calif., for petitioners.

Robert E. Healy, chief counsel, *Martin A. Morrison*, assistant chief counsel, and *Eugene W. Burr*, all of Washington, D. C., for respondent.

¹ The period covered is that of this volume, namely, December 24, 1931, to July 17, 1932, inclusive.

² The case is reported in 56 F. (2d) 774.

³ See 15 F. T. C. 139, 167, 168.

Before WILBUR and SAWTELLE, Circuit Judges.

WILBUR, *Circuit Judge*:

An ex parte order was made in this matter for the inclusion in the record to be certified by the Federal Trade Commission of a copy of the trial examiner's report upon the facts, and motion is made to amend the order by striking out the requirement that the report of the examiner should be included in the transcript. The statute upon the subject is in general terms (38 Stat. 717, sec. 5, p. 720; 15 USCA sec. 45) and provides that the Commission shall file with the court "a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission." The statute also provides that the Commission after its hearing "shall make a report in writing in which it shall state its findings as to the facts" and further provides that the findings of the Commission as to the facts, if supported by the testimony, shall be conclusive, but either party may apply to the court for leave to adduce additional evidence. The Commission states in its application that its uniform practice has been to omit from its transcripts of proceedings the findings of the examiner, and that out of a total of 148 petitions to the various circuit court of appeals in only three have the examiner's reports been accepted by the circuit courts. The Commission contends that the findings of the examiner are no proper part of the record and states: "In the present case the examiner's findings comprise 58 pages of mimeographed material and the exceptions thereto by the present petitioners cover 105 printed pages, while those by counsel for the Commission occupy 20 (mimeographic) pages." The petitioners who seek to review the order of the Commission maintain that the question as to whether or not the report of the examiner and proceedings with relation thereto shall be included in the record to be certified to the court by the Commission is a matter resting in the sound discretion of the court. This [775] we think is correct and in accordance with the rulings of the various courts. The petitioners in opposing the application for the amendment of the order so as to omit the requirement that the examiner's report be certified by the Commission frankly state their purpose in insisting upon that inclusion. That purpose, briefly stated, is that the report illustrates the fact that the Commission has neglected to consider matters which are involved as shown by the examiner's report, which have been brought to its attention. In short, although it is conceded that the examiner's report has no binding effect and that the ultimate decision of the facts rests with the Commission it is insisted that the report will be a valuable addition to the record.

We are inclined to agree with the contention of the Federal Trade Commission that in the routine certification of its records to the courts it should not be required to certify the report of the examiner or the exceptions thereto unless such report and exceptions are referred to in the findings of the Commission and thereby adopted by it as its findings. It is stated, and there is no suggestion to the contrary, that in the present proceeding the findings of the Commission did not refer in any wise to the examiner's report. If upon the hearing of the matter before the court it seems desirable that any part of the record or proceedings before the Federal Trade Commission would be helpful in determining the cause, and such part of the record has not been certified, it can be supplied upon the hearing or afterward by stipulation of counsel or certification by the Federal Trade Commission upon a supplemental order requiring that to be done. Usually, in such case there is no disagreement between counsel as to the terms of such an order. In the case at bar the purpose suggested by counsel can be covered by argument and by briefs without the actual presence of the examiner's report. We are not impressed that the report of the examiner would be of any assistance in coming to a conclusion in the matter, particularly where the contention is that it has been disregarded by the Commission.

The order will be amended by striking out the requirement that the Federal Trade Commission certify the report of the examiner or the objections thereto. If, on the hearing and argument, the matter seems to the court to be relevant and counsel can not agree on the terms of the examiner's report the court will make such supplemental order as seems proper. Congress has provided that "such proceedings in the circuit court of appeals shall be given preference over other cases pending therein, and shall be in every way expedited." It is in the interest of expedition that the uniform course of procedure adopted in the presentation of these records be followed, and we feel that the course usually adopted by the Commission of omitting the examiner's report in the transcript is the better practice to be followed unless upon the hearing of the matter the inclusion of the report for some reason appears necessary to correct the decision.

Motion granted.

FEDERAL TRADE COMMISSION *v.* PARAMOUNT FAMOUS-LASKY CORPORATION ET AL.¹

(Circuit Court of Appeals, Second Circuit. April 4, 1932)

No. 286

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

On application to enforce cease and desist order of Federal Trade Commission, it is not essential to establish violation of Commission's order; question presented being whether there has been violation of law (Federal Trade Commission Act, sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Circuit Court of Appeals, on application to enforce cease and desist order of Federal Trade Commission, has power to examine entire record and determine for itself issues presented and whether there are material facts not reported.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Standard applicable to determine whether given acts amount to "unfair methods of competition" is standard established by Sherman Antitrust Act and by courts in construing such act (Sherman Antitrust Act (15 USCA, sec. 1 et seq); Federal Trade Commission Act, sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Practices which are against public policy because of dangerous tendency unduly to hinder competition or create monopoly constitute "unfair methods of competition."

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

"Public policy," as basis for determining whether certain practices constitute unfair methods of competition, is policy of common law, equity or statutory, with statutes paramount.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (4).

Distributor of moving picture films may select own customers and sell such quantities at given prices, or refuse to sell to any particular person for personal reasons, without being subject to charge of unfair competition.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (4).

Attempt to effectively dispose of products as whole before entering upon negotiations for disposition of less than all is not creative of dangerous tendency to unduly hinder competition or to create monopoly.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Size of business alone does not give rise to violation of law declaring unfair methods of competition unlawful.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Fact that given method of competition makes it difficult for competitors to do business successfully does not of itself brand method of competition as unlawful and unfair.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Finding of Federal Trade Commission, if not supported by evidence in record, will not sustain order to cease and desist. Fed[153]eral Trade Commission Act sec. 5; 15 USCA sec. 45.)

¹ 57 F. (2d) 152. For case before Commission, see 11 F. T. C. 187.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Though Federal Trade Commission is required to make findings of fact, whether given method of competition is fair or unfair is question of law for courts.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Producer and distributor of moving picture films is not required to so conduct its business that every competitor may conduct his with equal degree of success according to his size and importance.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Purpose of act prohibiting unfair methods of competition is to preserve, for benefit of public, active competition in given industry.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Where no question of monopoly is involved, question is whether method of competition described has dangerous tendency unduly to hinder competition.

MONOPOLIES KEY-NO. 12 (2).

In absence of combination or agreement, fact that business method practiced by moving picture film distributor tends to exclude other independent producers is of itself insufficient to establish any probable tendency toward creation of monopoly or combination in restraint of trade.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1).

Where practice is not inherently unlawful and unfair, and legality depends on effect, finding that it has dangerous tendency unduly to hinder competition or create monopoly must be based on effect as demonstrated on experience of competitors. (Sherman Antitrust Act (15 USCA sec. 1 et seq.); Federal Trade Commission Act, sec. 5; 15 USCA sec. 45.)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (2).

Tying contracts are not unlawful as opposed to public policy per se, but only when insisted on in sale by corporation which has monopoly (Clayton Act sec. 3 (15 USCA sec. 14); Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

MONOPOLIES KEY-NO. 12 (2).

Fact that moving picture films of distributor are copyrighted, and that another can not use them except under lease or license, does not create monopoly (Sherman Antitrust Act; 15 USCA sec. 1 et seq.).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (3).

Business practices of producer and distributor of moving picture films, consisting of "block booking" system, held not to disclose dangerous tendency unlawfully to hinder competition, nor to create monopoly, so as to constitute "unfair methods of competition" (Sherman Antitrust Act (15 USCA sec. 1 et seq.); Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

Producer and distributor of moving picture films adopted method of leasing films under a system known as "block booking," under which films were offered in blocks only. The blocks offered contained certain films which the exhibitor might not want to lease but which he was required to lease if he wanted other films in the block. The exhibitor could not select some of the individual films and reject others contained in the block unless he exercised the option to pay prices arbitrarily fixed considerably higher than the estimated prices of such films as part of the block. If the exhibitor declined to take all the films in the block, the

block was successively offered to competitors until a lease was made. Only if all the competitors refused the block would the individual films be offered to exhibitors on some other basis arrived at by negotiation between the producer and the exhibitors.

(The syllabus is taken from 57 F. (2d) 152)

Petition to enforce an order of the Federal Trade Commission, entered against Famous Players-Lasky Corp., Adolph Zukor and Jesse L. Lasky, which order directed them to cease and desist from practices found by the Commission to constitute unfair methods of competition in violation of section 5 of the Federal Trade Commission Act (15 USCA sec. 45).

Order reversed and the petition to enforce denied.

Robt. E. Healy, chief counsel, Federal Trade Commission, and *Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, both of Washington, D. C., for petitioner.

Cravath, De Gersdorff, Swaine & Wood, of New York City, (*Frederick H. Wood*, and [154] *Bruce Bromley*, both of New York City, of counsel) for respondents.

Before MANTON, AUGUSTUS N. HAND and CHASE, Circuit Judges.

MANTON, *Circuit Judge*.

The Federal Trade Commission issued an order against the respondents directing them to cease and desist from certain practices found by it to constitute methods of unfair competition in violation of section 5 of the Federal Trade Commission Act (38 Stat. 717, 15 USCA sec. 45). That part of the order sought to be enforced directs the respondents to cease and desist "from leasing or offering to lease for exhibition in a theater or theaters motion picture films in a block or group of two or more films at a designated lump sum price for the entire block or group only and requiring the exhibitor to lease all such films or be permitted to lease none; and from leasing or offering to lease for exhibition such motion picture films in a block or group of two or more at a designated lump sum price for the entire block or group and at separate and several prices for separate and several films, or for a number or numbers thereof less than the total number, which total or lump sum price and separate and several prices shall bear to each other such relation as to operate as an unreasonable restraint upon the freedom of an exhibitor to select and lease for use and exhibition only such film or films of such block or group as he may desire and prefer to procure for exhibition; or shall bear such relation to each other as to tend to require an exhibitor to lease such entire block or group or forego the lease of any portion or portions thereof; or shall bear such relations to each other that the effect of such proposed contract for the lease of such films may be substantially to lessen competition

or tend to create a monopoly in any part of the certain line of commerce among the several States, or with foreign nations, involved in the said proposed sale, to wit: The business of the production, distribution, and exhibition of motion picture films to the public, or the business of production and distribution, or of production or distribution of moving picture films for public exhibition.”

No review of all or any part of the order entered has been sought by the respondents. However, upon an application to enforce the order, it is not essential to establish a violation of the Commission's order, for the first question we must examine in the proceeding is whether or not there has been a violation of the law, *Federal Trade Commission v. Balme*, 23 F. (2d) 615 (CCA, 2); certiorari denied, 277 U. S. 598. The statute grants jurisdiction to the court to enter, upon the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside an order entered by the Commission and in so doing, the court has the power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission. *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568. Section 5, which is alleged to have been violated, has reference to unfair methods of competition in commerce, which are declared to be unlawful, and, in determining whether given acts amount to unfair methods of competition within the meaning of the act, the standard is the one “established by the Sherman Antitrust Act in the words ‘restraint of trade or commerce’ and ‘monopolize or attempt to monopolize,’ and by the courts in construing the Sherman Act with reference to acts ‘which operate to the prejudice of the public interest by unduly restricting competition or unduly obstructing the due course of trade,’ and ‘restrict the common liberty to engage therein.’” *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441; *Standard Oil Co. of N. J. v. Federal Trade Commission*, 282 Fed. 81 (CCA, 3). A practice which is against public policy because of its dangerous tendency unduly to hinder competition or create a monopoly, is declared to be unfair and unlawful by section 5. *Federal Trade Commission v. Gratz*, 253 U. S. 421. And public policy is the policy of the common law, equity or statutory, with statutes paramount. *Chicago, B. & Q. R. v. McGuire*, 219 U. S. 549.

The Famous Players-Lasky Corp. is a New York corporation engaged in the business, interstate and foreign, of producing, leasing, transporting, and distributing to exhibitors and exhibiting for profit, motion picture films. These films are produced at their studios located in several States of the United States and are distributed and transported therefrom in interstate commerce to theaters located in several other States. It is in competition with other producers. The

individual respondents are officers of the corporation and as such, operate and control its business activities. The Commission found that it adopted a method of leasing its films under a system known as "block booking." Under such plan, films were offered in blocks [155] only. A block is a group of films offered as a unit, containing a number of individual motion pictures which are available for lease by exhibitors for three months or for one year. Such blocks contain 13 or 26 films, or 52 or 104 films, according to whether the theater changes films once or twice a week. The individual films in blocks being offered are not always identical. The blocks offered to an exhibitor contain certain films which the exhibitor may not want to lease, but he must lease all or none. He may not select some of the individual films and reject others contained in the block unless he exercises the option to pay prices found by the Commission to be arbitrarily fixed from 50 to 75 per cent higher than the estimated prices of such films as part of the block. If the exhibitor declines to take all, the block is successively offered to his competitors until a lease is made. Only if all competitors refuse the block are the individual films offered to exhibitors upon some other basis arrived at by negotiation between the producer and exhibitors. The Commission determined this method of distribution to be unfair, and that the purpose and effect of the alternative offer is to coerce and intimidate an exhibitor into surrendering his free choice in the leasing of films, and into leasing films in blocks as offered, thereby denying to such exhibitor the opportunity and profit of leasing and exhibiting certain other films of higher qualities and which such exhibitor's patrons demand and which such exhibitor desires to exhibit. It is thus concluded by the Commission that this distribution policy lessens competition and tends to create a monopoly in the motion picture industry by tending to exclude from the market and industry independent producers and distributors of films, and denies to the exhibitors freedom of choice in leasing films.

There are seven other producers of major rank and some smaller, who are in competition with the respondents. The evidence discloses the total number of feature pictures released annually, and the percentage thereof produced by the respondent in the years 1919 to 1923, is shown in the table (a) below:

Table (a)

Year	All companies	FPL released	Per cent FPL released
1919.....	815	139	17
1920.....	735	116	16
1921.....	830	120	14
1922.....	707	95	13
1923.....	827	61	12

Since 1919 there has been a reduction in the percentage of feature films released by the respondent, and table (b) below sets forth the percentage which film rentals received by the respondent from feature pictures were of the total rentals paid to all producers and distributors for feature pictures for the same period.

Table (b)

Period	Percentage of film rentals for FPL features
Fiscal year June 30, 1919, to June 30, 1920.....	29.8
Fiscal year June 30, 1920, to June 30, 1921.....	28.2
June 30, 1921, to January 1, 1922.....	30.8
Calendar year 1922.....	26.6
Calendar year 1923.....	22.1
Calendar year 1924.....	20.6

From this, it is apparent that the general production of feature pictures has likewise declined since 1919, and these tables demonstrate that there is free competition among producers and distributors for the distribution and marketing of their pictures. There is a lack of monopolization by the respondent and, in fact, lack of ability to achieve a monopoly and therefore not a business operation which would unduly hinder competitors, as indicated by table (c) below, showing first, the total number of feature pictures released during the years 1919 and 1923, respectively; second, the number and percentage of total released by the respondent; third, the number and percentage of total released by each of the respondent's principal competitors, and fourth, the number and percentage released by smaller distributors.

Table (c)

	Number of features 1919	Per cent of total 1919	Number of features 1923	Per cent of total 1923	Per cent of increase or decrease in per cent of total distribution
Total of all producers.....	815	100.00	527	100.00	0
Respondent.....	139	17.05	61	11.57	-32.3
Universal Film Mfg. Co.....	64	7.85	63	11.95	+52.2
Fox Film Corp.....	70	8.58	55	10.43	+21.5
Pathé.....	58	7.11	26	4.93	-30.7
Warner Brothers.....			11	2.10	(*)
Metro-Goldwyn.....	83	10.18	60	11.38	+11.8
First National.....	21	2.57	46	8.72	+34.0
United Artists.....	3	.36	11	2.08	+477.7
Miscellaneous State rights companies.....	117	14.35	108	20.49	+42.8

* Newcomer.

These tables [156] indicate a state of free competition in the industry and sufficiently negative the finding of the Commission that the respondent dominates the industry. The percentages dis-

closed by the evidence sufficiently demonstrate that the respondents have not absorbed the exhibition time of the first-run theaters, to the exclusion of other producers, large or small. Nor has the method of negotiation for the leasing of its films shown effective or destructive injury to first-run houses. About one-half of the houses of the key cities are disclosed not to have shown the respondent's pictures, and of those showing its pictures, but a small percentage have shown them in substantial numbers. In the last two years, approximately three-fourths of those showing respondent's pictures show less than 25 per cent thereof. There is no finding by the Commission that the method of negotiation in block booking, which it condemns, was generally successful in the distribution of their pictures to the detriment of respondent's competitors, nor is there a finding in respect to the existence or absence of free and active competition in the industry generally. The record discloses that the respondent's releases in 1923 were but 12 per cent of the total releases, and this shows a decline in percentage since 1919. The small producer or distributor, as distinguished from the larger companies, has not been shown to have been effected by any combination between the large companies. The respondent's sales methods have not been shown to have any effect upon its competitors—the smaller producers—when the whole field is surveyed, and it is impossible to say on the evidence that the effect of block booking as practiced by the respondent, or its accumulative effect as practiced independently by the respondent and others, has unfairly affected competition. On the other hand, it may fairly be said that all persons engaged in the production of pictures have been able successfully to distribute their product. This has permitted fair competition in the industry.

It is admitted that the purpose of the respondent's method of negotiation and block booking is to sell the entire product to a single exhibitor in a single locality, but the method is said to deny to exhibitors freedom of choice in leasing films. Where an offer, unaccompanied by any declaration that the exhibitor must take all or none, is accepted, there is no restraint upon the exhibitor's freedom of choice. If the offer is rejected and the respondent refuses to consider the lease of less than the block until the block has been successively offered to the exhibitor's competitors, there is no restraint placed upon the freedom of choice of the exhibitor if all refuse the block. But if, under these circumstances, the exhibitor is induced to take all, by refusal of respondent at that time to consider the lease of less, the result is not due to denial or freedom of choice, but to the exercise of his choice of two alternatives, namely, to refuse at that time to take the block and await developments as to other competitors, or to take the block and thereby forestall any of his

competitors from obtaining it. After this, there is the insistence on an increase in price by the respondent if individual films are accepted. But these we regard as merely ordinary incidents of bargaining and negotiating between seller and buyer, out of which a contract may or may not result. In either case, the buyer exercises his legal right to purchase or not, as he chooses. A distributor of films by lease or sale has the right to select his own customers and to sell such quantities at given prices, or to refuse to sell at all to any particular person for reasons of his own. *Fed. Trade Comm. v. Raymond Bros.-Clarke Co.*, 263 U. S. 565; *United States v. Colgate & Co.*, 250 U. S. 300; *Natl. Biscuit Co. v. Fed. Trade Comm.*, 299 Fed. 733 (CCA, 2); *Great A. & P. Tea Co. v. Cream of Wheat Co.*, 227 Fed. 46 (CCA, 2). But in the sale or lease, it is unlawful if the sale is attempted to be brought about by an agreement, either actual or implied, as to the maintenance of resale prices. *United States v. A. Schrader's Sons, Inc.*, 252 U. S. 85; *Harriet Hubbard Ayer, Inc. v. Fed. Trade Comm.*, 15 F. (2d) 274 (CCA, 2). No such effort was made here.

The Commission did not find that the method of negotiation for the leasing of the films in question was carried on by the respondent as the result of a conspiracy or agreement with other producers, and, in the absence of such finding, they had an undoubted right to sell in blocks or to adhere to a policy of terms of sale, price of sale, and persons to whom they sold. Of course, there are some exceptions to a sales policy which we think are not applicable here. The Commission may not interfere with the respondent's attempt to effectively dispose of their products as a whole before entering upon negotiations for the disposition of less than all. Nor is this method of negotiation and sales creative of a dangerous tendency to unduly hinder competition or to create a monopoly. [157] *Fed. Trade Com. v. Beech-Nut Packing Co.*, 257 U. S. 441; *Fed. Trade Com. v. Gratz*, 253 U. S. 421. We see nothing in the method of competition which is disclosed by the efforts of salesmanship involved in the respondent's business which has or can have any dangerous tendency unduly to hinder competition or to create a monopoly. The method of distribution by sale or lease, or the practice of selling through a common distributor is open to every other producer, large or small, to the extent of his pictures produced. To the extent that the method of negotiation carried on by the respondent is successful, the greater number of pictures produced by it and the greater number which may be placed at wholesale in a single contract, may result from the size of its business and the industry it employs. But the size alone does not give rise to a violation of the law. *United States v. International Harvester Co.*, 274 U. S. 693; *United States v. U. S. Steel Corp.*, 240

U. S. 442. The mere fact that a given method of competition makes it difficult for competitors to do business successfully is not of itself sufficient to brand the method of competition as unlawful and unfair. *Fed. Trade Com. v. Curtis Publishing Co.*, 260 U. S. 568; *Fed. Trade Com. v. Sinclair Refining Co.*, 261 U. S. 463. From the tables referred to above, it is apparent that the respondent did not have a monopoly in the film industry.

It is true that the Commission in its findings (par. 11) determined that the "acts, practices, and things done as hereinbefore set forth, have unduly hindered and are now unduly hindering, the competition in interstate commerce of competing producers and distributors of motion picture films; and * * * have a dangerous tendency to create * * * a monopoly in the motion picture industry." This finding relates to and includes block booking for it says (par. 10) "the purpose and necessary effect of such distribution policy is to lessen competition and to tend to create a monopoly in the motion picture industry, tending to exclude from the market and the industry small independent producers and distributors of films and denying to exhibitors freedom of choice in leasing of films." An examination of the record reveals, however, that this is a conclusion of the author of this finding, which is not sustained by the evidence. Without support by evidence in the record, it will not sustain the order to cease and desist. *National Biscuit Co. v. Federal Trade Commission*, supra; *Mennen Co. v. Federal Trade Commission*, 288 Fed. 774 (CCA, 2). The Commission is required to make findings of fact, but whether a given method of competition is fair or unfair within the meaning of the act, is a question of law for the courts. *Federal Trade Commission v. Gratz*, supra; *Federal Trade Commission v. Beech-Nut Packing Co.*, supra. The respondent is not required, under the law, to so conduct its business that every competitor may conduct his with an equal degree of success according to his size and importance. It was not the purpose of the act to equalize opportunity or insure an equal degree of success upon the part of all competitors in a given industry, but it was its purpose to preserve for the benefit of the public, active competition therein, and where there is no question of monopoly involved, the question is whether the method of competition described has a dangerous tendency unduly to hinder competition. *Federal Trade Commission v. Gratz*, supra. As the Supreme Court put it in *Federal Trade Commission v. Curtis Publishing Co.* (supra),

Effective competition requires that traders have large freedom of action when conducting their own affairs. Success alone does not show reprehensible methods, although it may increase or render insuperable the difficulties which rivals must face.

In the instant case, there is no finding that the respondent combined with other large producers for the purpose of hindering those outside the large combination, and the evidence would not warrant such a finding. In the absence of combination or agreement, the fact that the method of negotiation as practiced by the respondent tends to exclude other independent producers, is of itself insufficient to establish any probable tendency toward the creation of the evils prohibited by the Sherman Antitrust Act. Where a practice is not inherently unlawful and unfair, and its legality depends upon its effect, a finding that it has a dangerous tendency unduly to hinder competition or create a monopoly, must be based upon its effect as demonstrated upon the experience of competitors. *Federal Trade Commission v. Standard Oil Co.*, 261 U. S. 463.

The cases of *Paramount Famous Lasky Corp. v. United States* (282 U. S. 30) and *United States v. [158] First National Pictures* (282 U. S. 44), in no way support the decision of the Commission. The freedom of contract therein protected was the right to contract independently of a restraint placed upon either party by an agreement with others, and the vice of the agreement condemned was that by unlawful agreement or conspiracy the distributors had agreed among themselves not to contract with exhibitors, except in accordance with a form of agreement to which all distributors agreed to adhere. That question is not involved in this case. The basis of the order here sought to be enforced is that by refusing to consider an offer for less than a block of pictures, until the possibility of selling the same block to others had been exhausted, the respondent exerts pressure upon the exhibitor for the purpose of compelling or inducing him to take the block, and that is said to be unfair and unlawful, for it is claimed to deny to the exhibitor freedom of choice in the purchase of his pictures. But that freedom is denied only if the distributor is able to find some other exhibitor who will take the block. If, on the other hand, he can not, the first bidder for the picture may buy at the increased price.

Moreover, the evidence in the record discloses that the effect of this method of negotiation has not been to unduly restrain the exhibitor's freedom of choice. It is only a small percentage of contracts made which are for blocks offered. The greater number are shown to be for a few pictures only. The record shows that the respondent succeeded in making a total of 9,128 contracts with exhibitors for pictures in groups and of these 57½ per cent were for ten pictures or less. This, it would seem, demonstrates that the method of negotiation prohibited by the cease and desist order has not had the effect of unduly restraining the exhibitor's freedom of selecting from among the pictures offered those which he desires.

Nor is the alternative offer permitted to be made for the films, that is, to lease less than a block at higher prices, a coercive or intimidating method. The Commission found that the alternative prices are "so high as to make it impossible for him (the exhibitor) successfully to compete with rival theaters." The exhibitor can freely accept or refuse this offer. If the distributor has the right to sell or attempt to sell his films and the right to make terms which are reasonable, this offer of sale under such terms in no way restrains competition in trade; it constitutes merely a part of the ordinary process of bargaining with the customer for the sale of one's product. Each sale, because of the difference in films, presents an individual problem which must be considered by the buyer and seller according to the circumstances and in conformity with their best judgments. At no time did the respondent refuse to sell if its terms were met. It engaged in a lawful effort to market its products at what it deemed to be desirable terms.

Nor may the order be supported upon the theory that the contracts made for the leasing of the films are unlawful as tying or exclusive contracts and opposed to public policy. A tying contract is one in which one or more different articles are tied together for sale. Such contracts are not unlawful as opposed to public policy per se, but only when insisted upon in a sale by a corporation which has a monopoly. *Federal Trade Commission v. Gratz*, supra. Section 3 of the Clayton Act makes it unlawful to lease or make a contract for the sale of goods "on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise * * * of a competitor * * * of the lessor or seller, where the effect of such lease, sale, or contract * * * may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

No such contract is made here. When pictures are leased in blocks, they are not tied together, and the respondent's pictures are not indispensable to any exhibitor. And as said in *Federal Trade Commission v. Gratz* (supra):

All questions of monopoly or combination being out of the way, a private merchant, acting with entire good faith, may properly refuse to sell except in conjunction, such closely associated articles as ties and bagging. If real competition is to continue, the right of the individual to exercise reasonable discretion in respect of his own business methods must be preserved. *United States v. Colgate & Co.*, 250 U. S. 300; *United States v. A. Schrader's Son, Inc.*, 252 U. S. 85.

It is true that respondent's pictures are copyrighted and that one cannot use them except under lease or license, but by reason thereof, no monopoly in the pictures has been created, and moreover, the respondent's pictures are not indispensable to any exhibitor, as found

by the Commission. Exhibitors need pictures, to be sure, but not necessarily respondent's. Its competitors have pictures [159] which are also covered by copyrights and subject to lease; any person can make a picture and copyright it and any exhibitor is free to lease a copyrighted picture or refuse to do so.

The respondent has lawfully exercised its right to sell its product to the best advantage and in such quantities and to such persons as it chooses. It neither has a monopoly and, apparently, not the ability to acquire one. The percentage of the pictures produced in the film rentals received have progressively declined during the period covered. The means and methods employed in marketing its leases of films to prospective customers are matters within the business judgment of a private producer of films and carries with it the legal right to bargain and negotiate as the respondent did. The method of negotiation which has been condemned by the Commission, does not disclose a dangerous tendency unlawfully to hinder competition, nor does it create a monopoly. The findings are insufficient in law to support the conclusions of fact reached and therefore the petition to enforce paragraph 2 of the order to cease and desist must be denied.

Petition denied.

JAMES S. KIRK & CO. ET AL. *v.* FEDERAL TRADE
COMMISSION ¹

(Circuit Court of Appeals, Seventh Circuit. April 15, 1932)

No. 4140

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Ultimate determination of what constitutes unfair competition is for court, and not for Federal Trade Commission (Federal Trade Commission Act 1914, as amended; 15 USCA secs. 41-51).

EVIDENCE KEY-NO. 51.

Generally, court will look to lexicographer for definitions of words.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (2).

Sale of soap which does not contain 100 per cent olive oil, but contains oily and fatty elements other than olive oil, as "castile" soap, held not to constitute unfair competition (Federal Trade Commission Act 1914, sec. 5, as amended by act Feb. 13, 1925, sec. 2; 15 USCA sec. 45).

(The syllabus is taken from 59 F. (2d) 179)

On petition by James S. Kirk & Co. to review and set aside a cease and desist order entered by the Commission, The Procter & Gamble

¹ Reported in 59 F. (2d) 180. Case before Commission reported in 12 F. T. C. 272. Rehearing denied June 22, 1932. Petition for writ of certiorari denied by the Supreme Court on December 5, 1932. 287 U. S. 603.

Co. having been permitted to intervene as copetitioner. Order of Commission reversed in accordance with opinion.

Cutting, Moore & Sidley, of Chicago, Ill. (*D. F. McPherson* and *James F. Oates, jr.*, both of Chicago, Ill., *Frank F. Dinsmore*, of Cincinnati, Ohio, and *Horace Kent Tenney*, of Chicago, Ill., of counsel), for petitioners.

Robt. E. Healy, chief counsel, Federal Trade Commission, and *Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, both of Washington, D. C., and *Edward E. Reardon*, of New York City, for respondent.

Before ALSCHULER, EVANS, and SPARKS, Circuit Judges.

SPARKS, *Circuit Judge*:

The original petitioner, James S. Kirk & Co., hereinafter referred to as petitioner, brought this proceeding to review and set aside a cease and desist order entered by the Federal Trade Commission against petitioner pursuant to the provisions of Federal Trade Commission Act of 1914, c. 311, 38 Stat. 715, and certain amendatory acts.

The provisions of the statute which are pertinent to the issues in controversy are found in section 5 of the original act as amended in 1925, c. 229, section 2, 43 Stat. 939, 15 USCA section 45, and are set forth in the margin.²

The Commission's complaint, which was filed January 9, 1924, alleges that petitioner is in competition with others in the manufac-

² 15 USCA Sec. 45:

Par. 1. "Unfair methods of competition in commerce are declared unlawful.

Par. 2. "The Commission is empowered and directed to prevent * * * corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

Par. 3. "Whenever the Commission shall have reason to believe that any such * * * corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such * * * corporation a complaint stating its charges in that respect, * * *. If upon such hearing the Commission shall be of the opinion that the method of competition in question is prohibited by this subdivision of this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such * * * corporation an order requiring such * * * corporation to cease and desist from using such method of competition.

Par. 4. "If such * * * corporation fails or neglects to obey such order * * * the Commission may apply to the Circuit Court of Appeals of the United States for the enforcement of its order, * * * the court * * * shall have jurisdiction of the proceeding * * * and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission.

Par. 5. "Any party required by such order of the Commission to cease and desist * * * may obtain a review of such order in said Circuit Court of Appeals by filing in the court a written petition praying that the order * * * be set aside * * *. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission as in the case of an application by the Commission for the enforcement of its order, and the findings of the Commission as to the facts, if supported by testimony, shall in like manner be conclusive."

ture and sale of soap in interstate commerce; that among its competitors are a number who manufacture or import Castile soap from various countries; that genuine Castile soap took its name from the province of Castile, Spain; that it is a hard soap, the oil ingredient of which always has been, and now is, olive oil exclusively, that because of the qualities of olive oil as a soap material, and for other reasons, it is considered by the trade and the public generally as an excellent soap, free from substances harmful to the skin or delicate fabrics; that by the medical profession and drug trade it is considered to have qualities requisite for bathing infants and sick persons and for use in medical prescriptions, and is so used; that, in addition to making several brands containing various percent[180]ages of olive oil, Kirk & Co., for more than four years, has made seven brands of soap—all called Castile but none of which contain the words “olive” or “olive oil” in their names, and four of which contain the word “cocoa”—and that none of them have any olive oil content; that such labeling has the capacity and tendency to deceive the trade and public into the erroneous belief that they are genuine Castile soaps; that genuine Castile soaps are more costly than other soaps because of the higher cost of olive oil, and by reason thereof petitioner sells its soaps for less than its competitors who import, or manufacture, and sell genuine Castile soap; that such fact has the capacity and tendency to cause the trade and public to purchase petitioner’s so-called Castile soaps in preference to the genuine and more costly Castile soaps; and that all acts of petitioner as referred to are prejudicial to the public.

On December 12, 1928, the Commission made its findings of fact and issued to petitioner an order to cease and desist from using the word “olive,” or any representation indicating an olive oil source, or the word “Castile” and the words “olive oil soap,” either alone or in conjunction with any other word or words which are the name of, or are descriptive or suggestive of, an oil or fat, in labeling, branding, or otherwise describing soap for sale or sold in commerce, the oil or fatty composition of which is not wholly derived from olives; except that when an oil or fat of a soap is composed of two or more oils or fats including olive oil or fat, and in such proportion that the soap in any of its qualities is substantially affected by any ingredient from olives, the word “olive” shall not be used in the manner above enumerated unless the name of each oil or fat therein is used immediately in conjunction with the word “olive” or with said representation indicating an olive oil source, and in a manner equally conspicuous with and similar to that in which the word “olive” or said representation is so used, in order to indicate clearly that such soap is not made wholly from oil or fat derived from olives.

Findings of the Commission, which bear directly on petitioner's contentions, and its conclusion are set forth in the margin.⁸

On July 7, 1930, The Procter and Gamble Co. purchased the soap business and brands of Kirk & Co., and it was permitted to intervene as a copetitioner.

[181] The basis of the Commission's complaint is to the effect that Castile soap is one in which olive oil constitutes the sole oily or fatty ingredient. The Commission has found this to be true, as a matter of fact, and it is supported by some evidence. The respondent, therefore, insists that such finding is conclusive and that unfair competition is established.

In *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568, the court said:

We have heretofore pointed out that the ultimate determination of what constitutes unfair competition is for the court, not the Commission * * * *Federal Trade Commission v. Gratz*, 253 U. S. 421, 427.

* "Paragraph 5. Castile soap is a hard soap produced from oil or fat which is derived solely from olives and without the addition or admixture of any artificial perfume, or any substance as a filler or bulder. It derives its odor solely from the olive oil constituent in its composition.

"Castile soap is produced by the saponification of olive oil by the use of an alkaline salt. Caustic soda (sodium hydroxide) is the saponifying agent most commonly used in modern times in conjunction with olive oil to produce Castile soap."

"Parapragh 18. The word 'cocoa,' which has been and is being used by respondent as part of the brand name or description of some of its soaps which respondent sold and is selling as Castile soap describes or indicates an ingredient known as cocoa or chocolate."

"Paragraph 21. The use by respondent, either alone or together, of the word 'olive' or the words 'olive oil' in labeling, branding, or otherwise describing soap made partly of oil or fat derived from olives and partly of other oil or fat and offering such soap for sale and selling or causing the same to be sold as herein set forth without stating, immediately in conjunction with, or in association with, said word or words, and in a manner equally conspicuous with and similar in all respects to that in which said word or words are used, the name or names of the other oils or fats in the composition of the soap or that such soap is not made wholly of oil or fat derived from olives has the tendency and capacity to deceive members of the public into the belief that such soap was and is composed, as to its fatty composition, exclusively of oil or fat derived from olives.

"Paragraph 22. Relying upon the representations of respondent in the labeling, branding, and description of its soaps, sold and caused to be sold by respondent as and for Castile soap and olive oil soap, as set forth above, and because respondent is and has been enabled to offer for sale and has offered and sold its said soaps at a lower price by reason of their composition than the prices at which respondent's competitors can offer and sell and have offered and sold Castile soap, members of the public, including physicians, pharmacists, druggists, and others have been deceived into purchasing and using respondent's said soaps instead of and in place of Castile soap or olive oil soap, among other purposes for use in the compounding of medical prescriptions and for use in connection with the care of babies.

"Paragraph 23. There are among the competitors of respondent referred to herein many who make and sell soap made, as to its oil or fatty composition, only of oil or fat derived from olives and who properly represent their said soap as Castile soap and as olive oil soap, and respondent's acts and practices as above set forth tend to and do divert business from such competitors and otherwise injure and prejudice them."

"CONCLUSION

"The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 (of act of 1914) * * *."

Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter, upon the pleadings, testimony and proceedings, a decree affirming, modifying, or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission. If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the Commission—the primary fact-finding body—with direction to make additional findings, but if from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay the court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the Interstate Commerce Act.

It is contended first by petitioner that there are certain material facts, not covered by the findings, which were proven by the evidence and were not contradicted, and which conclusively disprove unfair competition.

For instance, by far the greater number of witnesses, from all parts of the United States, testified that Castile soap meant to them a pure high-grade toilet soap; or that it implied no special vegetable oil as an ingredient; or that they had never associated any brand of Castile soap with olive oil as an ingredient; or that it meant a soap which would lather satisfactorily in hard water. One hundred fifteen witnesses testified that Castile soap meant to them a soap made from cocoanut oil; while 110 witnesses testified that the name indicated that the oily or fatty ingredient was exclusively of olive oil. Regardless of which of these witnesses, if any, were giving the proper meaning of the word "Castile" when used in connection with soap, the substance of all their testimony proves beyond question, so far as individual opinions are concerned, that the word "Castile" when used with soap means different things to different persons. This diversity of opinion is quite a pertinent fact in the determination of the issues before us. It not only bears directly on the issue of whether petitioner's alleged acts have the capacity and tendency to deceive the trade and the general public; but it is quite material in determining the real meaning of the word "Castile" when used in connection with soap, or whether it has more than one meaning, as contended by petitioner.

As a general rule we look to the lexicographer for definitions of words; but, on the other hand, the lexicographer bases his definition upon the use which the public has given the word. Unfortunately, or fortunately, there are many words whose meanings, once correctly and definitely defined, have subsequently through usage acquired different or additional meanings, and such enlarged meanings have been recognized and approved in later dictionaries. Indeed, there

are many instances in which it is difficult to trace the connection between the root meaning of a word and its present meaning as established and recognized by usage.

It is contended by petitioner that the word "Castile" when used in relation to soap means nothing as to the constituent elements, but refers to the quality of the soap as a whole. The word "Castile" alone does not mean soap of any kind, nor is it the name of a constituent element of any soap ever made. It is the name of a province in Spain, and the Commission finds as a fact that Castile soap derives its name from the fact that it was first made in the province of Castile in Spain, in a very early day, and that its oily or fatty ingredient was derived [182] exclusively from olives; that by custom and usage any soap whose sole oily or fatty ingredient is derived from olives is known as Castile soap, regardless of its place of manufacture. We are convinced from the record before us that during the earlier years Castile soap was recognized and considered as a soap whose sole oily and fatty ingredient was derived from olives, and the dictionaries of the various countries, including America, so defined it, and the pharmacopœias designated it as the one to be used in all medical preparations and prescriptions in which soap was required because its sole oily or fatty ingredient was olive oil. The words "Castile soap" thereby became synonymous with "olive oil" soap, and such synonymity still prevails with many people.

In the earlier years of the last century, however, some foreign manufacturers made and sold soaps which they called "Castile" soap whose oily or fatty ingredient was not solely of olive oil, and much of those products was imported into America. At that time the soap industry in America was begun, and many of our earlier soap makers did the same thing and have continued the practice up to the present time. During seventy-five years last past that practice has grown to such an extent that practically all of our soap makers are resorting, more or less, to that custom. So far as the record shows, Holbrook & Co. is the only soap manufacturer in the United States whose entire product is made solely of olive oil as the fatty ingredient and is labeled "Pure Olive Oil Castile." That company admitted that it was not a competitor of petitioner, and that almost all of its product was used by the textile trades.

The United States Pharmacopœia from its beginning valiantly attempted to preserve the meaning of the words "Castile soap" as a soap whose oily or fatty ingredient consisted solely of olive oil, and such a soap was the only one recognized by it as the equivalent of "sapo," which is the medical term for soap.

In the last edition of that work, however, the equivalent of "sapo" is given as "olive oil Castile soap." Petitioner claims that this fact

is an implied recognition on the part of the authors of the existence of other Castile soaps. Such conclusion does not necessarily follow. The action of the authors may well have been an effort to protect the medical profession and the public by designating what they regarded as genuine Castile soap as distinguished from quasi Castile soap.

A perusal of the very voluminous record in the case convinces us that the present contrariety of opinion as to the meaning of the words "Castile soap" is a result of an effort on the part of certain soap manufacturers, both foreign and American, extending from very early times to the present, to corrupt and change the public's understanding of the meaning of those words to the manufacturers' advantage. That this effort has been in a great degree successful can no more be denied than the methods employed can be approved. As a result of such effort it is not at all surprising that the present laity should have such diversified views as to the meaning of the words, for the record supports us in saying that a greater part of the laity knows very little and cares less as to the constituent elements of any soap.

That in former years the methods used did deceive and had the capacity and tendency to deceive is fully supported by the evidence, and were it not for the action of the Bureau of Standards of the United States Department of Commerce that capacity and tendency would still exist. In *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, Justice Brandeis, speaking for the court, said:

The fact that misrepresentation and misdescription have become so common in the * * * trade that most dealers no longer accept labels at their face value, does not prevent their use being an unfair method of competition.

By the act of March 3, 1901, 31 Stat. 1449, 15 USCA 271, et seq., Congress established the National Bureau of Standards and authorized that bureau's director to issue bulletins for public distribution containing such information as might be of value to the public or facilitate the bureau in the exercise of its functions. Pursuant thereto, the following bulletin was promulgated and distributed:

UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF STANDARDS

Circular No. 62, "Soap," 3d edition, published January 24, 1923, at page 9:

Castile soap was originally made from low-grade olive oils. The name now represents a type of soap, the term "Castile" being applied to a soap intended for toilet or household use, sold usually in large, unwrapped, unperfumed bars, which are cut up when sold or when used. It is often drawn directly from the kettle [183] without "crutching," but is sometimes crutched a little or even enough to make it float and is sometimes milled. It is also sold in small bars

both wrapped and unwrapped. The type is not one easily defined, so now when made from olive oil it is invariably sold as olive-oil Castile. There are soaps made entirely from coconut oil which are sold as coconut Castiles or hard-water Castiles. Many other Castiles are made from a mixture of coconut oil and tallow.

This circular was discussed in petitioner's briefs and it was ignored by respondent. We deem it quite pertinent and decisive of the question before us. The Government, through its agency, the Bureau of Standards, has thus committed itself to the proposition that Castile soap may be made of oily and fatty elements other than olive oil. Being solely a question of fact we deem it expedient for other departments of the Government, including the judiciary, to accept such construction, if for no other reason than that of consistency.

This being true it necessarily follows that petitioner's methods which are the basis of this action do not constitute unfair competition in so far as they relate to the use of the word "Castile."

The Commission's findings point out various of petitioner's soaps which are branded or labeled with the words "olive" or "olive oil" and having oil content of less than 100 per cent olive oil,⁴ and the order to cease and desist prohibits petitioner also from using the words "olive" or "olive oil" in connection with its soap product, except under certain conditions named in the order. The complaint does not refer to the use of those words nor ask any order concerning

⁴ Paragraph 15:

1. "Oreno Olive Oil Castile"; of which it was said in catalogue illustration of the soap, "Oreno Olive Oil Castile, made in North Chicago, U. S. A., from genuine olive oil." The fatty composition of this soap is tallow, cocconut oil, and olive oil, of unknown percentages.
2. "Oreno Genuine Olive Oil Castile" contains 90 per cent olive oil and 10 per cent cocconut oil.
3. "Baby Bath Castile" having on each cake the phrase, "Olive Oil Soap," and on the box end, "Made with pure olive oil." The composition of this soap is 55 per cent tallow, 10 per cent cocconut oil, and 35 per cent olive oil. Since 1926, there is printed in small type on each cake the words, "Contains olive oil, cocconut oil, and refined tallow."
4. "Olive Oil Castile" with those words stamped on the soap, and in the catalogue the statement "large white cakes of milled olive oil soap." Its fatty content is 80 per cent tallow, 10 per cent cocconut oil, and 10 per cent olive oil.
5. "Nursery Olive Oil Castile": Fatty content, 90 per cent olive oil, 10 per cent cocconut oil.
6. "Field's Olive Oil Castile": Made partly of olive oil and partly of other oils or fats, percentages not disclosed.
7. "Glendora Castile Soap" having stamped on the bars "Glendora 90 per cent Olive Oil Soap." It has 90 per cent olive oil and 10 per cent other oils.
8. "Harmony Olive Oil Castile" having fatty content of 60 per cent tallow, 10 per cent cocconut oil, and 30 per cent olive oil.
10. "Washrag Castile" having on the labels the words "Olive Oil Castile," and the statement "This is a real milled olive oil Castile soap of highest quality" and beneath an illustration the words "No. 425 Olive Oil Washrag Castile." Its fatty content is tallow 60 per cent, cocconut oil 10 per cent, olive oil 30 per cent.

Paragraph 16:

"A toilet soap having printed on the wrappers, 'Kirk Olive. Trade-mark registered,' and having fatty content of tallow 60 per cent, cocconut oil 10 per cent, palm oil 15 per cent, olive oil 15 per cent."

them, but it is contended by respondent that, inasmuch as the words "Castile soap" indicate 100 per cent olive oil content and are synonymous with the words "olive" or "olive oil" as applied to soap, the allegations of the complaint, and the evidence, are sufficient to support the findings in that respect. But inasmuch as we find against respondent's contention of such synonymity, its contention in this respect can not prevail.

The order to cease and desist is therefore reversed, with permission to respondent, if it shall so desire, to amend its original complaint against petitioner in such manner as to include petitioner's use of the words "olive" and "olive oil" in connection with soap having oil content of less than 100 per cent olive oil, or otherwise to proceed in respect to such use of the words "olive" and "olive oil"; and in such case to permit further evidence to be taken, if either party desires so to do, and for all other necessary proceedings not inconsistent with this opinion.

ROYAL MILLING CO. ET AL. *v.* FEDERAL TRADE COMMISSION¹

(Circuit Court of Appeals, Sixth Circuit. May 4, 1932)

Nos. 5958, 6098-6102

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Federal Trade Commission may file complaint only if proceeding would be to public interest (Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

To warrant proceeding by Federal Trade Commission, public interest must be specific and substantial.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Requirement that proceeding by Federal Trade Commission must be to public interest is not satisfied by proof of misapprehension and confusion on purchasers' part or even that they were deceived.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

"Public interest" authorizing proceeding by Federal Trade Commission exists only when substantial part of purchasing public is injuriously affected or suffers loss.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Community's interest that private rights be respected is not "public interest" authorizing proceeding by Federal Trade Commission.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Desist order prohibiting mixers of self-rising and "processed" flour from using words "mill" or "milling" in corporate or trade-name held unauthorized; no public interest being involved.

Commission's desist order was unauthorized, since, although Commission found that, when terms "mills" or "milling company" or "manu-

¹ Reported in 58 F. (2d) 581. Case before Commission reported in 15 F. T. C. 38. Decision of lower court reversed by Supreme Court February 6, 1933. 288 U. S. 212.

facturer of flour" are used in flour industry, it is generally understood by dealers and purchasing public to mean concern that grinds wheat into flour, yet there was no finding that either dealer or consumer obtained an inferior product, or a product other than he sought to purchase, and record failed wholly to establish any injury to public or any loss suffered by it, either individually or in the aggregate, and hence, if there was any deception in representations by concerns using words "mill" or "milling" in corporate name, although not grinding wheat into flour, it amounted at most to private wrong, and one not to be redressed by action of Commission.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Finding that sellers of flour maintained no laboratory for testing flours held not to warrant prohibiting use of word "mill" or "milling" in names of corporations not grinding wheat into flour.

Assuming such finding to be based upon substantial evidence, desist order was not appropriate to such alleged evil.

(The syllabus is taken from 58 F. (2d) 581)

Petitions by Royal Milling Co. and five others to review orders of Commission. Orders set aside.

T. H. Malone, of Nashville, Tenn., for petitioners.

Baldwin B. Bane, of Washington, D. C. (*Robert E. Healy* and *Martin A. Morrison*, both of Washington, D. C., on the brief), for respondent.

Before MOORMAN, HICKENLOOPER and SIMONS, Circuit Judges.

SIMONS, *Circuit Judge*:

Nashville, Tenn., if not the center of the flour industry in the South, is at least the [582] largest center of the self-rising flour industry in the South, if not in the world. The six petitioners are all located in Nashville; they sell self-rising flour throughout the Southeastern States, in interstate commerce, and have built up a substantial industry. If not originators of the process of mixing self-rising flour, nor even its first producers, they were undoubtedly early in the field, and in some respects pioneers in the industry, one of the petitioners having commenced business in 1902, and the others at dates from 1905 to 1925.

"Self-rising flour" is used extensively throughout the South in making griddle cakes, biscuits, and other hot breads, and consists of flour with salt, soda, and phosphate added in proper proportions and properly mixed. The petitioners buy their flour from grinding mills, but are not themselves grinders of wheat into flour. They also market a commodity called "processed flour." This is a blend of two or more flours of different content with a small percentage of phosphate. "Processed flour" tends to counteract an overdose of soda in the hands of an unskilled housewife, and restores to some extent the mineral content of flour removed in the grinding process.

All of the petitioners in their corporate or partnership names use the words "mill" or "milling." They also represent themselves as manufacturers. Considerable machinery is required for the making of self-rising and processed flour. Mills that grind wheat into flour and sell in the Southeastern States also produce self-rising flour. The process used by the grinding mills is substantially the same as that of the petitioners, and requires substantially the same machinery and the same amount of time. The petitioners' product, and that of the grinding mills, are in active competition in the territory. There is also evidence that petitioners' product for some time came into competition with the product of one or two concerns in the same business which did not represent themselves as mills or milling companies. This competition, however, was never substantial, and it is doubtful on the record whether it still exists. Most of the petitioners were in the self-rising flour industry before the grinding mills undertook to produce the commodity, although one or two of the petitioners may have begun their enterprises later. Upon occasions some of the grinding mills buy surplus flour from other grinding mills, and when this is done the purchasers sell the flour under their own labels.

Early in the proceedings the petitioners offered by letter, and again in their amended answers, to add the phrase "Not grinders of wheat" to their trade or corporate names wherever used, to "cut off the possibility of deceiving or misleading any purchaser or customer." No attention was paid to the offer, and after a hearing in one of the cases, and a stipulation adopting the evidence in that case to all of the other cases, the several orders here reviewed were made by the Commission, directing the several petitioners to desist from using the words "mill" or "milling" in their corporate or trade names, and to cease from making representations that they are manufacturers of flour, or that the flour sold by them comes direct from manufacturer to purchaser.

The proceedings which led to the orders here complained of were begun by the respondent under the provisions of section 5 of the Federal Trade Commission Act. The meaning of the act, its purpose, the extent of the power conferred by it upon the Federal Trade Commission, and its supplementary relationship to the Sherman Antitrust Act and the Clayton Act, have frequently been considered by this court. *L. B. Silver Co. v. Federal Trade Commission*, 289 Fed. 985; *Procter & Gamble Co. v. Federal Trade Commission*, 11 F. (2d) 47; *Berkey & Gay Furniture Co. v. Federal Trade Commission*, 42 F. (2d) 427; *Raladam Co. v. Federal Trade Commission*, 42 F. (2d) 430; *Ohio Leather Co. v. Federal Trade Commission*, 45 F. (2d) 39; *Federal Trade Commission v. Good-Grape Co.*,

45 F. (2d) 70. The issues here presented do not, in our opinion, require, nor does their novelty now invite the careful study there pursued, nor the painstaking argument there presented. It is settled that a complaint may be filed by the Commission, interstate commerce being involved, only if it shall appear among other things that a proceeding would be to the interest of the public, that the public interest must be specific and substantial, that this requirement is not satisfied by proof that there has been misapprehension and confusion on the part of purchasers, or even that they have been deceived. *Federal Trade Commission v. Klesner*, 280 U. S. 19. *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643.

It is clear from the Klesner case that public interest in an unfair practice may be [583] said to exist only when a substantial part of the purchasing public is injuriously affected by it or has suffered a loss. "It is not claimed that the article supplied by Klesner was inferior to that of Sammons, or that the public suffered otherwise financially by Klesner's use of the words "Shade Shop." The mere fact that it is to the interest of the community that private rights be respected is not enough to support a finding of public interest. Public interest is sometimes said to exist when the unfair method employed threatens the existence of present or actual competition, when the circumstances involve flagrant suppression of the weak by the strong, or when the individual loss is small, but the aggregate is so serious and widespread as to make the matter of public consequence.

There is here manifestly no threat to competition. Such effect as the Commission's orders may have upon the active competition that now exists will be in the direction of stifling rather than of preserving it. There is no oppression of the weak by the strong, the grinding millers being strong concerns organized into powerful trade organizations, and the record fails wholly to establish any injury to the public or any loss suffered by it, either individually or in the aggregate.

It is not shown that the petitioners' product is injurious to the consumer, or that it is in any way different from or inferior to the product of their competitors. Nor did the Commission so find. The Commission goes no further than to conclude that when the terms "mills" or "milling company" or "manufacturer of flour" are used in the flour industry, it is generally understood by dealers and the purchasing public to mean a concern that grinds wheat into flour; that many dealers and consumers prefer to buy flour that comes directly from a concern that grinds the wheat into flour, rather than from one that buys the flour from a grinding concern, because they think that they get from such grinding concern a more

uniform product, or better product for less money; that many persons have been buying petitioners' flour because from the use of such words or terms in the names under which they do business they believe that they are manufacturers of flour. There is no finding that either dealer or consumer obtained an inferior product, or a product other than he sought to purchase. The case differs, therefore, in the essential prerequisite of public injury from *Federal Trade Commission v. Winsted Co.*, 258 U. S. 483, and *Federal Trade Commission v. Good-Grape Co.*, *supra*. Failing to see any public injury, or financial loss in the methods of competition here reviewed, we find no public interest exists, much less one that is specific and substantial. If there is any deception in the petitioners' representations or trade names, it amounts at most to a private wrong, as in the Klesner case, and one not to be redressed by action of the Commission.

Another finding upon which the Commission's conclusions are based remains to be noted. The Commission found that the petitioners do not have or maintain a laboratory for testing or analyzing flours which they buy or sell; that they use only the paddle test, by which the characteristics or qualities of flour can not be determined. Assuming this finding to be based upon substantial evidence, we fail to see the appropriateness of the desist order to the evil, if any such exists. *Berkey & Gay Furniture Co. v. Commission*, *supra*. The orders of the Commission in all of the six cases must be set aside and held for naught.

INDIANA QUARTERED OAK CO. v. FEDERAL TRADE COMMISSION¹

(Circuit Court of Appeals, Second Circuit. May 9, 1932)

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.

Circuit Court of Appeals has original jurisdiction in matter of setting aside or modifying orders of Federal Trade Commission (Jud. Code sec. 128 (28 USCA sec. 225); Federal Trade Commission Act sec. 5; 15 USCA sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-No. 80½.

Circuit Court of Appeals, on good cause shown and where equity demands, may vacate its desist order entered in proceeding to review Federal Trade Commission's order.

INJUNCTION KEY-No. 164.

Power to modify injunctive order on good cause shown and where equity demands is inherent in equity court.

¹ Reported in 53 F. (2d) 182. Original case reported in 26 F. (2d) 340. For case before the Commission see 11 F. T. C. 271.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

In proceeding to review Federal Trade Commission's order, order of affirmance, directing petitioner to desist from designating woods, not in mahogany family, as "mahogany" or "Philippine mahogany", *held*, under circumstances, to require modification so as to permit petitioner to use latter term.

Circumstances disclosed that, after Circuit Court of Appeals entered its order and mandate, Federal Trade Commission [183] began investigation in connection with other dealers in same woods coming from Philippines; that investigation made by Commission satisfied it that using qualifying term "Philippine" in sale of such wood and selling it as "Philippine mahogany" would eliminate the unfair competition charged against petitioner originally; and that, if order to cease and desist in its original form should stand against petitioner, it would be unable fairly to compete with its competitors who were permitted by Commission to use term "Philippine mahogany" after such subsequent investigation.*

(The syllabus is taken from 58 F. (2d) 182)

On motion to modify an order and decree to cease and desist entered herein (26 F. (2d) 340).

Motion granted.

Harry D. Nims, of New York City, for petitioner.

Robert E. Healy, of Washington, D. C., chief counsel for Federal Trade Commission.

Before MANTON, SWAN, and CHASE, Circuit Judges.

MANTON, *Circuit Judge*:

An order was issued against the petitioner, on August 16, 1927, to cease and desist from advertising, selling or offering for sale certain woods of the Philippine Islands as mahogany or Philippine mahogany. An application was made by the petitioner to review the order in this court and the order was affirmed on May 14, 1928. See *Indiana Quartered Oak Co. v. Federal Trade Commission (CCA)*, 26 F. (2d) 340; certiorari denied, 278 U. S. 623. The order and mandate of this court was entered against the petitioner on October 14, 1929. It required the petitioner to refrain from designating its goods as mahogany or Philippine mahogany.

It appears from the petition now filed that at the time of the entry of the order to cease and desist against the petitioner, other dealers and users of similar woods of the Philippine Islands were

*The original decrees in four other Philippine mahogany cases were correspondingly modified so as to permit the use of the word "mahogany," if accompanied by the word "Philippine" as applied to Philippine timber of the species herein concerned. The cases, reported in 11 F. T. C. at 248, 293, and 313, follow:

Hammond Lumber Co. (p. 313); Kirschmann Hardwood Co. (p. 293); Robert Dollar Co. (p. 313). Circuit Court of Appeals for the Ninth Circuit at San Francisco, on June 7, 1932.

Thomas E. Powe Lumber Co. (p. 248). Circuit Court of Appeals for the Eighth Circuit on June 10, 1932.

established in business and they advertised, sold, and designated their same woods as Philippine mahogany. Subsequent to the order of affirmation of this court, these dealers petitioned the Federal Trade Commission to institute new proceedings against one of their number, alleging that a more complete disclosure of the facts regarding the subject matter would effect a different result. This the Federal Trade Commission did, selecting the Gillespie Furniture Co. of Los Angeles, Calif., as respondent, and issued its complaint against it on December 14, 1929. The allegations of that complaint were the same as contained in the complaint issued against this petitioner. An answer was filed, the trial proceeded on the issues thus framed, and a very voluminous record of 8,000 pages was made. On this record, the Federal Trade Commission, one commissioner dissenting, dismissed the complaint against the Gillespie Furniture Co. Between the time of the issuance of the complaint against the Gillespie Furniture Co. and the dismissal of that complaint by the Commission, complaints were filed against 14 other dealers or users of the same kind of wood, also advertised and sold as Philippine mahogany. Subsequent to the dismissal of the petition against the Gillespie Furniture Co. these complaints were dismissed by the Commission upon a stipulation and order of dismissal reading:

Respondent hereby stipulates and agrees that in its sale, description, and advertisement of the wood of the Philippine Islands which it has heretofore designated and described as "Philippine mahogany" and articles of commerce made therewith, it will not employ the word "mahogany" in connection with the sale of said wood without the modifying term "Philippine."

It is here alleged that the 15 dealers referred to above, against whom complaints were issued, and other dealers and users of the same wood who are not bound by the orders of any court do now freely advertise, sell, and designate their wood and products composed thereof by the common and accepted name of Philippine mahogany, whereas this petitioner by reason of the order and decree of this court is restrained from designating its same wood by that designation. The petition alleges that the defendant is handicapped in responding to the invitations to bid offered by architects and builders when Philippine mahogany is designated in the specifications and therefore is not free to compete with other dealers in the same wood. It claims it is thus penalized by reason of the order of this court while its competitors are under no restraint, due to the subsequent action taken by the respondent with reference to its competitors. It points out that similar orders were entered against other dealers in the Eighth and Ninth Circuit Courts of Appeals, and that the Federal Trade Commission on April 15, 1932, directed its chief counsel to prepare a petition to [184] be filed in those courts, in which the Federal Trade Commission and the dealers against whom orders

of the court were entered, similar to the order against this petitioner, will jointly ask for a modification so that they will be free to designate their wood as Philippine mahogany and not as mahogany without qualification.

The prayer for relief is that this court modify its former order and decree to the extent of permitting petitioner to be free to use the term "Philippine mahogany" consistent with the order of the Commission entered against the 14 other dealers and users of wood, or that we vacate our order and decree so entered and remand the proceedings, together with the record therein, to the Federal Trade Commission for further consideration.

The Circuit Courts of Appeals are granted exclusive jurisdiction to enforce, set aside, or modify orders of the Commission. Judicial Code, section 128, 43 Stat. 813 (28 USCA sec. 225); Federal Trade Commission Act, section 5, 38 Stat. 719 (15 USCA sec. 45). This court therefore has original jurisdiction in the matter of setting aside or modifying orders of the Commission. With such original jurisdiction, it has the power to vacate its own order upon good cause shown and where equity demands such action. Such power is inherent in a court of equity where a modification of an injunctive order is sought. *United States v. Swift & Co.*, 286 U. S. 106, decided May 2, 1932; *In re Jackson*, 9 Fed. 493; *Lowe v. Prospect Hill Cemetery Association*, 75 Nebr. 85; *Larson v. Minnesota Electric Railway Co.*, 136 Minn. 423.

The allegations of the petition, which are all admitted by the respondent, set forth sufficient reason why we should modify the order entered. The subsequent investigation made by the Commission satisfied it that using the qualifying term "Philippine" in the sale of the petitioner's wood and selling it as "Philippine mahogany" would eliminate the unfair competition charged against it originally when this case was here before, and now if the order to cease and desist in its original form stands against the petitioner it places it in a position where it would be unable to fairly compete with its competitors. Under these circumstances, this court should act and will do so. An order will therefore be entered by this court modifying the order of affirmance directing the petitioner to cease and desist, so that petitioner will be permitted to use the term "Philippine mahogany" consistent with the provisions of the order of the Commission entered on November 7, 1931, as against other named respondents and petitioners in the trade of the petitioner.

Motion granted.

NORTHAM WARREN CORPORATION v. FEDERAL TRADE COMMISSION¹

(Circuit Court of Appeals, Second Circuit. June 6, 1932)

No. 300

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Purpose of Federal Trade Commission Act is to curb practices which are unfair and would create monopoly and undue restraint of trade (Federal Trade Commission Act, 15 USCA secs. 41-51).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Practice, though unethical, would still be beyond purview of Federal Trade Commission Act, if lacking public interest necessary to support Commission's jurisdiction.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½.

Business practice, to give Federal Trade Commission jurisdiction, must be unfair and mislead public.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68(1).

Advertising by manufacturer of toilet articles, using admittedly truthful testimonials without disclosing payment therefor, *held* not to create monopoly, or undue restraint of trade, so as to constitute unfair competition (Sherman Antitrust Act, 15 USCA secs. 1-7, 15; Clayton Act, 38 Stat. 730; Federal Trade Commission Act sec. 5, 15 USCA sec. 45).

Manufacturer of toilet articles and preparations paid to certain well-known persons of the theatrical and social life of the community substantial sums of money for their consent to use their testimonials with their signatures thereto, indorsing the manufacturer's products. The Federal Trade Commission found that the statements contained in the testimonial were truthful expressions of opinion of and concerning manufacturer's products. Manufacturer, however, in using testimonials for advertising, did not disclose that it had paid substantial sums of money therefor.

(The syllabus is taken from 59 F. (2d) 196)

Petition by Northam Warren Corp. to review order of Commission directing it to cease and desist its methods of advertising. Order reversed.

Breed, Abbott & Morgan, of New York City (*Dana T. Ackerly* and *Edward A. Craighill, jr.*, both of New York City, of counsel), for petitioner.

Robert E. Healy, chief counsel, Federal Trade Commission, *Martin A. Morrison*, assistant chief counsel, and *Richard P. Whiteley*, all of Washington, D. C., for respondent.

Blake & Vorhees, of New York City (*Clinton H. Blake, jr.*, and *Miner W. Tuttle*, both of New York City, of counsel), *amicus curiae*.

¹ Reported in 59 F. (2d) 196. Case before Commission reported in 15 F. T. C. 389.

Covington, Burling & Rublee, of Washington, D. C. (*J. Harry Covington* and *Dean Acheson*, both of Washington, D. C., and *H. Thomas Austern*, of New York City, of counsel), for Standard Brands.

Before MANTON, SWAN, and CHASE, Circuit Judges.

MANTON, *Circuit Judge*:

This is a petition to review an order of the Federal Trade Commission of December 14, 1931, ordering the petitioner to cease and desist in its advertising and use of testimonials and endorsements of its toilet articles and preparations, for which testimonials or indorsements the petitioner has paid substantial sums of money without disclosing that fact in the advertisements. The petitioner concedes that it paid to certain well-known persons of the theatrical and social life of the community, substantial sums for consent to use their testimonials with their signatures thereto. The statements contained in the tes[197]timonials, the Commission expressly found, were truthful expressions of opinion of and concerning petitioner's products. They accurately set forth the opinion of each of the several authors of the testimonials or recommendations. The Commission, however, found that the failure to disclose that the petitioner paid substantial sums of money to the persons named for the testimonials "has the capacity and tendency to mislead and deceive the ultimate purchasers of said preparations into the erroneous belief that said testimonials are entirely voluntary and unbought, and tends to and does divert trade from competitors who do not use purchased testimonials in advertising their products."

The petitioner is a New York corporation engaged in manufacturing toilet articles, and particularly preparations for the care of finger nails and cuticle which are sold under the trade name of Cutex. These preparations are sold in interstate commerce through jobbers and retailers. It has an annual sales volume of between two and three million dollars.

The question is therefore presented whether Congress has conferred upon the Federal Trade Commission jurisdiction, in the interest of the public, to prohibit as an unfair method of competition, tending to create a monopoly or unduly to restrain trade, the use of admittedly truthful testimonials, unless accompanied by a statement that payment has been made for thier use.¹ There is no claim of misbranding, falsity or insufficiency in the statement labeling the product. In such case action by the Commission would be justified under the provisions of the act, for such would be deception

¹ New York Civil Rights Law (art. 5, sec. 50) [Consol. Laws, N. Y. C. 6] forbids any firm or corporation to use, for advertising purposes or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person; such use, without consent, is a misdemeanor.

necessarily tending to promote unfair competition with those who were selling the true article as the genuine product. *Federal Trade Commission v. Eastman Kodak Co.*, 274 U. S. 619; *Federal Trade Commission v. Western Meat Co.*, 272 U. S. 554; *Berkey & Gay Furniture Co. v. Federal Trade Commission*, 42 F. (2d) 427 (CCA 6). The quality of the petitioner's products is not brought into question; nor is there a charge that its products were inadequately labeled or so testified to, by testimonials, as to induce the public to purchase from it under practices of deception. The indorsements are said to be neither exaggerations nor untruthful. There is no claim of monopoly. It would seem, therefore, that there was no violation of the Sherman Antitrust Act or Clayton Act. While the testimonials, if having merit, may tend to increase the volume of business, still, if an honest opinion is expressed under the signature of the giver of such testimonial, the public can not be presumed to be induced to purchase the petitioner's products in any way or manner that might be said to tend to divert trade from competitors who do not use testimonials in advertising their products. It is doubtful if the public is gullible enough to believe that such testimonials are given without compensation. But, if they are paid for, providing they are truthful, no one is deceived.

Section 5 of the Federal Trade Commission Act (USC, title 15, sec. 45; 38 Stat. 717) was recently considered by the Supreme Court in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, where the court pointed out that the act was supplementary to the Sherman Antitrust Act and the Clayton Act, *Federal Trade Commission v. Beech-Nut Co.*, 257 U. S. 441, and said:

The object of the Trade Commission Act was to stop in their incipency those methods of competition which fall within the meaning of the word "unfair."
* * * In a case arising under the Trade Commission Act, the fundamental questions are, whether the methods complained of are "unfair," and whether, as in cases under the Sherman Act, they tend to the substantial injury of the public by restricting competition in interstate trade and "the common liberty to engage therein." The paramount aim of the act is the protection of the public from the evils likely to result from the destruction of competition or the restriction of it in a substantial degree, and this presupposes the existence of some substantial competition to be affected, since the public is not concerned in the maintenance of competition which itself is without real substance. Compare *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291.

The Supreme Court, referring to the words "unfair method of competition," said in *Federal Trade Commission v. Gratz*, 253 U. S. 421, at page 427:

They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dan[198]gerous tendency unduly to hinder competition or create monopoly.

The Federal Trade Commission Act does not purport to establish a decalogue of good business manners or morals. Its purpose is to strike down at their inception practices which are unfair and which, if permitted to run their full course, would result in the creation of a monopoly and an undue restraint of trade. Even if a practice may be regarded as unethical, it would still be beyond the purview of the act if it lacks the public interest necessary to support the Commission's jurisdiction. *Federal Trade Commission v. Klesner*, 280 U. S. 19. The Commission does not suggest that these testimonials tend to create a monopoly; they do not have a tendency to create an undue restraint of trade. The strongest argument the respondent makes is that failure to state the price paid for the testimonial amounts to deception and misrepresentation concerning the petitioner's product and in that way the petitioner is able to deprive honest manufacturers of a market. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483. But where unlawful restraint of trade has been ordered to be discontinued it has always appeared that there was some dishonesty in labeling or marketing the goods. *Federal Trade Commission v. Winsted Hosiery Co.*, *supra*; *Guarantee Veterinary Co. v. Federal Trade Commission*, 285 Fed. 853 (CCA 2); *Royal Baking Powder Co. v. Federal Trade Commission*, 281 Fed. 744 (CCA 2); *Procter & Gamble v. Federal Trade Commission*, 11 F. (2d) 47 (CCA 6). In order that the Commission proceed in the public interest, the courts have insisted not only upon a showing that the practice is unfair and disapproved, but also that the public are misled thereby. *Federal Trade Commission v. Klesner*, *supra*.

The use of testimonials, which are truthfully stated under the signature of the giver, can not in any sense be regarded as unfair competition or as involving a tendency to restrain competition unduly, and the Commission was without jurisdiction to interfere. In *New Jersey Asbestos Co. v. Federal Trade Commission*, 264 Fed. 509, this court held that a long-standing practice of entertainment of buyers and employees of customers, such as furnishing liquor, cigars, meals, and theater tickets is not an unlawful practice giving the Commission jurisdiction to act. In *Ostermoor & Co. v. Federal Trade Commission*, 16 F. (2d) 962, we held that an advertisement showing a picture of a mattress uncovered at one end and extending to a surprising degree, exaggerating the actual thickness and resiliency of the layers, was not an unfair method of competition. We said:

In our judgment, this pictorial representation of the process of manufacturing Ostermoor mattresses and of the materials used therein, even though exaggerated as to their characteristics, can not deceive the average purchaser * * *. There is no basis for the finding that "substantial numbers of purchasers had been misled and deceived by the grossly exaggerated pictorial representation."

Because a prominent person ventures an opinion without being requested to do so is no guaranty either of veracity or good judgment. If the testimonials involved here represent honest beliefs of the indorsers, there is no misrepresentation concerning the product, and no unfair competition is created. We have no right to presume that indorsers of commercial products falsify their statements because they have received compensation. There are no misrepresentations and the Commission was without jurisdiction.

Order reversed.

APPENDIX

**FEDERAL TRADE COMMISSION ACT
CLAYTON ACT
EXPORT TRADE ACT
SHERMAN ANTITRUST ACT
RULES OF PRACTICE**

FEDERAL TRADE COMMISSION ACT¹

[Approved Sept. 26, 1914]

[PUBLIC—No. 203—63D CONGRESS]

[H. R. 15613]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION. (38 Stat. 717; 15 USCA., sec. 41.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be com[718]posed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

Term, seven years.

¹ Reported decisions of the courts for the period covered by this volume (Dec. 24, 1931, to July 17, 1932, inclusive) and arising under this act are printed in full at p. 657 et seq. Previously reported decisions will be found set forth in Appendix II of Volumes II-XIV, inclusive, of the Commission's Reports, and in volume 15 at p. 597 et seq. Decisions handed down prior to Jan. 1, 1930, may also be found compiled and indexed in the Commission publication entitled "Statutes and Decisions—Federal Trade Commission—1914-1929."

Note should also be made of the case of *Crowell v. Benson*, Feb. 23, 1932, 285 U. S. 22, in which the Supreme Court gave extensive consideration to questions involved in judicial review of fact-finding bodies.

It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.

Chairman to be chosen by commission. Pursuit other business prohibited. Removal by President.

shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Vacancy not to impair exercise of power by remaining commissioners.

Seal judicially noticed.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES. (38 Stat. 718; 15 USCA, sec. 42.)

Commissioner's salary, \$10,000.

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Appointment of secretary. Salary, \$5,000.

Other employees. Salaries fixed by Commission.

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962-1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerce on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 25, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report presenting the minority views respectively of Messrs. Stevens and Lafferty; report of Senator Newlands from the Committee on Interstate Commerce on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressman Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840-8849; 9068; 14925-14933 (part 15); Dickinson for, part 9, pp. 9189-9190; Mann against, part 15, pp. 14939-14940; Morgan, part 9, 8854-8857, 9063-9064, 14941-14943 (part 15); Sims for, 14940-14941; Stevens of N. H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8849-8853 (part 9); 14933-14939 (part 15); and of Senators Borah against, 11186-11189 (part 11); 11232-11237, 11298-11302, 11600-11601 (part 12); Brandegee against, 12217-12218, 12220-12222, 12261-12262, 12410-12411, 12792-12804 (part 13), 13103-13108, 13299-13301; Clapp against, 11872-11873 (part 12), 13061-13065 (part 13), 13143-13146; 13301-13302; Cummins for, 11102-11106 (part 11), 11379-11389, 11447-11458 (part 12), 11528-11539, 12873-12875 (part 13), 12912-12924, 12987-12992, 13045-13052, 14768-14770 (part 15); Hollis for, 11177-11180 (part 11), 12141-12149 (part 12), 12151-12152; Kenyon for, 13155-13160 (part 13); Lewis for, 11302-11307 (part 11), 12924-12933 (part 13); Lippit against, 11111-11112 (part 11), 13210-13219 (part 13); Newlands for,

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Commission may rent suitable offices.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Auditing of accounts.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES. (38 Stat. 718; 15 USCA, sec. 43.)

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pend-

Bureau of Corporations absorbed by Commission.

9930 (part 10), 10376-10378 (part 11), 11081-11101, 11106-11116, 11594-11597 (part 12); Pomerene for, 12870-12873 (part 13), 12993-12996, 13102-13103; Reed against, 11112-11116 (part 11), 11874-11876 (part 12), 12022-12029, 12150-12151, 12539-12551 (part 13), 12933-12939, 13224-13234, 14787-14791 (part 15); Robinson for, 11107 (part 11), 11229-11233; Saulsbury for, 11185, 11591-11594 (part 2); Shields against, 13056-13061 (part 13), 13146-13148; Sutherland against, 11601-11604 (part 12), 12805-12817 (part 13), 12855-12862, 12980-12986, 13055-13056, 13109-13111; Thomas against, 11181-11185 (part 11), 11598-11600 (part 12), 12862-12869 (part 13), 12978-12980; Townsend against, 11870-11872 (part 12); and Walsh for, 13052-13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63 Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 429-442. (See case also in Vol. II of Commission's Decisions, p. 564 at pp. 570-579, and in "Statutes and Decisions," etc., 69, 74-81.

Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.—Contd.

ing investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employ-
ees, records, pa-
pers, property,
appropriations
transferred to
Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in
Washington, but
Commission may
meet elsewhere.

May prosecute
any inquiry any-
where in United
States.

[719] The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sec. 4. DEFINITIONS. (38 Stat. 719; 15 USCA, sec. 44.)

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation."

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Documentary evidence” means all documents, papers, and correspondence in existence at and after the passage of this Act. “Documentary evidence.”

“Acts to regulate commerce” means the Act entitled “An Act to regulate commerce,” approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto. “Acts to regulate commerce.”

“Antitrust acts” means the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety;² also the sections seventy-three to seventy-seven, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’ ” approved February twelfth, nineteen hundred and thirteen. “Antitrust acts.”

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE. (38 Stat. 719; 15 USCA, sec. 45.)

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful. Unfair methods unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce. Commission to prevent. Banks and common carriers excepted.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon Commission to issue complaint when unfair method used and to public interest.

and containing a notice of a hearing upon To serve same on respondent with notice of hearing.

² For text of Sherman Act, see p. 734.

¹ Jurisdiction of Commission under this section limited by sec. 406 of the “Packers and Stockyards Act, 1921,” approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See third paragraph of footnote on p. 695.

Provisions against unfair methods of competition extended by Export Trade Act (see sec. 4, p. 732) to include such methods used in export trade against competitors.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall [720] be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

Action by Court. Notice to respondent. Decree affirming, modifying, or setting aside Commission's order.

question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every [721] way expedited. No order of the

Commission's findings. Conclusive if supported by testimony.

Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

To be served on Commission.

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

Jurisdiction of Court exclusive

Proceedings to have precedence over other cases.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

Liability under antitrust acts not affected.

Service of Commission's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return by person serving, and return post-office receipt, proof of service.

commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.⁴

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. FURTHER POWERS.⁵ (38 Stat. 721; USCA, sec. 46.)

SEC. 6. That the commission shall also have power—

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

To require annual or special reports from corporations, except banks and common carriers.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special,

⁴ For text of Sherman Act, see p. 734. As enumerated in last paragraph of sec. 4 of this act, see p. 699.

⁵ Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

Such reports to be under oath, or otherwise, and filed within such reasonable period as commission may prescribe.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

To transmit findings and recommendations to Attorney General.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith [722] recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To make public, as it deems expedient, portions of information obtained.

To make reports to Congress, together with recommendations for new legislation.

To provide for publication of its reports and decisions.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To classify corporations, and make rules and regulations incidental to administration of Act.

Sec. 6 FURTHER POWERS—Continued.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY. (38 Stat. 722; 15 USCA, sec. 47.)

Court may refer suit to Commission.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

To ascertain and report an appropriate form of decree.

Commission to proceed on notice to parties and as prescribed by court. Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS. (38 Stat. 722; 15 USCA, sec. 48.)

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT. (38 Stat. 722; 15 USCA, sec. 49.)

Commission to have access to documentary evidence and right to copy same.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require

by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

May require attendance of witnesses and production of evidence.

Subpoenas, oaths, affirmations, examination of witnesses. Reception of evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpoena. Commission may invoke aid of any United States court.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

In case of contumacy or disobedience of subpoena, any district court in jurisdiction involved may order obedience.

Disobedience thereafter punishable as contempt.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Mandamus from district courts on application of Attorney General to enforce compliance with Act.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any [723] stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Commission may order depositions at any stage.

May be taken before person designated by Commission.

Testimony to be reduced to writing, etc.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same

Witness fees same as paid for like services in United States courts.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Incriminating testimony or evidence no excuse for failure to testify or produce.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

Sec. 10. PENALTIES. (38 Stat. 723; USCA, sec. 50.)

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc.; or

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence

Willful refusal to submit documentary evidence to Commission.

of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

Offender subject to fine or imprisonment, or both.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It [724] shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Failure of corporation to file required report.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business.

Various district attorneys to prosecute for recovery.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE. (38 Stat. 724; 15 USCA, sec. 51.)

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Not affected by this act.

Approved, September 26, 1914.

CLAYTON ACT¹

[Approved Oct. 15, 1914]

[PUBLIC—No. 212—63D CONGRESS]

[H. R. 15657]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes

Sec. 1. DEFINITIONS. (38 Stat. 730; 15 USCA, sec. 12.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety;² sections seventy-three to seventy-seven, inclusive, of an Act en-

"Antitrust laws."

¹ Reported decisions for the period covered by volumes I-XIII, inclusive (Mar. 16 1915, to May 4, 1930, inclusive) and bearing on the provisions of this act affecting the Commission, may be found, with a few exceptions to be noted, reported in whole or in part, in the Commission publication entitled "Statutes and Decisions—Federal Trade Commission—1914-1929."

Decisions in which the Commission was a party and which were handed down during the period above referred to may also be found reported in their chronological order in Appendix II of the different volumes of the Commission's decisions.

Exceptions above referred to follow: *Parker v. New England Oil Corporation*, 8 F. (2d) 802, 418; *Radio Corporation of America v. United Radio & Electric Corporation et al.*, 50 F. (2d) 206; *Swift & Co. v. United States*, 276 U. S. 311, 319; *United States v. Bates Valve Bag Corporation et al.*, 39 F. (2d) 162; *Sidney Morris & Co. v. National Association of Stationers, etc.*, 40 F. (2d) 620 (C. C. A.).

Decisions handed down subsequent to aforesaid period and during period covered by this and the two preceding volumes, i. e., May 5, 1930, to July 17, 1932, inclusive, follow: *Pittsburgh & W. Va. Ry. v. U. S.*, 281 U. S. 470, 483, 484, 488; *American Can Co. v. Ladoga*, 44 F. (2d) 763 (C. C. A.); *Radio Corporation of America v. DeForest Radio Co.*, 47 F. (2d) 606 (C. C. A.); *Carbice Corporation of America v. American Patents Development Corporation et al.*, 283 U. S. 27; *Gutterman v. Penn. R. R. Co. et al.*, Mar. 31, 1931, 48 F. (2d) 851; *Radio Corp. of America v. DeForest Radio Co.*, Apr. 27, 1931, 283 U. S. 847 (denying certiorari); *U. S. Navigation Co. v. Cunard S. S. Co.*, May 18, 1931, 50 F. (2d) 83, 284 U. S. 474 (Feb. 15, 1932); *Peterson v. Borden Co.*, June 11, 1931, 50 F. (2d) 644; *Temple Anthracite Coal Co. v. F. T. C.*, July 9, 1931, 51 F. (2d) 656 (see also volume 15, p. 616); *Hand v. Kansas City So. Ry. Co.*, July 16, 1931, 55 F. (2d) 712; *V. Vivaudou, Inc. v. F. T. C.*, Nov. 2, 1931, 54 F. (2d) 273 (see also volume 15, p. 631); *Crowell v. Benson*, Feb. 23, 1932, 285 U. S. 22; *Atwater v. Wheeling & L. E. Ry. Co.*, Mar. 8, 1932, 56 F. (2d) 720, 722; and *F. T. C. v. Paramount Famous Lasky Corp. et al.*, Apr. 4, 1932, 57 F. (2d) 152 (see also this volume, ante, p. 660)

It should be noted that this law is limited to some extent by certain provisions of other acts, as follows:

SHIPPING BOARD

The so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess., 39 Stat. 728, 734) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto * * *";

² The Sherman Act (26 Stat. 209), which as a matter of convenience is printed here-with on p. 734 et seq.

titled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' " approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of

PACKERS AND STOCKYARDS ACT

The jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

TRANSPORTATION ACT

By the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 456 at 452, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisitions by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

AGRICULTURAL ASSOCIATIONS

Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388), permits, subject to the provisions set forth, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products * * *". See also, in this general connection, the Cooperative Marketing Act, approved July 2, 1926, 44 Stat. 803.

Sec. 1. DEFINITIONS—Continued.

either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Sec. 2. PRICE DISCRIMINATION.³ (38 Stat. 730; 15 USCA, sec. 13.)

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

Vendor may select own customers if not in restraint of trade.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.³ (38 Stat. 731; 15 USCA, sec. 14.)

Unlawful where effect may be to substantially lessen competition.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or re-

³ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on pp. 708, 709.

bate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED. (38 Stat. 731; 15 USCA, sec 15.)

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws ⁴ may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

May sue in any United States district court, and recover threefold damages, including cost of suit.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS. (38 Stat. 731; 15 USCA, sec. 16.)

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Prima facie evidence against same defendant in private litigation.

Consent judgments or decrees excepted.

⁴ For text of Sherman Act, see p. 734. As enumerated in Clayton Act, see first paragraph thereof on p. 708.

Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS—Continued.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE. (38 Stat. 731; 15 USCA, sec. 17.)

Labor, agricultural, or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by antitrust laws with respect to their legitimate objects.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.¹ (38 Stat. 731; 15 USCA, sec. 18.)

Of other corporation. Prohibited where effect may be to substantially lessen competition, restrain commerce, and tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

¹ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on pp. 708, 709.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 731, sec. 3.)

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Purchase solely for investment excepted.

Formation of subsidiary corporations for immediate lawful business also excepted.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited

Existing rights heretofore lawfully acquired not affected.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS—Continued.

or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.* (38 Stat. 732; 15 USCA, sec. 19.)

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over \$5,000,000.

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

How eligibility determined.

* By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent, or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or employee of any" bank or corporation, "chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States," in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the Act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnotes on pp. 708, 709.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares, to joint stock land banks organized under the provisions of the Federal Farm Loan Act, or to other banking institutions which do no commercial banking business: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker from being an officer, director, or employee of not more than two banks, banking associations, or trust companies, or prohibit any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if in any such case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds, after reasonable notice and opportunity to be heard, that the public interest requires its revocation.

Not to serve more than one bank, banking association or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

Certain savings banks, land banks, and non-commercial banking institutions excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

Class A director of Federal reserve bank excepted, and

Private banker or officer, etc., of member bank, or class A director may serve, with consent of Federal Reserve Board, not more than two other banks, etc., where no substantial competition.

¹ That part of the preceding clause beginning with "to joint-stock land banks" added by Act of Mar. 2, 1929, ch. 581.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTIONS OF OTHER CORPORATIONS—Continued.

Consent may be secured before applicant elected director.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.⁸

Not to serve two or more presently or previously competing corporations if capital, surplus, and undivided profits aggregate more than \$1,000,000, and elimination of competition by agreement would violate antitrust laws.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

How eligibility determined.

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

⁸ The part of the section immediately preceding beginning with, "And provided further. That nothing in this Act" to this point, amendments made by act, May 15, 1914, ch. 120, act May 28, 1920, ch. 208, and Act Mar. 9, 1928, ch. 165.

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY. (38 Stat. 733; 18 USCA, sec. 412.)

SEC. 9. Every president, director, officer or manager of any firm, association, or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association, or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

May prosecute in district court of United States for district where offense committed.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS. (38 Stat. 734; 15 USCA, sec. 20.)

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such com-

Dealings in securities, etc., and contracts for construction or maintenance, aggregating more than \$50,000 a year to be by bid in case director, etc., of common carrier, also director, etc., of other party or has a substantial interest therein.

Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS—Continued.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

mon carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

Commission to report violations, and its own findings to Attorney General.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Penalty.

Effective date extended to Jan. 1, 1921.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first,

nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.⁹

Except as to corporations organized after Jan. 12, 1918.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS, APPEALS, SERVICE.¹⁰ (38 Stat. 734; 15 USCA, sec. 21.)

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Jurisdiction as respectively applicable, vested in

Interstate Commerce Commission;

Federal Reserve Board; and

Federal Trade Commission.

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist

Commission or board to issue complaint if believes secs. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist, etc., on respondent.

⁹ Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

¹⁰ On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on pp. 708, 709.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS, SERVICE—Continued.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying, or setting aside order of commission or board.

cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such

Findings of commission or board conclusive if supported by testimony.

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

Commission or board may make new or modified findings by reason thereof.

modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code. Judgment and decree subject to review upon certiorari, but otherwise final.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive. Petition by respondent to review order to cease and desist. To be served on commission or board which thereupon to certify and file transcript of record in the court. Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive. Jurisdiction of Court of Appeals exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts. Proceedings to have precedence over other cases, and to be expedited. Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal Service of commission's or board's complaints, orders, and other processes. Personal; or At office or place of business; or By registered mail.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS, SERVICE—Continued.

Verified return of person serving, and return post-office receipt, proof of service.

office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS. (38 Stat. 736; 15 USCA, sec. 22.)

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

SEC. 12. That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS. (38 Stat. 736; 15 USCA, sec. 23.)

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS. (38 Stat. 736; 15 USCA, sec. 24.)

Deemed also that of individual directors, officers, etc.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction

A misdemeanor.

therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

Penalty, fine or imprisonment, or both.

Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT. (38 Stat. 736; 15 USCA, sec. 25.)

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

District attorneys, under direction of Attorney General, to institute proceedings.

Proceedings may be by way of petition setting forth the case, etc.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

Court may summon other parties.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS. (38 Stat. 737; 15 USCA, sec. 26.)

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven, and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS—Continued.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS. (38 Stat, 737; first two paragraphs are 28 USCA, sec. 381.)

No preliminary injunction without notice.

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such tempo-

rery restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Opposite party may move dissolution or modification on two days' notice.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Sec. 263 of Judicial Code repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 266 not affected.

Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY. (38 Stat. 738; 28 USCA, sec. 382.)

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Except as provided in sec. 16 of this act.

Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS. (38 Stat. 738; 28 USCA, sec. 383.)

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific, and described acts to be restrained.

Binding only on parties to suit, their officers, etc.

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT. (38 Stat. 738; 29 USCA, sec. 52.)

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge

Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT—Continued.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Acts specified in this paragraph not to be considered violations of any law of the United States.

or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT. (38 Stat. 733; 28 USCA, sec. 386.)

Sec. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of

the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL. PENALTIES. (38 Stat. 738; USCA, sec. 387.)

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which

Trial may be by court, or upon demand of accused, by jury.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL, PENALTIES—Continued.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Penalty, fine or imprisonment, or both.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed \$1,000.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court

Court or judge may dispense with rule and issue attachment for arrest.

or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

Sec. 23. EVIDENCE. APPEALS. (38 Stat. 739; 28 USCA, sec. 388.)

Evidence may be preserved by bill of exceptions.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SECTION 21 NOT AFFECTED. (38 Stat. 739; 28 USCA, sec. 389.)

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States.

And other cases not in sec. 21.

Punished in conformity with prevailing usages at law and in equity.

Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS. (38 Stat. 740; 28 USCA, sec. 390.)

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT. (37 Stat. 740; 15 USCA, sec. 27.)

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

But to be confined to clause, sentence, etc., directly involved.

Approved, October 15, 1914.

EXPORT TRADE ACT¹

[Approved Apr. 10, 1918]

[PUBLIC—No. 126—65TH CONGRESS]

[H. R. 2316]

AN ACT To promote export trade, and for other purposes

Sec. 1. DEFINITIONS. (40 Stat. 516; 15 USCA, sec. 61.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

"Export trade." That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

"Trade within the United States."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

¹ In this general connection, i. e., regulation and promotion of export trade, mention should perhaps be made of the so-called antidumping legislation, prohibiting, penalizing, and affording relief for systematic importation and sale of articles into the United States at prices substantially less than their actual market value or their wholesale price, as in the act specified, where done with the intent of destroying or injuring a domestic industry, preventing the establishment thereof, or of restraining or monopolizing any part of trade and commerce in the articles concerned, in the United States. Act of Sept. 8, 1916, ch. 463, sec. 801, 39 Stat. 798.

As regards cases, see reference to act in *United States v. United States Steel Corporation*, 251 U. S. 417 at 453, in *Ex Parte Lamar*, 274 Fed. 160 at 171, and in *American Export Door Corporation v. John A. Gauger Co.*, 283 Pac. 462 (Wash.), in which the court, in a suit by an Export Trade Act association against a member, to enforce the membership contract, held the contract void as a restraint of trade at the common law and violative of the State constitution, the act inoperative to regulate such intrastate matters as therein concerned, as beyond the Federal jurisdiction, and, as regards the exemptions provided by the act, from the antitrust laws, as not intended to reach such situations as disclosed by the facts of said case. Except as above noted, the Export Trade or Webb Act act does not appear to have been involved in reported cases.

That the word "Association" wherever used in this "Association." Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW. (40 Stat. 517; 15 USCA, sec. 62.)

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety,² shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Association not illegal if organized for and engaged in export trade solely,
Nor agreement nor act,
If not in restraint of trade within the United States, or of the export trade of any domestic competitor, and
If such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION. (40 Stat. 517; 15 USCA, sec. 63.)

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen,³ shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

² For text of Sherman Act, see p. 734.

³ See *ante*, p. 712 et seq.

Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS. (40 Stat. 517; 15 USCA, sec. 64.)

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen,⁴ shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Even though acts involved done without territorial jurisdiction of United States.

Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION. (40 Stat. 517, 15 USCA, sec. 65.)

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

⁴ See ante, p. 699 et seq.

the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

District attorneys to prosecute for recovery of forfeiture.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Commission given same powers as under Federal Trade Commission Act so far as applicable.

Approved, April 10, 1918.

SHERMAN ANTITRUST ACT

Sec. 1. CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL—PENALTY. (26 Stat. 209; 15 USCA, sec. 1.)

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Misdemeanor:
Penalty—Fine,
imprisonment, or
both.

Sec. 2. PERSONS MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY. (26 Stat. 209; 15 USCA, sec. 2.)

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 3. CONTRACTS, ETC., AFFECTING TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY. (26 Stat. 209; 15 USCA, sec. 3.)

SEC 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States

or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 4. ENFORCEMENT. (26 Stat. 209; 15 USCA, sec. 4.)

SEC. 4. The several circuit courts¹ of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Jurisdiction; circuit courts.

Procedure; by way of petition.

Sec. 5. ADDITIONAL PARTIES. (26 Stat. 210; 15 USCA, sec. 5.)

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Sec. 6. FORFEITURE OF PROPERTY. (26 Stat. 210; 15 USCA, sec. 6.)

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited

¹ Act of Mar. 3, 1911, c. 231, 36 Stat. 1167, abolishes the courts referred to, and confers their powers upon the district courts.

Procedure.

to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Sec. 7. SUITS—RECOVERY. (26 Stat. 210.)**Threefold damages and costs.**

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court¹ of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Sec. 8. "PERSON" OR "PERSONS" DEFINED. (26 Stat. 210; 15 USCA, Sec. 7.)

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

¹ See footnote on p. 735.

RULES OF PRACTICE

I. SESSIONS

The principal office of the Commission at Washington, D.C., is open each business day from 9 a.m. to 4:30 p.m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Principal office.

Commission may exercise power elsewhere.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Hearings as ordered.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D.C., on each business day at 10:30 a.m. Three members of the Commission shall constitute a quorum for the transaction of business.

Sessions for orders and other business.

Quorum.

All orders of the Commission shall be signed by the secretary.

Orders signed by secretary.

I-A. PERSONAL APPEARANCE

Any individual or member of a partnership which is a party to any proceeding before the Commission may appear for himself or such partnership upon adequate identification, and a corporation or association may be represented by a bona-fide officer of such corporation or association.

Person or partnership.

Corporation or association.

I-B. ADMISSION TO PRACTICE

Attorneys at law who are admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the Court of Appeals or the Supreme Court of the District of Columbia, may be admitted to practice before the Commission.

Attorneys: Qualifications.

The Commission may, in its discretion, deny admission, suspend or disbar from practice before it, any person who, it finds, does not possess the requisite qualifications to represent others, or is lacking in character, integrity, or is guilty of unprofessional conduct. Any person who has been admitted to practice before the

Denial of admission, suspension, or disbarment: Grounds.

Hearing.

Commission may be disbarred or suspended from practice for good cause shown but only after he has been afforded an opportunity to be heard.

II. COMPLAINTS**Who may ask complaint.**

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Form of application.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Commission to investigate.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.

Issuance and service of complaint.**III. ANSWERS****Time allowed for answer.**

(1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint), file with the Commission an answer to the

Form of answer.

complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial.

Failure to deny any allegation.

Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

If respondent desires to waive hearing,—

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or

that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint, to waive a hearing thereon, and to authorize the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, to make, enter, issue, and serve upon respondent:

(a) In cases arising under section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (the Federal Trade Commission Act), or under sections 2 and 3 of the act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), an order to cease and desist from the violations of law charged in the complaint;

In cases under sec. 5 of F. T. C. Act, or secs. 2 and 3 of Clayton Act.

(b) In cases arising under section 7 of the said act of Congress approved October 15, 1914 (the Clayton Act), an order to cease and desist from the violations of law charged in the complaint and to divest itself of the stock alleged in the complaint to be held contrary to the provisions of said section 7 of said Clayton Act;

In cases under sec. 7 of Clayton Act; and

(c) In cases arising under section 8 of the said act of Congress approved October 15, 1914 (the Clayton Act), an order to cease and desist from the violation of law charged in the complaint and to rid itself of the directors alleged in the complaint to have been chosen contrary to the provisions of said section 8 of said Clayton Act.

In cases under sec. 8 of Clayton Act.

(3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Failure to answer.

(4) Three copies of answers must be furnished. All answers must be signed in ink by the respondent or by his duly authorized attorney and must show the office and post-office address of the signer. All answers must be typewritten or printed. If typewritten, they must be on paper not more than 8½ inches wide and not more than 11 inches long. If printed, they must be on paper 8 inches wide by 10½ inches long.

Number of copies, signature, etc.

IV. SERVICE

Personal, or Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed, as aforesaid, shall be proof of the service of the same.

By leaving copy, or
By registered mail.
Return.

V. INTERVENTION

Form of application. Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Permitted by order.
Size of paper, margin, etc., used on application.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10- or 12-point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

VI. CONTINUANCES AND EXTENSIONS OF TIME

In discretion of Commission. Continuances and extensions of time will be granted at the discretion of the Commission.

VII. WITNESSES AND SUBPENAS

Examination ordinarily oral. Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Subpenas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpenas for witnesses.

Subpenas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Subpenas for production of documentary evidence.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

Witness fees and mileage.

VIII. TIME FOR TAKING TESTIMONY

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than 5 days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

Examination of witnesses to proceed as fast as practicable.

Notice to counsel.

IX. OBJECTIONS TO EVIDENCE

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

To state grounds of objection, etc.

X. MOTIONS

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

To briefly state nature of order applied for, etc.

XI. HEARINGS ON INVESTIGATIONS

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings

By single commissioner.

thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding the same, be public.

General counsel or assistant to conduct hearing.

XII. HEARINGS BEFORE EXAMINERS

Examiner to take testimony.

When issue in the case is set for trial it shall be referred to a trial examiner for the taking of testimony. It shall be the duty of the trial examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown on the record, the trial examiner shall extend the time. The examiner shall, within 20 days after the receipt of the stenographic report of the testimony (unless the time be extended by the Commission on application within that period by the chief trial examiner stating reasons for the delay), make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

Testimony to be completed within 30 days except for good cause.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument on exceptions.

Examiner under certain circumstances to receive from each side statement of its contentions after testimony and before his report.

When, in the opinion of the trial examiner engaged in taking testimony in any formal proceeding, the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel at the close of the taking of testimony announce to the attorney for the respondent and for the Commission that the examiner will receive at any time before he has completed the drawing of the "trial exam-

iner's report upon the facts" a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Any tentative draft of finding or findings submitted by either side shall be submitted within 10 days after the closing of the taking of testimony and not later, which time shall not be extended.

Time allowance for submission of tentative findings.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS

The Commission may order testimony to be taken by deposition in a contested proceeding.

Commission may order.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Before person designated, etc.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

Application for depositions.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D.C. Upon receipt of the deposition and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Testimony of witness.

Deposition to be forwarded.

And filed. Copy to defendant or his attorney.

- Size of paper, etc.** Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.
- Notice.** No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.
- Limitations as to time.** No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

XIV. DOCUMENTARY EVIDENCE

- Relevant and material matter only to be filed.** Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

XV. BRIEFS

- Filed with secretary.** All briefs must be filed with the secretary of the Commission, and briefs on behalf of the Commission must be accompanied by proof of the service of the same as hereinafter provided, or the mailing of same by registered mail to the respondent or its attorney at the proper address.
- Proof of service.** Twenty copies of each brief shall be furnished for the use of the Commission unless otherwise ordered. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Every brief, except the reply brief on behalf of the Commission, hereinafter mentioned, shall contain in the order here stated:
- Number.**
- To contain exceptions to trial examiner's report.**
- Form.**
- Abstract of case.** (1) A concise abstract or statement of the case.
- Brief of argument.** (2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.
- Index.** Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

Briefs must be printed in 10 or 12 point type on good ^{Printing.} unglazed paper 8 by 10½ inches, with inside margins not less than 1 inch wide, and with double-leaded text and single-leaded citations.

The reply brief on the part of the Commission shall be ^{Reply brief.} strictly in answer to respondent's brief.

The time within which briefs shall be filed is fixed as ^{Time for briefs.} follows: For the opening brief on behalf of the Commission, 30 days from the day of the service upon the chief counsel or trial attorney of the Commission of the trial examiner's report; for brief on behalf of respondent, 30 days after the date of service upon the respondent or his attorney of the brief on behalf of the Commission; for reply brief on behalf of the Commission, 10 days after the filing of the respondent's brief. Reply brief on behalf of respondent will not be permitted to be filed. Applications for extension of time in which to file briefs shall be by petition in writing, stating the facts on which the application rests, which must be filed with the Commission at least 5 days before the time fixed for filing such briefs. Briefs not filed with the Commission on or before the dates fixed therefor will not be received except by special permission of the Commission. Appearance of additional counsel in a case shall not, of itself, constitute sufficient grounds for extension of time for filing brief or for postponement of final hearing.

Briefs on behalf of the Commission may be served by ^{Service of Commission brief.} delivering a copy thereof to the respondent's attorney or to the respondent in case respondent be not represented by attorney, or by registering and mailing a copy thereof addressed to the respondent's attorney or to the respondent in case respondent be not represented by attorney, at the proper post-office address. Written acknowledgment of service, or the verified return of the party making the service, shall constitute proof of personal service as hereinbefore provided, and the return post-office receipt aforesaid for said brief when registered and mailed shall constitute proof of the service of the same.

Oral arguments may be had only as ordered by the ^{Oral arguments.} Commission on written application of the chief counsel or of respondent filed not later than 5 days after expiration of time allowed for filing of reply brief of counsel for the Commission.

XVI. REPORTS SHOWING COMPLIANCE WITH ORDERS

Within time
specified and in
writing.

In every case where an order is issued by the Commission for the purpose of preventing violations of law the respondent or respondents therein named shall file with the Commission, within the time specified in said order, a report in writing setting forth in detail the manner and form in which the said order of the Commission has been complied with.

XVII. REOPENING PROCEEDINGS

Within 90 days
and for good
cause.

In any case where an order to cease and desist, an order dismissing a complaint, or other order disposing of a proceeding is issued the Commission may, at any time within 90 days after the entry of such order, for good cause shown in writing and on notice to the parties, reopen the case for such further proceedings as to the Commission may seem proper.

XVIII. ADDRESS OF THE COMMISSION

Washington,
D.C.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D.C., unless otherwise specifically directed.

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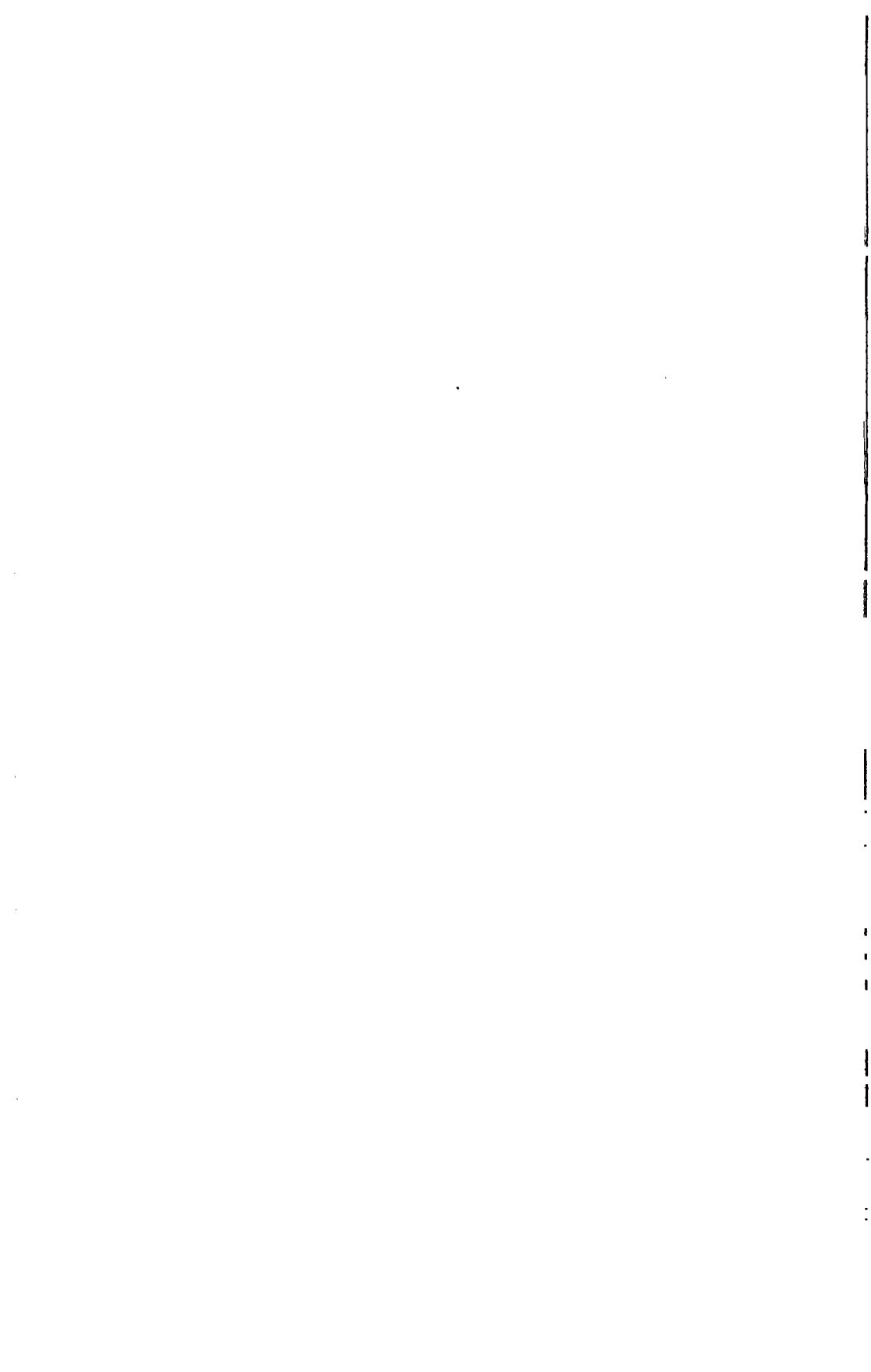
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